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Proclamation 7586 of August 28, 2002

To Modify Duty-Free Treatment Under the Generalized System of Preferences for Argentina

By the President of the United States of America

A Proclamation

1. Section 503(c)(2)(C) of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2463(c)(2)(C)), provides that a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the competitive need limitations in section 503(c)(2)(A) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)) during the preceding calendar year.

2. Section 503(c)(2)(F) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)) provides that the President may disregard the competitive need limitation provided in section 503(c)(2)(A)(i)(II) (19 U.S.C. 2463(c)(2)(A)(i)(II)) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed an amount set forth in section 503(c)(2)(F)(ii) (19 U.S.C. 2463(c)(2)(F)(ii)).

3. Pursuant to section 503(c)(2)(C) of the 1974 Act, I have determined that Argentina should be redesignated as a beneficiary developing country with respect to certain eligible articles that previously had been imported in quantities exceeding the competitive need limitations of section 503(c)(2)(A).

4. Pursuant to section 503(c)(2)(F) of the 1974 Act, I have determined that the competitive need limitation provided in section 503(c)(2)(A)(i)(II) should be waived with respect to certain eligible articles from Argentina.

5. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide that Argentina, which has not been treated as a beneficiary developing country with respect to certain eligible articles, should be redesignated as a beneficiary developing country with respect to those articles for purposes of the GSP:

(a) general note 4(d) to the HTS is modified as provided in section A of the Annex to this proclamation.

(b) the Rates of Duty 1-Special subcolumn for each of the HTS subheadings enumerated in section B of the Annex to this proclamation is modified as provided in such section.

(2) A waiver of the application of section 503(c)(2)(A) (i)(II) of the 1974 Act shall apply to the eligible articles in the HTS subheadings and to

the beneficiary developing country listed in section C of the Annex to this proclamation.

(3) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(4) The modifications made by the Annex to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of August, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



Annex

Modifications to the Harmonized Tariff
Schedule of the United States (HTS)

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the publication of this proclamation in the Federal Register.

Section A. General note 4(d) to the HTS is modified by:

(1) deleting the following subheadings and Argentina set out opposite such subheading:

0813.30.00	4101.90.70	4107.11.50	4107.19.80	4107.99.70
1005.90.20	4103.20.20	4107.11.60	4107.91.50	4107.99.80
1005.90.40	4104.11.40	4107.11.70	4107.91.60	4112.00.60
1007.00.00	4104.11.50	4107.11.80	4107.91.70	4113.90.60
2305.00.00	4104.19.40	4107.12.50	4107.91.80	4114.20.70
4101.20.40	4104.19.50	4107.12.60	4107.92.50	4205.00.60
4101.20.70	4104.41.40	4107.12.70	4107.92.60	7115.90.40
4101.50.40	4104.41.50	4107.12.80	4107.92.70	
4101.50.70	4104.49.40	4107.19.60	4107.92.80	
4101.90.40	4104.49.50	4107.19.70	4107.99.60	

(2) deleting Argentina set out opposite the following subheadings:

1602.50.20	3204.12.30	3204.12.50	4101.20.50	4101.90.50
3204.12.20	3204.12.45	3806.30.00	4101.50.50	7115.90.30

Section B. For the following provisions, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A*" and inserting an "A" in lieu thereof.

0813.30.00	4101.90.70	4107.11.50	4107.19.80	4107.99.70
1005.90.20	4103.20.20	4107.11.60	4107.91.50	4107.99.80
1005.90.40	4104.11.40	4107.11.70	4107.91.60	4112.00.60
1007.00.00	4104.11.50	4107.11.80	4107.91.70	4113.90.60
2305.00.00	4104.19.40	4107.12.50	4107.91.80	4114.20.70
4101.20.40	4104.19.50	4107.12.60	4107.92.50	4205.00.60
4101.20.70	4104.41.40	4107.12.70	4107.92.60	7115.90.40
4101.50.40	4104.41.50	4107.12.80	4107.92.70	
4101.50.70	4104.49.40	4107.19.60	4107.92.80	
4101.90.40	4104.49.50	4107.19.70	4107.99.60	

Section C. HTS subheading and country for which the competitive need limitation provided in section 503(c)(2)(A)(i)(II) is waived.

2305.00.00 Argentina

Title 3—

Executive Order 13273 of August 21, 2002

The President

Further Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1 of title II of the Act of June 15, 1917, as amended (50 U.S.C. 191) (the "Act"), and in addition to the finding in Executive Order 10173 of October 18, 1950, and any other declaration or finding in force under section 1 of the Act, I find that the security of the United States is endangered by reason of disturbances in the international relations of the United States that have existed since the terrorist attacks on the United States of September 11, 2001, and that such disturbances continue to endanger such relations, and hereby order that:

Part 6 of Title 33 of the Code of Federal Regulations is amended by:

(a) Adding after section 6.01–5 the following new section:

"6.01–6 Area Commander. "Area Commander," as used in this part, means the officer of the Coast Guard designated by the Commandant to command a Coast Guard Area."; and

(b) Amending section 6.04–1 to read as follows:

"6.04–1 Enforcement. (a) The rules and regulations in this part shall be enforced by the Captain of the Port under the supervision and general direction of the District Commander, Area Commander, and the Commandant. All authority and power vested in the Captain of the Port by the regulations in this part shall be deemed vested in and may be exercised by the District Commander, Area Commander, and the Commandant.

(b) The rules and regulations in this part may be enforced by any other officer or petty officer of the Coast Guard designated by the District Commander, Area Commander, or the Commandant.

(c) Any authority or power under this part vested in, delegated to, or exercised by a member of the Coast Guard shall be subject to the direction of the Secretary of the Department in which the Coast Guard is operating."



THE WHITE HOUSE,
August 21, 2002.

Rules and Regulations

Federal Register

Vol. 67, No. 170

Tuesday, September 3, 2002

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 02-085-1]

AQI User Fees: Extension of Current Fees Beyond Fiscal Year 2002

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the user fee regulations to ensure that fiscal year 2002 user fee rates remain in effect beyond fiscal year 2002 until the fees are revised. In a final rule published in the **Federal Register** on November 16, 1999, we amended the regulations by adjusting the fees charged for certain agricultural quarantine and inspection services we provide in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. We should have stated that the fees for fiscal year 2002 would remain in effect until changed by further rulemaking; instead, we indicated that the fees would remain in effect through September 30, 2002. This interim rule will extend existing user fee rates and continue to allow the collection of the fees beyond that date.

DATES: This interim rule is effective September 3, 2002. We will consider all comments that we receive on or before November 4, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-085-1, Regulatory Analysis and Development,

PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-085-1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-085-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Mr. Jim Smith, Assistant Director, Port Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737-1236; (301) 734-8295. For information concerning rate development, contact Ms. Donna Ford, PPQ User Fees Section Head, FMD, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1232, (301) 734-5901.

SUPPLEMENTARY INFORMATION:

Background

Section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136a), referred to below as the FACT Act, authorizes the Animal and Plant Health Inspection Service (APHIS) to collect user fees for agricultural quarantine and inspection (AQI) services. The FACT Act was amended by section 917 of the Federal Agricultural Improvement and Reform Act of 1996 (Pub. L. 104-127), on April 4, 1996.

The FACT Act, as amended, authorizes APHIS to collect user fees for providing AQI services in connection with the arrival at a port in the customs

territory of the United States, or the preclearance or preinspection at a site outside the customs territory of the United States, of:

- Commercial vessels,
- Commercial trucks,
- Commercial railroad cars,
- Commercial aircraft, and
- International airline passengers.

According to the FACT Act, as amended, these user fees should recover the costs of:

- Providing the AQI services listed above,
- Administering the user fee program, and
- Until September 30, 2002, maintaining a reasonable balance in the Agricultural Quarantine Inspection User Fee Account (AQI account).

On November 16, 1999, we published in the **Federal Register** (64 FR 62089-62096, Docket No. 98-073-2) a final rule amending the user fee regulations in § 354.3 by adjusting the fees charged for certain AQI services we provide in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. We should have stated that the fees for fiscal year (FY) 2002 would remain in effect until changed by further rulemaking; instead, we indicated that the fees would remain in effect through September 30, 2002. In order to recover our costs for providing AQI services after that date, we need to continue to collect user fees.

Therefore, we are amending the AQI user fee regulations in § 354.3 to ensure that FY 2002 user fee rates remain in effect beyond FY 2002 until the fees are revised. This interim rule will extend existing user fee rates and continue to allow the collection of the fees beyond September 30, 2002. Collection of these fees is necessary for the continuance of specific border inspection activities that are essential to protect U.S. agriculture from plant and animal disease and pest threats.

Immediate Action

Immediate action is necessary to continue to allow the collection of AQI user fees beyond September 30, 2002. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause

under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

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

This interim rule amends the AQI user fee regulations to ensure that current fees remain in effect until adjusted through further rulemaking.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 is revised to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

2. Section 354.3 is amended by revising the tables in paragraphs (b)(1), (c)(1), (d)(1), (e)(1), and (f)(1) to read as follows:

§ 354.3 User fees for certain international services.

* * * * *

(b) * * *

(1) * * *

Effective dates	Amount
January 1, 2000 through September 30, 2000	465.50
October 1, 2000 through September 30, 2001	474.50
October 1, 2001	480.50

* * * * *

(c) * * *

(1) * * *

Effective dates	Amount
January 1, 2000 through September 30, 2000	4.25
October 1, 2000 through September 30, 2001	4.50
October 1, 2001	4.75

* * * * *

(d) * * *

(1) * * *

Effective dates	Amount
January 1, 2000 through September 30, 2000	6.75
October 1, 2000 through September 30, 2001	7.00
October 1, 2001	7.00

* * * * *

(e) * * *

(1) * * *

Effective dates	Amount
January 1, 2000 through September 30, 2000	64.00
October 1, 2000 through September 30, 2001	64.75
October 1, 2001	65.25

* * * * *

(f) * * *

(1) * * *

Effective dates ¹	Amount
January 1, 2000 through September 30, 2000	3.00

Effective dates ¹	Amount
October 1, 2000 through September 30, 2001	3.00
October 1, 2001	3.10

¹Persons who issue international airline tickets or travel documents are responsible for collecting the APHIS international airline passenger user fee from ticket purchasers. Issuers must collect the fee applicable at the time tickets are sold. In the event that ticket sellers do not collect the APHIS user fee when tickets are sold, the air carrier must collect the user fee from the passenger upon departure. Carriers must collect the fee applicable at the time of departure from the traveler.

* * * * *

Done in Washington, DC, this 27th day of August, 2002.

Richard L. Dunkle,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02-22313 Filed 8-30-02; 8:45 am]
BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-313-AD; Amendment 39-12875; AD 94-09-11 R1]

RIN 2120-AA64

Airworthiness Directives; Raytheon Model BAe.125 Series 1000A Airplanes and Model Hawker 1000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; rescission.

SUMMARY: This amendment rescinds an existing airworthiness directive (AD), applicable to certain Raytheon Model BAe.125 Series 1000A Airplanes and Model Hawker 1000 airplanes. That AD currently requires inspections of the thrust reverser system for integrity, and correction of any discrepancy found. The requirements of that AD were intended to prevent a significant reduction in the controllability of the airplane due to an in-flight deployment of a thrust reverser. Since the issuance of that AD, the FAA has issued a separate AD that requires the accomplishment of modifications that terminate the requirements of the existing AD.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Aerospace Engineer, Systems and Propulsion Branch, ACE-116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas

67209; telephone (316) 946-4153; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to rescind an airworthiness directive (AD) that is applicable to certain Raytheon Model BAe.125 Series 1000A and Hawker 1000 series airplanes was published in the **Federal Register** on September 10, 1999 (64 FR 49112). That action proposed the rescission of AD 94-09-11, amendment 39-8900 (59 FR 22125, April 29, 1994), in order to prevent operators from performing an unnecessary action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the rescission of the rule as proposed, with the exception of the change to applicability.

Explanation of Change to Applicability

The FAA has revised the applicability of this final rule to identify model designations as published in the most recent type certificate data sheet for the affected models.

Regulatory Impact

The regulations adopted herein will 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 final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from 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 Rescission

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 39-8900.

94-09-11 R1 Raytheon Aircraft Company:

Amendment 39-12875. Docket No. 97-NM-313-AD. Rescinds AD 94-09-11, Amendment 39-8900.

Applicability: Model BAe.125 Series 1000A Airplanes and Model Hawker 1000 airplanes; as listed in Raytheon Corporate Jets Service Bulletin SB 78-12, dated January 4, 1994, certificated in any category.

This rescission is effective September 3, 2002.

Issued in Renton, Washington, on August 26, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-22176 Filed 8-30-02; 8:45 am]

BILLING CODE 4910-13-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-46418]

Delegation of Authority to the General Counsel of the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its rules to delegate authority to the General Counsel to issue orders raising in any Commission-instituted proceeding the matter of whether any sanction, and if so what sanction, should be imposed in the public interest. This delegation is intended to conserve Commission resources, as well as expedite the resolution of reviews of those proceedings.

EFFECTIVE DATE: September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Joan Loizeaux, Office of the General Counsel, at (202) 942-0990, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549-0208.

SUPPLEMENTARY INFORMATION: The Commission today is amending its rules governing delegation of authority to the General Counsel. The Securities Act of 1933,¹ Securities Exchange Act of 1934,² Investment Advisers Act of 1940,³ the Investment Company Act of 1940,⁴ the Securities Investor Protection Act of 1970,⁵ and rule of practice 102(e)⁶ authorize the Commission to institute administrative proceedings, which, under appropriate circumstances, can result in the imposition of sanctions. The Commission wishes to provide prompt notice to the parties that it may review sanctions imposed in initial decisions in such proceedings with a view to making an independent assessment of what sanctions, if any, are in the public interest.

Commission rule of practice 411(d)⁷ authorizes the Commission, prior to the issuance of a decision, to raise and determine any matters that it deems material. The Commission therefore is amending its rules to delegate to the General Counsel the authority to issue orders, pursuant to rule of practice 411(d), that would take up the issue of whether any sanction, and if so what sanction, is appropriate in the public interest. In any case in which the General Counsel believes it appropriate, he or she may submit the matter to the Commission for consideration.

Administrative Law Matters

The Commission finds, in accordance with section 533(b)(A) of the Administrative Procedure Act, 5 U.S.C. 553(b)(A), that this amendment relates solely to agency organization, procedure, or practice. Accordingly, notice and opportunity for public comment, as well as publication 30 days before its effective date, are unnecessary. Because notice and comment are not required for this final rule, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act.⁸

The rule does not contain any collection of information requirements as defined by the Paperwork Reduction

¹ 15 U.S.C. 77a, *et seq.*

² 15 U.S.C. 78a, *et seq.*

³ 15 U.S.C. 80b-1, *et seq.*

⁴ 15 U.S.C. 80a-1, *et seq.*

⁵ 15 U.S.C. 78aaa, *et seq.*

⁶ 17 CFR 201.102(e).

⁷ 17 CFR 201.411(d).

⁸ See 5 U.S.C. 603.

Act of 1995, as amended.⁹ The rule will not impose any costs on the public.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of the Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

* * * * *

2. Section 200.30-14 is amended by adding paragraph (g)(1)(xv) to read as follows:

§ 200.30-14 Delegation of authority to the General Counsel.

* * * * *

(g)(1) * * *
(xv) To issue an order raising, pursuant to the provisions of Rule 411(d) of the Commission's Rules of Practice, § 201.411(d) of this chapter, any matter relating to whether any sanction, and if so what sanction, is in the public interest.

* * * * *

Dated: August 27, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-22302 Filed 8-30-02; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05-02-004]

RIN 2115-AE46

Special Local Regulations for Marine Events; St. Mary's River, St. Mary's City, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local

regulations for the St. Mary's Seahawk Sprint, a marine event held on the waters of the St. Mary's River, St. Mary's City, Maryland. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the St. Mary's River during the event.

DATES: This rule is effective October 3, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-02-004 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Section, at (757) 398-6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 26, 2002, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; St. Mary's River, St. Mary's City, MD, in the **Federal Register** (67 FR 13734). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

St. Mary's College of Maryland annually sponsors the St. Mary's Seahawk Sprint, a rowing regatta conducted during the second weekend in April. The St. Mary's Seahawk Sprint consists of intercollegiate crew rowing teams racing along a 2000-meter course on the waters of the St. Mary's River. A fleet of spectator vessels traditionally gathers near the event site to view the competition. To provide for the safety of event participants, spectators and transiting vessels, the Coast Guard will temporarily restrict the movement of all vessels operating in the event area during the crew races.

Discussion of Comments and Changes

No comments were received. No substantive changes were made to the proposed regulatory text. Changes were made, however, to the format of the proposed regulatory text. We moved the description of the "regulated area" from the definitions section to the body of the text and made grammatical corrections.

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).

Although this rule will prevent traffic from transiting a portion of the St. Mary's River during the event, the effect of this rule will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary.

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 owners or operators of vessels, some of which may be small entities, intending to transit or anchor in the affected portions of the St. Mary's River during the event.

Although this rule will prevent traffic from transiting a portion of the St. Mary's River during the event, the effect of this rule will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

⁹ 44 U.S.C. 3501 *et seq.*

Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No assistance was requested by any small business, organization, or governmental jurisdiction.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraphs (34)(h) and (35)(a) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit, are specifically excluded from further analysis and documentation under those sections. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. § 100.527 is added to read as follows:

§ 100.527 St. Mary's River, St. Mary's City, Maryland.

(a) *Definitions.* (1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(b) *Regulated area.* The regulated area includes all waters of the St. Mary's River, from shoreline to shoreline, bounded to the south by a line at latitude 38°10'05" North, and bounded to the north by a line at latitude 38°12'00" North, All coordinates reference Datum NAD 1983.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign; and

(ii) Proceed as directed by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(d) *Effective dates.* This section is effective annually from 7 a.m. to 4 p.m. on the second Saturday in April.

Dated: August 26, 2002.

A.E. Brooks,

Captain, Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02-22338 Filed 8-30-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100, 117 and 165

[USCG-2002-13238]

Safety Zones, Security Zones, Drawbridge Operation Regulations and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued; correction.

SUMMARY: This document corrects a notice of temporary rules issued published in the **Federal Register** on July 30, 2002, collecting those temporary rules issued by the Coast Guard for which timely publication in the **Federal Register** was not possible. That document contained an inaccurate docket number. The correct docket number appears in the heading of this document.

FOR FURTHER INFORMATION CONTACT: LTJG Sean Fahey, Office of Regulations and Administrative Law, at (202) 267-2830.

SUPPLEMENTARY INFORMATION:**Correction**

The heading of the notice of temporary rules issued published July 30, 2002, on page 49236 of the **Federal Register**, contained an incorrect docket number, USCG-2002-11544. The correct docket number is USCG-2002-13238. To advise the public of this error, we are publishing this notice of correction.

Correction of Publication

Accordingly, the notice of temporary rules issued published July 30, 2002, FR Doc. 02-19135, [docket number USCG-2002-11544], is corrected as follows: On page 49236, in the heading, "USCG-2002-11544" is corrected to read "USCG-2002-13238".

Dated: August 27, 2002.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 02-22341 Filed 8-30-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-02-065]

RIN 2115-AA97

Safety and Security Zones; High Interest Vessel Transits, Narragansett Bay, Providence River, and Taunton River, RI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent safety and security zones around high interest vessels (HIVs) while those vessels are operating within Rhode Island Sound, Narragansett Bay, and the Providence and Taunton Rivers. This rule also establishes safety and security zones around HIVs and adjacent land areas while HIVs are moored at waterfront facilities in the Providence Captain of the Port zone. The safety and security zones are needed to safeguard the public, high interest vessels and their crews, other vessels and their crews, and the Port of Providence, Rhode Island from sabotage or other subversive acts, accidents, or other causes of a similar nature.

DATES: This rule is effective September 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, are part of docket CGD01-02-065 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Providence, 20 Risho Avenue, E. Providence, RI, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT David C. Barata at Marine Safety Office Providence, (401) 435-2345.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On December 12, 2001, we published a temporary final rule (TFR) entitled "Safety And Security Zones: High Interest Vessel Transits, Narragansett Bay, Providence River, and Taunton River, RI" in the **Federal Register** (66 FR 64144-64146). The effective period for this rule was from October 6, 2001, until June 15, 2002. The original TFR was urgently required to prevent possible terrorist strikes against high interest vessels (HIVs) within and adjacent to Rhode Island Sound, Narragansett Bay, and the Providence and Taunton Rivers.

It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, to propose regulations responsive to existing conditions. We determined the need for continued security regulations existed and issued a change to the effective period in the **Federal Register** (67 FR 35035, May 17, 2002). The Coast Guard used the extended effective period of the TFR to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment within the COTP Providence Zone.

On June 20, 2002, the Coast Guard published a notice of proposed rulemaking (NPRM) to propose to make permanent the temporary safety and security zones created and then extended by TFRs (66 FR 64144, December 12, 2001, and 67 FR 35035, May 17, 2002). The last date for submitting comments and related materials on the proposed permanent rule was August 5, 2002.

We received no letters commenting on the proposed rule. No public hearing was requested, and none was held. This final rule makes effective the safety and security measures that have been in place on a temporary basis since October 2001.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this regulation would be contrary to the public interest since prompt action is needed to ensure the continued security of HIV transits, the port, facilities, and the maritime community. The temporary rule issued on October 6, 2001, for security of HIVs (66 FR 64144), will be in effect only until September 15, 2002 (67 FR 35035).

Implementation of this regulation on September 15, 2002, is necessary to prevent any lapse in the established security procedures and to facilitate ongoing response efforts and prevent future terrorist attack. Any delay in the effective date would leave critical HIV cargo vessels, their crews, the port, facilities, and the maritime community with inadequate security measures to meet potential threats. Since the October 2001 effective date of the temporary rule, approximately seven high interest vessel transits have occurred under the temporary regulation. Disruptions to the waterways users have been minimal and no complaints have been received.

Background and Purpose

In light of terrorist attacks on New York City and Washington, DC on September 11, 2001, and the continuing concern for future terrorist acts against the United States, we have established permanent safety and security zones to safeguard high interest vessels transiting Narragansett Bay en route commercial facilities in the upper Providence River and Taunton River. For purposes of this rulemaking, high interest vessels operating in the Providence Captain of the Port zone include barges or ships carrying liquefied petroleum gas (LPG), liquefied natural gas, chlorine, anhydrous ammonia, or any other cargo deemed to be high interest by the Captain of the Port.

Title 33 CFR 165.121 currently provides for safety zones for LPG vessels while at anchor in Rhode Island Sound, while transiting Narragansett Bay and the Providence River, and while LPG vessels are either moored at the Port of Providence LPG facility or at the manifolds connected at the Port of Providence LPG facility. However, in light of the current terrorist threats to national security, this zone is insufficient to protect LPG vessels while anchored in Rhode Island Sound, or while a vessel is transiting or moored in the Port of Providence. Moreover, this rulemaking is necessary to protect other high interest vessels not currently covered by 33 CFR 165.121.

This rulemaking makes permanent the temporary safety and security zones established on October 6, 2001 (66 FR 64144). That rule created temporary safety and security zones around high interest vessels in the Providence, Rhode Island Captain of the Port Zone, identical to those being made permanent in this rulemaking. That original temporary rule was effective until June 15, 2002. The temporary rulemaking was extended until September 15, 2002, by a notice in the **Federal Register** dated May 17, 2002 (67 FR 35035). A notice of proposed rulemaking was published on June 20, 2002 (67 FR 41911). The comment period for that notice ended August 5, 2002.

The safety and security zones are needed to protect high interest vessels, their crews, and the public, from harmful or subversive acts, accidents or other causes of a similar nature. The safety and security zones have identical boundaries, as follows: (1) All waters of Rhode Island Sound within a ½ mile radius of any high interest vessel while the vessel is anchored within ½ mile of the position Latitude 41°25' N, Longitude 71°23' W in the Narragansett

Bay Precautionary Area; (2) all waters of Rhode Island Sound, Narragansett Bay, the Providence and Taunton Rivers 2 miles ahead and 1 mile astern and extending 1000 yards on either side of any high interest vessel transiting Narragansett Bay, or the Providence and Taunton Rivers; (3) all waters and land within a 1000-yard radius of any high interest vessel moored at a waterfront facility in the Providence Captain of the Port zone.

No person or vessel may enter or remain in the prescribed safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone shall obey any direction or order of the Captain of the Port or designated Coast Guard representative on-scene. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. The public will be made aware of dates and times during which the safety and security zones will be enforced through a Marine Safety Information Radio Broadcast on channel 22 (157.1 MHz). Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed \$25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than \$100,000), in addition to liability against the offending vessel, and license sanctions. This regulation is proposed under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Discussion of Comments and Changes

For clarification purposes only, we have amended the regulation by adding a definition of high interest vessels to the regulatory text. This does not change the regulation, as this definition was included in the Background and Purpose section of the NPRM for this rulemaking. A definition has been added to clarify the application of this regulation.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and

Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The sizes of the zones are the minimum necessary to provide adequate protection for high interest vessels and their crews, other vessels operating in the vicinity of high interest vessels and their crews, adjoining areas, and the public.

The entities most likely to be affected are commercial vessels transiting the main ship channel en route the upper Providence River and Taunton River and pleasure craft engaged in recreational activities and sightseeing. The safety and security zones prohibit any commercial vessels from meeting or overtaking a high interest vessel in the main ship channel, effectively prohibiting use of the channel. However, the zones are only effective during the vessel transits, which will last for approximately 3 hours. In addition, vessels are able to safely transit around the zones while a vessel is moored or at anchor in Rhode Island Sound. Additionally, the Captain of the Port may allow persons to enter the zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses and 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 may be small entities: The owners or operators of vessels intending to transit the main ship channel in Narragansett Bay, Providence River, and the Taunton River at the same time as high interest vessels, and vessels transiting in the vicinity of moored high interest vessels. The safety and security zones will not have a significant economic impact on a substantial number of small entities for several reasons: Small vessel traffic can pass safely around the zones and

vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the safety and security zones to engage in these activities. When a high interest vessel is at anchor, vessel traffic will have ample room to maneuver around the safety and security zones. The outbound and inbound transit of a high interest vessel will each last a maximum of three hours. Although this regulation prohibits simultaneous use of the channel, this prohibition is of short duration and marine advisories will be issued prior to transit of a high interest vessel. While a high interest vessel is moored, commercial traffic and small recreational traffic will have an opportunity to coordinate movement through the safety and security zones with the patrol commander. Before the effective period, we will issue maritime advisories widely available to users of the area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 LT David C. Barata, telephone (401) 435-2335. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

We 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 implementing 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. 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 set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.121 to read as follows:

§ 165.121 Safety and Security Zones: High Interest Vessels, Narragansett Bay, Rhode Island.

(a) *Location.* (1) All waters of Rhode Island Sound within a ½ mile radius of any high interest vessel while the vessel is anchored within ½ mile of the point Latitude 41°25' N, Longitude 71°23' W in the Narragansett Bay Precautionary Area.

(2) All waters of Rhode Island Sound, Narragansett Bay, the Providence and Taunton Rivers 2 miles ahead and 1 mile astern, and extending 1000 yards on either side of any high interest vessel transiting Narragansett Bay, or the Providence and Taunton Rivers.

(3) All waters and land within a 1000-yard radius of any high interest vessel moored at a waterfront facility in the Providence Captain of the Port zone.

(b) *High Interest Vessels defined.* For purposes of this section, high interest vessels operating in the Providence Captain of the Port zone include the following: barges or ships carrying liquefied petroleum gas (LPG), liquefied natural gas (LNG), chlorine, anhydrous ammonia, or any other cargo deemed to be high interest by the Captain of the Port, Providence.

(c) *Regulations.* (1) Entry into or movement within these zones, including below the surface of the water, during times in which high interest vessels are present and the zones are enforced is prohibited unless authorized by the COTP Providence or authorized representative.

(2) The general regulations covering safety and security zones in §§ 165.23 and 165.33, respectively, of this part apply.

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

Dated: August 19, 2002.

Mary E. Landry,

Captain, Coast Guard, Captain of the Port, Providence, Rhode Island.

[FR Doc. 02-22339 Filed 8-30-02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2002-0217; FRL-7196-6]

Lactic acid, ethyl ester and Lactic acid, n-butyl ester; Exemptions from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes two exemptions from the requirement of a tolerance for residues of lactic acid, ethyl ester and lactic acid, n-butyl ester when used in pesticide formulations. PURAC America, Inc. submitted two petitions to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting these exemptions from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of lactic acid, ethyl ester and lactic acid, n-butyl ester.

DATES: This regulation is effective September 3, 2002. Objections and requests for hearings, identified by docket ID number OPP-2002-0217, must be received on or before November 4, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by

mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP-2002-0217 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703-305-6304; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the

"**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-2002-0217. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the **Federal Register** of April 12, 2000 (65 FR 19759) (FRL-6498-8), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104-170), announcing the filing of pesticide tolerance petitions (PP 5E4510 and 5E4515) by PURAC America, Inc., Barclay Boulevard, Lincolnshire Corporate Center, Lincolnshire, IL 60069. This notice included a summary of the petitions prepared by the petitioner PURAC. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.1001(c) and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of ethyl lactate (CAS Reg. No. 97-64-3), also known as lactic acid, ethyl ester, and butyl lactate (CAS Reg. No. 138-22-7), also known as lactic acid, n-butyl ester.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA

determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Human Health Assessment

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by lactic acid, ethyl ester and lactic acid, n-butyl ester are discussed in this unit.

A. Toxicological Profile (Agency-Reviewed Studies) for Lactic Acid, Ethyl Ester (Ethyl Lactate)

1. *Acute oral toxicity in the rat.* Groups of five young adult outbred rats/sex were given a single oral dose of 2,000 milligrams/kilogram (mg/kg). All animals survived the 14-day observation period. No significant treatment-related effects on body weight were observed during the study, and gross necropsies of animals sacrificed after 14 days revealed no observable abnormalities. The lethal dose (LD₅₀) is greater than 2,000 mg/kg (males; females).

2. *Dermal developmental toxicity in the rat.* Lactic acid, ethyl ester was administered percutaneously to 25 rats/dose at dose levels of 0 (sham), 517, 1,551, or 3,619 mg/kg/day for 6 hours/

day on days 6–15 of gestation. No systemic toxicity was noted at any dose level. Body weights, body weight gains, feed consumption, mortality, clinical signs of toxicity, and cesarean section parameters were unaffected by treatment. There were no treatment-related effects found on cesarean section examinations of the dams or external, visceral, or skeletal examinations of the fetuses. Both the maternal and developmental no observed adverse effect level (NOAEL) was 3,619 mg/kg/day, the highest dose tested. The lowest observed adverse effect level (LOAEL) was not determined, but would be greater than 3,619 mg/kg/day.

3. *Inhalation studies.* Three inhalation studies using lactic acid, ethyl ester were also submitted. However, the Agency was not able to use this information since the aerodynamic particle sizes (the mass median aerodynamic diameter (MMAD) and distribution of measurements) and the time required to reach equilibrium of the generated aerosols were not provided.

B. Toxicological Profile (Agency-Reviewed Studies) for Lactic Acid, n-Butyl Ester (Butyl Lactate)

1. *Acute oral toxicity in the rat.* Groups of five young adult outbred rats/sex were given a single oral dose of 2,000 mg/kg. All animals survived the 14-day observation period. No treatment-related effect on body weight was observed during the study and gross necropsies of animals sacrificed after 14 days revealed no observable abnormalities. The LD₅₀ is greater than 2,000 mg/kg (males; females)

2. *Acute inhalation toxicity in the rat.* Groups of five young adult outbred rats/sex were given a whole body exposure to n-butyl-S-(-)- lactate vapor at 5.14 milligrams/liter (mg/L) (greater than 2X limit concentration) for 4 hours. All animals survived the 4-hour exposure period and 14-day observation periods. Moderately decreased breathing frequencies, wet fur (nose/head), were observed in 10/10 animals during and just following exposure. Effects subsided from all animals by day 1. No treatment-related effects on body weight were observed during the study, and gross necropsy after 14 days revealed no abnormalities. The lethal concentration (LC₅₀) is greater than 5.14 mg/L.

C. Structure Activity Relationship Assessment

For lactic acid, ethyl ester and lactic acid, n-butyl ester], toxicity was assessed, in part, by a process called structure-activity relationship (SAR). In

this process, the chemical's structural similarity to other chemicals (for which data are available) is used to determine toxicity. For human health, this process, can be used to assess absorption and metabolism, mutagenicity, carcinogenicity, developmental and reproductive effects, neurotoxicity, systemic effects, immunotoxicity, and sensitization and irritation. This is a qualitative assessment using terms such as good, not likely, poor, moderate, or high.

For lactic acid, ethyl ester and lactic acid, n-butyl ester the SAR assessment determined that the chemical was not structurally related to any known carcinogens or developmental/reproductive toxicants. The following human exposures were examined as part of the analysis: inhalation, dermal, exposures to the eyes, and drinking water. For both chemicals, absorption is expected to be good (well-absorbed) for all routes based on analog data. It was noted that ester hydrolysis would be expected to release the corresponding alcohol. Both chemicals would be expected to be irritating to mucous membranes, and there is the possibility of irritation to the lungs and eyes. For both lactic acid, ethyl ester and lactic acid, n-butyl ester, the overall rating for human health is low concern.

The SAR did note a concern for solvent neurotoxicity, i.e., neurotoxic effects that can occur due to high and/or prolonged dermal and inhalation exposures to organic solvents. According to the SAR, the greatest concerns for both ethyl and butyl lactate, based on their structural chemistry and chemical class, are concerns for possible solvent neurotoxicity and irritation to mucous membranes, lungs and eyes. It should be noted that the inclusion of the phrase concerns for solvent-type neurotoxicity in the SAR assessment does not necessarily indicate chemical-specific concerns. By including this statement those performing the assessment are acknowledging that the chemical is a member of a class of chemicals that can exhibit solvent neurotoxicity.

D. Findings of the FAO/WHO Expert Committee on Food Additives

Ethyl lactate has been examined at several meetings of the (United Nations Food and Agriculture Organization/World Health Organization) FAO/WHO Joint Expert Committee on Food Additives (JECFA). At the last meeting, the absorption and metabolism of ethyl lactate was extensively studied. There has long been evidence that in mammals simple esters such as ethyl lactate readily undergo hydrolysis, yielding the

alcohol and acid from which the ester was formed. In the case of ethyl lactate, this would be ethyl alcohol (ethanol) and lactic acid. The human metabolism of ethanol is well understood: it is oxidized to carbon dioxide and water. The metabolism of lactic acid is also understood: it is an intermediate in human metabolism of glucose. The Committee determined that recent *in vivo* and *in vitro* studies indicated that ethyl-L-lactate was hydrolysed to ethyl alcohol and lactic acid mainly prior to absorption. Based on this understanding of the metabolism of ethyl lactate, the Committee also determined that it was not necessary to specify an estimate of acceptable daily intake.

E. Conclusions

The SAR assessments did not identify any concerns for carcinogenicity or developmental toxicity for either of these lactate esters. In fact, both lactic acid, ethyl ester and lactic acid, n-butyl ester were judged to be of low concern. The only concerns identified were for possible solvent neurotoxicity and irritation to mucous membranes, lungs and eyes. These identified concerns are for the dermal and inhalation exposure routes and are addressed through the use of protective equipment such as gloves and respirators, not through establishment of tolerance exemptions.

The lactic acid, ethyl ester dermal developmental toxicity study indicates low toxicity to both the mother and the developing fetus. Both the developmental and maternal NOAELs (3,619 mg/kg/day) are the highest dose tested. Given the structural similarities of the two chemicals, the Agency believes that the developmental toxicity study can be bridged to lactic acid, n-butyl ester.

The JECFA monograph deemed lactic acid, ethyl ester to be of such low concern that the acceptable daily intake is not specified. A consideration in this decision was the understanding that hydrolysis would occur in the human body thus yielding ethanol and lactic acid. The same hydrolysis would occur for lactic acid, n-butyl ester but would yield butanol and lactic acid. Butanol is also metabolized in the human body butanol is oxidized to butyraldehyde, which is oxidized to butyric acid, which is then metabolized via the fatty acid and tricarboxylic acid pathways. Thus, the human body has a known pathway to metabolize lactic acid, ethyl ester and lactic acid, n-butyl ester, and their metabolites.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to

consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

For lactic acid, ethyl ester and lactic acid, n-butyl ester a qualitative assessment for all pathways of human exposure (food, drinking water, and residential) is appropriate given the SARs which judged lactic acid, ethyl ester and lactic acid, n-butyl ester to be of low concern and the body's ability to metabolize lactic acid, ethyl ester and lactic acid, n-butyl ester, and their metabolites.

V. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity. Lactic acid, ethyl ester and lactic acid, n-butyl ester are structurally related; however, both are lower toxicity chemicals; therefore, the resultant risks separately and/or combined should also be low. EPA does not have, at this time, available data to determine whether lactic acid, ethyl ester and lactic acid, n-butyl ester have a common mechanism of toxicity with other substances or how to include these pesticide chemicals in a cumulative risk assessment.

VI. Determination of Safety for U.S. Population, Infants and Children

Based on the available data, the SAR assessment indicating low concern, and information on the metabolism of lactic acid, ethyl ester and lactic acid, n-butyl ester, EPA concludes that lactic acid, ethyl ester and lactic acid, n-butyl ester do not pose a dietary risk under reasonably foreseeable circumstances. Accordingly, EPA finds that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to lactic acid, ethyl ester and lactic acid, n-butyl ester. For both lactic acid, ethyl ester and lactic acid, n-butyl ester, due to the expected low oral toxicity, a safety factor analysis has not been used to assess the risk. For the same reasons and especially considering the developmental toxicity NOAEL, the additional tenfold safety factor for the protection of infants and children is unnecessary.

VII. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing lactic acid, ethyl ester and lactic acid, n-butyl ester for endocrine effects may be required.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Tolerances

There are no existing tolerances or tolerance exemptions for ethyl and butyl lactate.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for lactic acid, ethyl ester and lactic acid, n-butyl ester nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

E. List 4A Classification

It has been determined that lactic acid, ethyl ester and lactic acid, n-butyl ester are to be classified as List 4A inert ingredients. Thus, the tolerance exemptions will be established in 40 CFR 180.950 instead of 40 CFR 180.1001(c) and (e) as requested by the petitioner PURAC.

VIII. Conclusions

Based on the information in the record, summarized in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of lactic acid, ethyl ester and lactic acid, n-butyl ester. Accordingly, EPA finds that exempting lactic acid, ethyl ester and lactic acid, n-butyl ester from the requirement of a tolerance will be safe.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA

procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP-2002-0217 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 4, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone

number for the Office of the Hearing Clerk is (202) 260-4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control ID number OPP-2002-0217, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not

require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDC section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 19, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.950 is amended by adding and reserving paragraph (d) and adding a new paragraph (e) to read as follows:

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *

(d) [Reserved]

(e) *Specific chemical substances.* Residues resulting from the use of the following substances as either an inert or an active ingredient in a pesticide chemical formulation, including antimicrobial pesticide chemicals, are exempted from the requirement of a tolerance under FFDC section 408, if such use is in accordance with good agricultural or manufacturing practices.

Chemical	CAS No.
Lactic acid, n-butyl ester	138-22-7
Lactic acid, ethyl ester	197-64-3

[FR Doc. 02-22369 Filed 8-30-02; 8:45 am]
BILLING CODE 6560-50-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020306047-2047-01; I.D. 082302A]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustment to the 2002 Black Sea Bass Total Allowable Landings (TAL)

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

ACTION: Notification of restoration to the 2002 black sea bass TAL.

SUMMARY: NMFS restores 10,000 lb (4,534 kg) of unused research set-aside to the 2002 black sea bass TAL, and makes corresponding adjustments to the 2002 black sea bass recreational harvest limit and the 2002 Quarter 4 commercial quota. This action complies with Framework Adjustment 1 to Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), which implemented procedures for setting aside up to 3 percent of the annual TAL to fund research activities for the summer flounder, scup, and black sea bass fisheries. Framework Adjustment 1 also specified that, if a research proposal is disapproved by NMFS or the NOAA Grants Office, the research set-aside for that proposal would be reallocated (i.e., added back) into the TAL. On June 21, 2002, NMFS disapproved a research project for which 10,000 lb (4,534 kg) of the black sea bass TAL had been set-aside. The intent of this action is to restore 10,000 lb (4,536 kg) to the overall 2002 black sea bass TAL.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978) 281-9279.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a final rule in the **Federal Register** on August 10, 2001 (66 FR 42156), implementing Framework Adjustment 1 to the FMP. Framework Adjustment 1 implemented procedures for setting aside up to 3 percent of the annual TAL to fund research activities for the summer flounder, scup, and black sea bass fisheries. Framework Adjustment 1 also specified that, if a proposal is disapproved by NMFS or the NOAA Grants Office, the research set-

aside for that proposal would be reallocated (i.e., added back) into the TAL.

On December 26, 2001, NMFS published a final rule in the **Federal Register** (66 FR 66348) announcing specifications for the 2002 summer flounder, scup, and black sea bass fisheries. An initial TAL of 6,800,000 lb (3,084,428 kg) was established for the black sea bass fishery. Four research projects utilizing the black sea bass research quota set-aside were recommended for approval by a review committee. As a result, 76,005 lb (34,475 kg) of black sea bass quota was set aside for those four research projects. Therefore, a TAL of 6,723,995 lb (3,049,953 kg) was implemented in the final rule. Under procedures in the FMP, the overall TAL is then allocated 49 percent to the commercial sector and 51 percent to the recreational sector, which resulted in a 2002 commercial quota of 3,294,758 lb (1,494,477 kg) and a 2002 recreational harvest limit of 3,429,237 lb (1,555,476 kg).

NMFS formally disapproved one of the black sea bass research projects on June 21, 2002. The disapproved project had been allocated 10,000 lb (4,536 kg) of the black sea bass research quota set-aside. This action is necessary to restore 10,000 lb (4,536 kg) to the overall 2002 black sea bass TAL. The resulting 2002 black sea bass TAL is 6,733,994 lb (3,054,488 kg). Of the 10,000 lb (4,536 kg) being restored, 4,900 lb (2,223 kg) is added to the commercial quota and 5,100 lb (2,313 kg) is added to the recreational harvest limit. The resulting commercial quota is 3,299,657 lb (1,496,699 kg) and the recreational harvest limit is 3,434,337 lb (1,557,789 kg).

Because the first three quarters of the 2002 black sea bass commercial fishing year have already closed, the entire portion of the additional commercial quota (4,900 lb (2,223 kg)) is being added to Quarter 4. The resulting adjusted 2002 black sea bass commercial quota for Quarter 4 is 656,274 lb (297,681 kg).

Although 5,100 lb (2,313 kg) of black sea bass is being restored to the recreational harvest limit, it does not alter the existing recreational management measures that have been established to ensure that the recreational harvest limit is not exceeded. A minimum fish size of 11.5 inches (29.2 cm), a 25-fish recreational possession limit, and a year-round open season will remain in effect.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: August 27, 2002.

Virginia M. Fay,

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

[FR Doc. 02-22352 Filed 8-30-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 082702A]

Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the fourth seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA was reached during the third seasonal apportionment.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2002, until 1200 hrs, A.l.t., October 1, 2002.

FOR FURTHER INFORMATION CONTACT:

Andrew Smoker, 907-586-7228, or Andy.Smoker@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 16, 2002) for the fourth season, the period September 1, 2002, through October 1, 2002, as 150 metric tons. Section 679.21(d)(5)(iv) specifies that if a seasonal apportionment of a halibut PSC limit specified for trawl, hook-and-line, or pot gear is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the respective apportionment for the next season during a current fishing year. Current data indicate that the Pacific halibut bycatch allowance for the fourth season was taken during the third seasonal allocation. Therefore, there is no fourth seasonal apportionment available for the GOA deep-water species fishery by vessels using trawl gear.

Therefore, in accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the fourth seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA was reached during the third seasonal apportionment. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the deep-water species fishery are: pollock, Pacific cod, deep-water flatfish, flathead sole, Atka mackerel, and "other species."

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the fourth seasonal halibut bycatch allowance specified for the deep water species

fishery in the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 27, 2002.

Virginia M. Fay,

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

[FR Doc. 02-22344 Filed 8-28-02; 2:54 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 082202B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Platoons in Areas 542 and 543

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

ACTION: Notification of platoon assignments.

SUMMARY: NMFS is notifying registered vessels of their platoon assignments for the B season Atka mackerel fishery in harvest limit areas (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the B season HLA limits established for area 542 and area 543 pursuant to the 2002 Atka mackerel total allowable catch and

associated Steller sea lion protection measures.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 28, 2002, until 1200 hrs, A.l.t., November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907-586-7228, or Andy.Smoker@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the emergency rule implementing 2002 harvest specifications and Steller sea lion protection measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 47472 July 19, 2002) NMFS established HLAs for Atka mackerel directed fishing in areas 542 and 543. Vessels had until August 1, 2002, to register to fish in the HLA in areas 542 and/or 543. NMFS then is required to randomly assign vessels between these areas to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over time.

In accordance with § 679.20(a)(8)(iii)(A), ten vessels using trawl gear for directed fishing for Atka mackerel have registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. In accordance with § 679.20(a)(8)(iii)(B) the Administrator, Alaska Region, has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which they have registered and is now notifying each vessel of its assignment.

Vessels assigned to Platoon A which will participate in the first HLA directed fishery in area 542 and/or the second HLA directed fishery in area 543 in

accordance with the vessel's registration under § 679.20(a)(8)(iii)(A) are as follows: Federal Fishery Permit number (FFP) 4093 Alaska Victory, FFP 3819 Alaska Spirit, FFP 3400 Alaska Ranger, FFP 2134 Ocean Peace, and FFP 1879 American No. 1.

Vessels assigned to Platoon B which will participate in the first HLA directed fishery in area 543 and/or the second HLA directed fishery in area 542 in accordance with the vessel's registration under § 679.20(a)(8)(iii)(A) are as follows: FFP 2443 Alaska Juris, FFP 3835 Seafisher, FFP 2733 Seafreeze Alaska, FFP 3423 Alaska Warrior, and FFP 2800 U.S. Intrepid.

Classification

This action responds to the best available information. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action that notifies each vessel of their platoon assignment to allow the harvest of the B season HLA limits established for area 542 and area 543 constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.20(a)(8)(iii), as such procedures would be unnecessary and contrary to the public interest. Similarly the need to implement these measures in a timely fashion that notifies each vessel of their platoon assignment to allow the harvest of the B season HLA limits established for area 542 and area 543 constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

Dated: August 27, 2002.

Virginia M. Fay,

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

[FR Doc. 02-22345 Filed 8-28-02; 2:54 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 67, No. 170

Tuesday, September 3, 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 ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE-RM/TP-99-500]

RIN 1904-AB04

Energy Conservation Program for Consumer Products: Test Procedure for Dishwashers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (We, DOE, or the Department) will hold a public hearing to discuss and receive comments on DOE's proposal to amend its test procedure for residential dishwashers. The proposal adds new definitions for non soil-sensing dishwashers, soil-sensing dishwashers, and standby power. It introduces a new test procedure for soil-sensing dishwashers, proposes to require that the measurement of standby power consumption be included in the estimated annual energy use and estimated annual operating cost calculations for dishwashers, and adds new specifications for instrumentation requirements. It also revises the value of one of the parameters used for calculating the estimated annual operating cost, that is, the representative average dishwasher use, based on new survey data on consumer practices.

DATES: The Department will hold a public hearing on Tuesday, October 22, 2002, at 9 a.m., in Washington, DC. Requests to speak at the hearing must be received by the Department no later than 4 p.m., October 8, 2002. A computer diskette or CD (WordPerfect™ 8) of statements to be given at the public hearing must be received by the Department no later than 4 p.m., October 8, 2002.

The Department will accept comments, data, and information regarding the proposed rule before or after the public hearing, but no later than November 18, 2002.

ADDRESSES:

Submission of Comments

The Department will accept comments, data, and information regarding the proposed rule before or after the public hearing, but no later than the date provided in the DATES section. All written comments should be addressed to Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-41, 1000 Independence Avenue, SW, Washington, DC, 20585-0121. DOE requests a signed original and a computer diskette or CD (WordPerfect™ 8) of the written comments. DOE will also accept electronically-mailed comments, e-mailed to *Brenda.Edwards-Jones@ee.doe.gov*, but you must also provide the Department with a signed hard copy of your comments. All envelopes and documents should be labeled, "Energy Conservation Program for Consumer Products: Test Procedures for Dishwashers, Docket No. EE-RM/TP-99-500."

Requests to make statements at the public hearing and copies of such statements should be addressed to Ms. Brenda Edwards-Jones at the following address: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-41, 1000 Independence Avenue, SW, Washington, DC 20585-0121. E-mail address: *Brenda.Edwards-Jones@ee.doe.gov*. The hearing will begin at 9 a.m. on Tuesday, October 22, 2002, in Room IE-245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. For more information concerning public participation in this rulemaking proceeding, see section IV, "Public Comment," of this notice of proposed rulemaking.

Copies of the transcript of the public hearing, public comments received, and this notice of proposed rulemaking may be read at the Freedom of Information Reading Room (Room 1E-190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between

the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Barbara Twigg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-41, 1000 Independence Avenue, SW, Washington, DC 20585-0121, (202) 586-8714, email: *barbara.twigg@ee.doe.gov*; or Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, GC-72, 1000 Independence Avenue, SW, Washington, DC 20585-0121, (202) 586-7432, email: *Francine.Pinto@HQMail.doe.gov*.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking incorporates by reference the "American National Standard, Household Electric Dishwashers, ANSI/AHAM DW-1-1992," and the August 20, 1999 "Addendum to Appendix A of AHAM DW-1-1992" published by the Association of Home Appliance Manufacturers (AHAM). Copies of the standards to be incorporated by reference may be viewed at the Department of Energy's Freedom of Information Reading Room at the address stated above. You may also obtain copies of the referenced standard AHAM DW-1-1992, along with the 1999 Addendum, from the Association of Home Appliance Manufacturers, 1111 19th Street, NW, Suite 402, Washington, DC 20036, (202) 872-5955.

Information regarding this rulemaking is also available on the Office of Building Research and Standards Web site at the following address: http://www.eren.doe.gov/buildings/codes_standards/index.htm

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I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act of 1975 (EPCA or Act), Public Law 94–163, as amended by the National Energy Conservation Policy Act of 1978 (NECPA), Public Law 95–619, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPACT), Public Law 102–486, established the Energy Conservation Program for Consumer Products Other Than Automobiles (Program). The products currently subject to this Program (“covered products”) include residential dishwashers, the subject of today’s notice.

Under the Act, the Program consists of three parts: testing, labeling, and the Federal energy conservation standards. Section 323 of EPCA requires the Department, in consultation with the National Institute of Standards and Technology (NIST), to establish or amend test procedures as appropriate for each of the covered products (42 U.S.C. 6293). The purpose of the test procedures is to measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. The test procedure must not be unduly burdensome to conduct (42 U.S.C. 6293(b)(3)).

If a test procedure is amended, section 323(e)(1) of EPCA requires DOE to determine, in the rulemaking, to what

extent, if any, the new test procedure would change the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure (42 U.S.C. 6293(e)(1)). If DOE determines that the amended test procedure would change the measured energy efficiency or measured energy use of a covered product, DOE must amend the applicable energy conservation standard during the rulemaking that establishes the new test procedure. In setting the new energy conservation standard, section 323(e)(2) of EPCA requires DOE, with the new test procedure, to measure the energy efficiency or energy use of a representative sample of covered products that minimally comply with the existing standard. The average of such energy efficiency or energy use of these representative samples, determined under the new test procedure, shall constitute the amended energy conservation standard for the applicable covered products (42 U.S.C. 6293(e)(2)). Further, models of covered products in use the day before the new energy conservation standard becomes effective (or revisions of such models that come into use after such date and have the same energy efficiency or energy use characteristics) and which comply with the energy conservation standard applicable to such covered products on the day before the new standard becomes effective, shall be deemed to comply with the new energy conservation standard (42 U.S.C. 6293(e)(3)).

Beginning 180 days after an amended or new test procedure for a covered product is prescribed or established under EPCA section 323(b), no manufacturer, distributor, retailer, or private labeler may make any representation with respect to the energy use, efficiency, or cost of energy consumed by such product, unless such product has been tested in accordance with such amended or new DOE test procedure and such representation fairly discloses the results of such testing (42 U.S.C. 6293(c)(2)).

B. Background

On December 18, 2001, the Department published a final rule for dishwashers that amended certain elements of the then-effective test procedure; the rule was made effective June 17, 2002 (66 FR 65091) (hereafter referred to as the “2001 final rule”). The 2001 final rule changed the definitions of compact and standard dishwasher models to use place setting capacity instead of width, reduced the representative average number of use cycles per year from 322 to 264, and

tightened testing specifications to improve testing repeatability. Although a new test procedure for soil-sensing dishwashers had been proposed in the Notice of Proposed Rulemaking (NOPR) published on September 28, 1999 (64 FR 52248), the 2001 final rule deferred action on finalizing a test procedure for soil-sensing or adaptive control models until additional research could be conducted in three areas. They were to: (1) Evaluate consumer behavior regarding the soil levels of typical dishwasher loads; (2) assess how consumer behavior concerning loading and rinsing could be translated into a representative soil load that could be used for repeatable and accurate testing; and (3) determine what kind of test procedure would best measure the energy and water consumption of dishwashers using a variety of soil-sensing technologies. Investigating and analyzing additional survey sources to update how often dishwashers are used was an additional goal.

Because the Department had learned that various research projects and surveys had already been conducted by manufacturers and others, we began an initiative to consolidate available information and determine whether such data were nationally significant and could be used to support the development of a new test procedure. However, because much of this information was considered proprietary by individual companies and entities and not publicly available, we hired an independent research organization, Arthur D. Little, Inc. (ADL), to collect all available surveys and studies and evaluate them for us. ADL (ADL’s Technology & Innovation Business is now known as TIAX) focused its research effort on the questions listed above, and presented its final report to DOE on December 18, 2001, entitled “Review of Survey Data to Support Revisions to DOE’s Dishwasher Test Procedure” (hereafter referred to as the ADL report). The report concluded that there was adequate, nationally significant information regarding consumer loading and pre-rinsing behavior, and presented recommendations regarding how a soil-based test procedure could be developed, using the existing consumer behavior data. On December 19, 2001, DOE posted the ADL report on the DOE Buildings Research and Standards website, along with a brief presentation of the type of soil test being considered for soil-sensing models. In the following weeks, we evaluated additional information and comments that we received as a result of our website

posting. ADL was directed to provide some additional detail on its analysis and on March 5, 2002, produced an addendum to the original report (hereafter referred to as the addendum). In formulating proposed revisions to the dishwasher test procedure, the Department has incorporated ADL's and stakeholder recommendations where appropriate. Both the ADL report and the addendum, which are the primary technical support documents for this rulemaking, have been placed in the docket and administrative record for this rulemaking.

C. The Proposed Rule

Today's proposed rule contains several major revisions to the current dishwasher test procedure. Section II contains discussion concerning each of the proposed revisions. The major revisions are as follows:

1. Update the test procedure to reflect the decline in dishwasher use by reducing the representative average dishwasher use from 264 cycles per year to 215 cycles per year, based on more recent survey results.

2. Add new definitions:

- Non soil-sensing dishwashers
- Soil-sensing dishwashers
- Standby mode
- Sensor Heavy Cycle
- Sensor Light Cycle
- Sensor Medium Cycle
- Truncated Sensor Heavy Cycle
- Truncated Sensor Light Cycle
- Truncated Sensor Medium Cycle

3. Create a separate section in the test procedure for soil-sensing dishwashers, adopting a three-level soil test based on the American National Standard, Household Electric Dishwashers, ANSI/AHAM DW-1-1992 and the August 20, 1999 Addendum to Appendix A of AHAM DW-1-1992, collectively referred to in this notice as AHAM DW-1.

4. Require the measurement of the standby power consumption for both non soil-sensing and soil-sensing models, and incorporate this value in calculations for the estimated annual energy use and estimated annual energy cost. Add new instrumentation requirements and update existing requirements.

5. Require that both current and future soil-sensing models be tested using the soil-based test procedure.

II. Discussion

A. General Discussion

As appliance technology evolves, the Department must make sure that the applicable test procedures keep pace and provide reliable measures of energy

consumption. In the case of dishwashers, the introduction of soil-sensing models, which adjust the duration and number of fills of a wash cycle according to the amount of soil in the dish load, challenged the structure of the existing test procedure. That test procedure, which uses only clean dishes, was developed at a time when the thermal mass of the dish load and the cycle type were the only factors that influenced the energy consumption results of the test. However, with the introduction of soil-sensing machines, the clean test load no longer served to test the machines accurately because soil-sensing machines used more energy if soiled dishes were used than if clean dishes were used. The questions arose: How could soil-sensing machines be accurately tested? How could a "normal" cycle be defined?

DOE's first attempt at designing a more accurate test procedure focused on developing a formula to weight and average the highest and lowest levels of energy consumption that a soil-sensing dishwasher was capable of providing using the minimum and maximum sensor normal cycles, but without requiring that soiled dishes be used when testing the machines (presented in the September 28, 1999 NOPR). This possible test procedure, however, proved problematic in a number of ways, and discussion gradually moved toward the necessity of having a soil-based test, whereby the soil sensor would set the cycle based on a more realistic representation of consumer use. But a test procedure that actually used soiled dishes presented the difficult questions of how many soiled dishes should be used in the test and to what degree should the dishes be soiled? What kind of test load could represent the typical load of soiled dishes being placed into soil-sensing dishwashers by American consumers?

To determine the nature of this soil load, the Department contracted with ADL to evaluate available survey and technical information. Much of that information is proprietary and confidential, and was reported by ADL to the Department only in summary or aggregated form.¹ As a result, and while

¹ We recognize and support the goal of full disclosure of all information used in our rulemaking process. However, in order for DOE to effectively carry out its statutory and regulatory responsibilities, it sometimes is necessary or advisable for DOE to review and/or use information that is proprietary or otherwise confidential. In those cases, it is essential that DOE respect the proprietary needs of those who are willing to share their own data for limited use. Without such assurances of confidentiality, organizations often would not make their research or information available to us, ultimately adding to the expense

ADL's report to DOE will be fully disclosed and will be a part of the public administrative record for this NOPR, DOE neither has possession of nor has any ability to identify in this NOPR the particular proprietary and confidential information used by ADL to complete its report.

DOE tasked ADL to compile all available public and private studies of consumer dishwasher use and determine whether ADL believed that information was of sufficient quality and national significance to use in developing a new test procedure for soil-sensing dishwashers. ADL did find significant sources of data, and produced for DOE a report outlining a possible three-level test procedure based on three levels of soil. The energy consumption for each soil-sensing dishwasher at those three levels would be weighted according to the distribution of dishwasher soil levels obtained from consumer survey data. The resulting energy factors would reflect a weighted average of consumer use in the U.S. ADL also surveyed and evaluated available studies of frequency of use in order to produce information so that DOE can update the average number of use cycles per year and provide a more current representation of annual energy use and cost.

This notice defines the two types of dishwashers now in the marketplace, non soil-sensing and soil-sensing. It retains the original test procedure using clean dishes for non soil-sensing models, and presents a new test procedure for soil-sensing models, using soiled dishes, based on the ADL report. It also adds a procedure for measuring standby power consumption for both non soil-sensing and soil-sensing models, and reduces the number of use cycles per year to 215. The Department is especially interested in receiving comments regarding whether the proposed soil levels provide a realistic representation of consumer use.

B. Changes in Consumer Practices—Representative Average Dishwasher Use

On December 18, 2001, the Department issued a final rule for dishwashers that reduced the representative average number of use cycles per year to 264, down from 322. In that final rule, the Department stated

and time needed for acquiring rulemaking data, as well as adversely impacting the quality of the rule eventually issued. In contracting with ADL, we asked ADL to use the best available expertise in appliance technology in order to evaluate, objectively and confidentially, all available data regarding the soil loads of dishwashers and their frequency of use.

it would consider any new data on dishwasher use in the future.

In its study, ADL evaluated six surveys that contained consumer usage information. ADL identified five as nationally representative of U.S. demographics (e.g., age, household size, income, location). Several surveys used bands to categorize dishwasher use per week (e.g., 4–6 times per week), indicating a range in the cycle numbers and contributing some uncertainty in the results. In its assessment, ADL points out that one of the surveys, the Energy Information Administration's Residential Energy Consumption Survey entitled, "A Look at Residential Energy Consumption in 1997," indicates that more than half of the U.S. households with a dishwasher use it less than four times per week (208 cycles per year). This extensive and nationally representative survey gives a good indication of the frequency of dishwasher use. Although the four remaining nationally representative surveys show a range of results for consumer use, they also support the overall trend that consumer dishwasher use is, on average, significantly lower than 264 cycles per year.

The ADL report states that "a revised number for the representative average-use cycles per year should be substantially less than the 264 in the interim rulemaking, but not less than 200 cycles per year." It goes on to recommend "reducing the average-use cycles per year for dishwashers into the range of 200 to 233 cycles per year." In the addendum to its report, ADL provided clarification on its methodology as to how it determined this range. ADL's recommendation of 200 to 233 cycles per year combined three approaches to analyzing the available data from five nationally representative surveys. The details of this approach can be found on page 13 of the addendum which is posted on our website and is available in the docket for this rulemaking. The Department reviewed the analysis and believes that because of the type of data available, the way that the surveys were conducted and the data presented, and the inherent variability of the consumer conduct at issue (i.e., dishwasher use by individual consumers), the range ADL recommends is appropriate. Because this range is appropriate but no definitive number within that range appears to be better than any other, the Department proposes to set the average use cycles, (factor "N" in the test procedure formula set forth in this NOPR), at 215 cycles per year. This number represents roughly the midpoint between the estimated range of the average use cycle

data presented in the ADL report. We believe it is appropriate to set the number of average use cycles at the midpoint in this range because there is no reason for DOE to believe, based on the data presented to it, that any one point in the range represents a more accurate estimate of average dishwasher use than any other.

C. New Definitions

This NOPR introduces a new test procedure for soil-sensing dishwashers. As a result, we have developed new definitions to differentiate between two types of dishwashers (non soil-sensing and soil-sensing), the conditions of the standby operation, and the conditions for the light, medium, and heavy tests of a soil-sensing dishwasher. These definitions are as follows:

- "*Non soil-sensing dishwasher*" means a dishwasher that does not have the ability to adjust automatically any energy consuming aspect of a wash cycle based on the soil load of the dishes.
- "*Soil-sensing dishwasher*" means a dishwasher that has the ability to adjust automatically any energy consuming aspect of a wash cycle based on the soil load of the dishes.
- "*Standby mode*" means the power consumption condition when the dishwasher is connected to the main electricity supply and the door lock is unlatched.
- "*Sensor heavy cycle*" means, for standard dishwashers, the set of operations in a soil-sensing dishwasher that constitutes the response for completely washing a load of dishes, four place settings of which are soiled. For compact dishwashers, this definition is the same, except that two soiled place settings are used instead of four.
- "*Sensor light cycle*" means, for both standard and compact dishwashers, the set of operations in a soil-sensing dishwasher that constitutes the response for completely washing a load of dishes, one place setting of which is soiled with half of the gram weight of soils for each item specified in a single place setting according to AHAM DW-1.
- "*Sensor medium cycle*" means, for standard dishwashers, the set of operations in a soil-sensing dishwasher that constitutes the response for completely washing a load of dishes, two place settings of which are soiled. For compact dishwashers, this definition is the same, except that one soiled place setting is used instead of two.
- "*Truncated sensor heavy cycle*" means the sensor heavy cycle interrupted to eliminate the power-dry

feature after the termination of the last rinse operation.

- "*Truncated sensor light cycle*" means the sensor light cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

- "*Truncated sensor medium cycle*" means the sensor medium cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

D. New Test Procedure for Soil-Sensing Dishwashers

The introduction of dishwashers using soil-sensing technology prompted the need to revise the current test procedure which does not accurately measure the energy consumption of models with variable cycles. Currently, there are several approaches to soil-sensing which include optical turbidity sensors, pressure-based sensors, and a new generation of laser-based sensors that is in development. The responses of these technologies vary, but in all cases, the soil-sensing dishwashers adjust the length and/or the severity of the washing cycle according to the amount of soil detected in the water. For example, if little or no soil is detected, a less severe wash cycle will be triggered; if a heavier soil load is detected, a more severe wash cycle will be triggered. The intent of the design is to use information to improve wash performance and reduce energy consumption when appropriate.

However, when soil-sensing dishwashers are tested with the current test procedure, which uses only clean dishes, the absence of soil invariably triggers a less severe cycle. Thus, the energy factors obtained are very high and do not reflect a dishwasher's performance (and thus its energy usage) when a soiled load of dishes is present. This leads to confusion for consumers seeking accurate measures of energy efficiency under normal use patterns; in fact, it leads to consumer decisions that are made based on demonstrably inaccurate information.

The test procedure for soil-sensing machines must provide reliable data which reflect performance with a typical load of dishes, while at the same time not unduly increasing the test burden for manufacturers. Establishing parameters for a typical load of dishes and for normal use is difficult because of the complex algorithms designed by manufacturers to respond to different soil levels. These algorithms for wash sequences are based on sensor data. The test procedure which we proposed in the September 1999 NOPR, based on a concept developed by AHAM,

attempted to average the energy consumed during both minimum and maximum wash cycles. However, manufacturers have since claimed that because of the different ways that varying sensor technologies perform, their machines cannot be adequately tested and compared using that procedure. As a result, DOE, NIST, and numerous stakeholders turned their attention to obtaining soiling and loading information useful for revising the dishwasher test procedure. Because of the flexibility of wash patterns from model to model, soil-based tests presented the most viable solution for representative energy testing.

AHAM DW-1 seemed a logical starting point for soil-based testing because these soil-based procedures were already used by industry. These procedures were originally developed as dishwasher performance evaluating tools to provide a repeatable test that could be reproduced in different laboratories. The procedures use a challenging soil load of specified foods to assess the washing and drying ability of dishwashers.

The AHAM performance testing procedures require the use of a standard test load of dishes, detergent, and rinse agent. Standard conditions for ambient temperature, water temperature, water pressure, and water hardness are all specified. The performance evaluation is based on a minimum of three runs on a dishwasher with a soiled load, set on the normal cycle. The quantity, brand, instruction for preparation, and order and location for the application of each soil used in the procedures are specified to maintain repeatability. A total of 13 different soils are applied within a one-hour period, followed by a two-hour drying period.

Because the AHAM performance test was developed to be a heavy soil test that challenged dishwasher cleaning performance, it is not representative of soil loads introduced under typical household use. Therefore, while the AHAM performance test was a logical starting point for developing a test procedure for soil-sensing dishwashers, the AHAM performance test was not itself suitable for a final test procedure. Instead, and recognizing the difficulty in developing a test procedure that is repeatable and realistic, DOE sought to extract elements from this AHAM performance test.

Before a test procedure could be drafted, it was necessary to gain an understanding of the different system responses of various soil-sensor models under soiled conditions, as well as research what amount of soil represents a "normal" soil level on dishes placed

in a dishwasher. DOE directed ADL to study consumer soiling and loading practices to determine what portion of the AHAM DW-1 soil load could be used to represent light, medium, and heavy soil levels. ADL analyzed the results of three available surveys, one of which, survey C, provided significantly more comprehensive data than the other two. The initial result of this analysis was based on weighted averages of the results of the three surveys. That approach led ADL to recommend that a greater mass of soil on dishes be selected to represent the light, medium, and heavy soil levels than if survey C were used alone. This recommendation was published in ADL's December 18, 2001 report and was posted on our website.

Following industry review and commentary on the method of the analysis, ADL produced for DOE an addendum to its earlier report on March 5, 2002. The addendum provides more detail on the initial analysis, demonstrates the comprehensiveness of survey C, analyzes additional data from survey C, and focuses on survey C as the primary basis for determining the portions of the AHAM DW-1 soil load that could be used to represent light, medium, and heavy soil levels.

The addendum provides additional data and methodology from survey C. It states that survey C collected and analyzed an extensive set of photographs of actual soiled dish loads from participating households. The photographs of each soiled dish load were compared against a Likert scale² and received Likert scale ratings that ranged from 2 to 10. The range of Likert scale ratings was divided into three soil levels—light, medium, and heavy. Likert scale ratings of 3, 6, and 10 were selected as representative of the light, medium, and heavy soil levels, respectively. The distribution of the Likert scale ratings showed that each of the selections—3, 6, and 10—represented more than half of the data within each of the three soil levels. The selection of 10 as representative of the heavy soil level was shown to be particularly conservative given that for

² Likert scale: a response scale developed by Rensis Likert for assessing opinions and usually consisting of five or more categories; used here as an analysis tool to assess the following issue: "How soiled are the dishes in the consumers' dishwasher loads?" From the large set of photographic data, the bottom of the scale was defined by assigning one of the photos showing the lowest level of soil as the comparison point for a score of 1. Conversely, the top of the scale was defined by assigning one of the photos showing the highest level of soil as the comparison point for a score of 5. The scores in between—2, 3, and 4—were defined similarly and represent increasing levels of soil.

the heavy soil level, the Likert scale rating of 8 represented over 75 percent of the data.

In the next step of the methodology from survey C, a minimum of 10 sets of photographs from each of the Likert scale ratings of 3, 6, and 10 were analyzed by a professional home economist. The professional home economist recreated the dish loads in the photographs using AHAM DW-1 soils and then weighed the amount of AHAM DW-1 soils on the recreated dish loads.

Using this information, the mass of food soils was translated into the corresponding number of soiled place settings for each level, according to AHAM DW-1. This translation was based on the fact that the AHAM DW-1 soiling procedure specifies approximately 31.3 grams of food soils per place setting. The result of this analysis, as listed in the ADL addendum, showed that a light soil level for standard dishwashers could be approximated by one-half of a single soiled AHAM DW-1 place setting; a medium soil level could be approximated by two soiled AHAM DW-1 place settings; and a heavy soil level could be approximated by four soiled AHAM DW-1 place settings.

DOE believes that this analysis of soil levels is based on the best available information and therefore proposes that the energy test procedure load of dishes for standard soil-sensing dishwashers be defined according to AHAM DW-1 with eight place settings of dishes, serving pieces, and flatware, soiled per the light, medium, and heavy cycle definitions proposed in this notice. It is noted that the reference to the AHAM DW-1 place settings refers to the ANSI/AHAM DW-1-1992 standard as well as the August 20, 1999 "Addendum to Appendix A of AHAM DW-1-1992" which provides more details regarding a source of acceptable dishware for testing. Both the standard and the addendum will be incorporated by reference in this proposed new test procedure rule.

For compact dishwashers, the typical loading capacity is half of the loading capacity of standard dishwashers. Therefore, the Department proposes to base the test load for compact soil-sensing dishwashers on a total of four AHAM DW-1 place settings. In addition, the soil load for the medium and heavy soil levels are reduced to half that of the soil load for standard dishwashers, proportional to its smaller capacity. However, the Department proposes to maintain the one-half place setting soil load to represent the light soil level because of the small amount of soil involved. Therefore, the soil load

for the light soil level for compact dishwashers is approximated by one-half of a single soiled AHAM DW-1 place setting, achieved by applying half of the gram weight of soils to each dishware item; a medium soil level is approximated by one soiled AHAM DW-1 place setting; and a heavy soil level is approximated by two soiled AHAM DW-1 place settings. Thus, the energy test load is defined according to AHAM DW-1 with four place settings of dishes, serving pieces, and flatware, soiled per the light, medium, and heavy definitions.

The new test procedure requires that the machine wash cycle responses under each of these soil levels are then multiplied by weighting factors representing the frequency of use for each soil level to calculate an energy factor for the dishwasher model that would represent its normal energy efficiency. The energy consumption for each of the three tests (*i.e.*, sensor heavy, sensor light, and sensor medium for soil-sensing dishwashers) would be measured and calculated in the same way as the existing test procedure. However, the machine energy and water energy components for a soil-sensing dishwasher would be based on a weighted average of the three energy consumption tests, according to the frequency with which light, medium, and heavy loads are washed.

From available survey data, ADL determined the following weighting factors, drawn from the distribution of U.S. households in the three soil level categories—62% light level of soil, 33% medium, and 5% heavy. The resulting equation for the machine energy, M , for soil-sensing dishwashers is:

$$M = (M_{hc} \times F_{hc}) + (M_{mc} \times F_{mc}) + (M_{lc} \times F_{lc})$$

The resulting equation for the amount of water used, V , for soil-sensing dishwashers is:

$$V = (V_{hc} \times F_{hc}) + (V_{mc} \times F_{mc}) + (V_{lc} \times F_{lc})$$

Based on the ADL report and addendum, and the available relevant and reliable data, DOE believes that the percentages used in the proposed rule represent the best possible estimate of how consumers currently use dishwashers, weighting the equation toward light loads that are significantly pre-rinsed. However, because all dishwashers are designed to wash heavy loads successfully without pre-rinsing, it is possible that in coming years, as consumers learn that pre-rinsing generally is unnecessary, dishwashers will encounter a higher percentage of heavy loads. Consumers Union stressed this point in a comment which emphasized the water and energy lost to

pre-rinsing, and the need for public information to reduce this wasteful practice. If educational campaigns successfully decrease the preponderance of pre-rinsing, and the Department becomes aware of reliable data documenting that change in behavior, the Department will consider reevaluating consumer usage patterns and making appropriate adjustments to the weighting factors or any other elements of the proposed test procedure. But for now, our test procedure must be based on the best approximation of how dishwashers are currently used.

The proposed test procedure requires the use of both the type and quantity of detergent and rinse agent specified in AHAM DW-1. This requirement can be found in section 2.7 of the test procedure. The test procedure also specifies the order of the tests, requiring the test of the heavy cycle to be conducted first, followed by the test of the medium cycle, and finally the test of the light cycle. This order was chosen because the Department is aware that for some models, the cycle response may be influenced by the previous wash cycle used. For those machines, this order selection would capture any additional energy use.

E. New Test Procedure for Standby Power

The existing test procedure for dishwashers was designed to measure energy consumption only during the normal wash cycle. However, many dishwasher manufacturers have shifted from electro-mechanical controls to controls using transformers and microprocessors to provide more advanced features in their high end dishwasher models (*e.g.*, innovative soil-sensing control schemes and displays). Thus, the market is seeing an increased percentage of models which consume standby power.

The energy consumption of standby power has gained additional attention through Executive Order 13221, "Energy Efficient Standby Power Devices," issued July 31, 2001 (66 FR 40571), which added standby power usage to Federal purchasing criteria for commercially available products. Since EPCA defines the estimated annual operating cost (EAOC) of a covered product as "the aggregate retail cost of the energy which is likely to be consumed annually * * * in representative use of a consumer product," EPCA section 321(7), 42 U.S.C. 6291(7), the Department proposes to require that the measurement of standby power consumption for dishwashers be included in the EAOC. Additionally, standby power would be

included in the estimated annual energy use (EAEU) calculations, a reporting value used in calculating the EAOC. It would not at this time, however, be included in the energy factor, since the energy factor has traditionally measured only the amount of energy consumed during the running of the test wash cycle(s). From the data that we have initially seen, we believe the amount of standby power use to be a small percentage of overall dishwasher energy use (probably between one and five percent). However, we will collect data on dishwasher standby power consumption in order to evaluate it further, for possible incorporation into the energy factor in the future.

The standby energy measurement procedure requires that the dishwasher be connected to a high resolution watt meter and the dishwasher set to the standby mode. The standby energy consumption must be measured over an interval of at least five minutes. The resulting value for average power in watts in the standby mode, S_m , is then multiplied by the nominal number of standby hours and divided by 1000 to obtain the units of kilowatt-hours. The nominal value for the number of standby hours was obtained as follows:

First calculate the total number of hours per year, H , taking into account leap years.

$$H = (365.25 \text{ days/year} \times 24 \text{ hours/day}) = 8766 \text{ hours/year}$$

Then calculate the number of standby hours per year, based on the normal/sensor medium cycle duration where L is defined as the duration of the normal cycle in hours or fractions of an hour for tests of non soil-sensing dishwashers or the duration of the sensor medium cycle for tests of soil-sensing dishwashers.

$$H_s = H - (215 \text{ cycles/year} \times L)$$

With these inputs, the calculation for annual standby power use, S , is completed using

$$S = S_m \times ((H_s)/1000).$$

Once the value, S , is known, the calculation for the estimated annual operating cost (EAOC) can be completed as follows:

$$EAOC + (D_e \times S) + (D_e \times N \times M)$$

where,

N is the annual dishwasher use = 215 cycles per year as discussed in section B of this notice, and D_e is the price of electricity in dollars per kWh.

This modification will give consumers a more complete estimate of their annual energy costs.

F. Instrumentation Requirements

As a result of the proposed changes set forth in this NOPR, there would be

requirements for additional instrumentation used in the test procedure. These new requirements would include an additional watt or watt-hour meter for measuring standby power and a timer for measuring the duration of the cycle. The specifications for each of these instruments are listed below.

3.2 Timer. Time measurements for each monitoring period shall be accurate to within 2 seconds.

3.5 Standby power meter. The watt/watt-hour meter must have a resolution of 0.1 watt or less at 1.0 watt actual power consumption and accumulate into watt-hours at a minimum power level of 20 milliwatts. The watt/watt-hour meter must be capable of operating within the stated tolerances for input voltages at up to five percent total harmonic distortion and shall be capable of operating at frequencies from 47 hertz through 63 hertz. Power measurement instruments shall have a crest factor of not less than five at RMS currents of two amps or less.

In addition, we propose modifying the wording of the electrical energy supply requirements. We propose changing the supply requirement from "115 volts" to "120 volts \pm 2%" and from "240 volts" to "240 volts \pm 2%." This change to 120 volts will better approximate most manufacturers' installation instructions and also adds a range to the voltage specification. DOE requests comment on whether these ranges are appropriate as testing requirements. The proposed new test is as follows:

2.2.1 Dishwashers that operate with an electrical supply of 120 volts. Maintain the electrical supply to the dishwasher at no less than 120 volts \pm 2% and within one percent of the nameplate frequency as specified by the manufacturer.

2.2.2 Dishwashers that operate with an electrical supply of 240 volts. Maintain the electrical supply to the dishwasher at 240 volts \pm 2% and within one percent of its nameplate frequency as specified by the manufacturer.

G. Impact of Test Procedure Revisions

Section 323(e) of EPCA requires that the Department, in a rulemaking, determine to what extent, if any, a proposed test procedure will alter the energy efficiency or energy use of any covered product as measured under the existing test procedure. If DOE determines that an amended test procedure would alter the energy efficiency or energy use of a covered product as measured, DOE is required to measure the energy efficiency or energy use of representative samples of covered products which minimally comply with the existing standard. The average efficiency of these representative samples, tested using the amended test

procedure, will constitute the amended standard (42 U.S.C. 6293(e)(2)). This statutory provision is designed to prevent alteration of an existing Federal energy conservation standard through a change in a test procedure. It seeks to ensure that products in compliance with the applicable energy conservation standard under the existing test procedure will not be out of compliance because the test procedure has been amended.

In this NOPR, the primary revisions to the dishwasher test procedure are the inclusion of new measurements of standby power, the reduction in annual cycles of use, and the addition of a new soil-based test method for soil-sensing dishwashers. The addition of standby power measurements will not affect the compliance of any dishwashers with existing energy conservation standards because the Department does not propose requiring that standby power consumption be added into the calculation for a dishwasher's energy factor. The energy factor is the energy descriptor that measures the energy efficiency for dishwashers in tests of the normal cycle. Instead, standby power consumption is only included in the EAOC and in the EAEU. These two values do not have an impact on model compliance with the currently-effective minimum energy standard for either non soil-sensing or soil-sensing models. Similarly, annual cycles of use are used to calculate EAOC and EAEU and are not included in energy factor.

Accordingly, these two changes in the proposed test procedure do not alter either the energy efficiency or energy use as measured for all dishwashers and therefore no amendment to the energy conservation standard is required under section 323(e) based on these proposed changes.

The third change, the new soil-based test method, will only be used for testing soil-sensing machines. Because non soil-sensing machines will still be tested using clean dishes, their energy factors will not change, and their compliance with the standard will not be affected. Soil testing, however, is expected to alter the energy factors of soil-sensing models. We understand that models using soil-sensing technology are generally more efficient than non soil-sensing models. Hence, at this time, under the existing test procedure, many soil-sensing dishwashers have been labeled Energy Star products and we expect that they will continue to be in compliance with the current standard when tested under the proposed test procedure.

However, stakeholders have agreed that the existing test procedure cannot

accurately test dishwasher models with the soil-sensing technology. In fact, under the existing test procedure, soil-sensing models show results that are overrated, that is, they inaccurately show higher energy factors than they would if tested with a soil load. For this reason, the parties have diligently worked together to design a new test procedure that can specifically measure the results of dishwashers with this particular technology.

Under section 323(e) of EPCA, the Department is required to amend the applicable energy conservation standard in certain circumstances. As set forth in section 323(e) of EPCA, DOE will use the amended test procedure set forth in this NOPR to test a representative sample of soil-sensing models that are identified as minimally compliant with the existing energy conservation standard. Subsequent to the testing, the Department will make such test results available for comment. If the results of such testing demonstrate that certain models will become noncompliant due to the amended test procedure, the average efficiency of the representative sample tested using the amended test procedure will constitute the amended standard for those models. In order to perform this analysis, the Department requests that manufacturers provide the Department with information properly identifying soil-sensing dishwasher models that minimally comply with energy conservation standards when tested with the currently-effective test procedure.

H. Representation Requirements

Consistent with Section 323(c)(2) of EPCA (42 U.S.C. 6293(c)(2)), all manufacturers, distributors, retailers, or private labelers have 180 days from the date a new or amended test procedure is prescribed or established to ensure that any representation with respect to energy use or efficiency or cost of energy consumed by a covered product fairly discloses the results from testing under the new or amended test procedure. This 180-day period may be extended for up to an additional 180 days if the Secretary determines that the requirements of section 323(c)(2) of EPCA would impose undue hardship.

The Department has the responsibility to ensure that these covered products are accurately rated and that manufacturers are in compliance with the energy conservation standard. Due to the unusual circumstances concerning the testing of dishwashers, DOE plans at some future time to require manufacturers to produce reports concerning the testing of soil-sensing models pursuant to the

amended test procedure. The Department has the authority to request such reports pursuant to EPCA section 326(d)(1). We will request such reports in a manner designed to minimize unnecessary burdens on manufacturers (42 U.S.C. 6296(d)(2)). We request comment from stakeholders concerning the appropriate timing of DOE's future request and how DOE can minimize the burden on manufacturers.

The Secretary of Energy has approved issuance of this NOPR.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this proposed rule, the Department proposes amendments to test procedures that may be used to implement future energy conservation standards for dishwashers. The Department has reviewed the proposed rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, the Department's regulations for compliance with NEPA, 10 CFR part 1021, and the Secretarial Policy on the National Environmental Policy Act (June 1994). The Department has determined that this rule falls into a class of actions that are categorically excluded from review under NEPA. This rule will not affect the quality or distribution of energy usage and, therefore, will not result in any environmental impacts. The Department has therefore determined that the proposed rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing the environmental effect, as set forth in the Department's NEPA regulations in Appendix A to Subpart D, 10 CFR part 1021. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

B. Review Under Executive Order 12866, "Regulatory Planning and Review"

This regulatory proposal is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review" 58 FR 51735 (October 4, 1993). Accordingly, the proposed action is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget.

C. Review Under Executive Order 13211, "Action Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use"

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any proposed significant energy action. 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, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's proposed rule will not have a significant adverse effect on the supply, distribution, or use of energy, and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

D. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis for any rule, for which a general notice of proposed rulemaking is required, that would have a significant economic effect on small entities unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

This proposed rule prescribes test procedures that will be used to test compliance with energy conservation standards and labeling. The proposed rule affects dishwasher test procedures and would not have a significant economic impact, but rather would provide common testing methods. Therefore DOE certifies that the proposed rule would not have a "significant economic impact on a substantial number of small entities," and the preparation of a regulatory flexibility analysis is not warranted.

E. Review Under Executive Order 13132, "Federalism"

Executive Order 13132, "Federalism," (64 FR 43255, August 4, 1999), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial direct effects, then this Executive Order requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The proposed rule published today would not regulate or otherwise affect the States. Accordingly, DOE has determined that preparation of a Federalism assessment is unnecessary.

F. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights"

DOE has determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," (52 FR 8859, March 18, 1988), that this regulatory proposal would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

G. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

H. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by sections 3(a) and 3(b) of the Executive Order, Executive agencies must make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on

existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them.

DOE reviewed today's proposed rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, the proposed regulations meet the requirements of those standards.

I. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95-91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788. Section 32 provides in essence that, where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards.

The rule proposed in this notice incorporates one commercial standard, "ANSI/AHAM DW-1-1992, and the August 20, 1999 "Addendum to Appendix A of AHAM DW-1-1992." The standard specifies the type and quantity of foods that will be used to soil place settings of dishes in this test procedure. The addendum provides more details regarding a source of acceptable dishware for testing. The Department has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the Federal Energy Administration Act, *i.e.*, that the standard was developed in a manner that fully provides for public participation, comment and review.

As required by section 32(c) of the Federal Energy Administration Act, the Department will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of this standard on competition, prior to prescribing a final rule.

J. Review Under the Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The budgetary impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of \$100 million or more to State, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

K. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

IV. Public Comment

A. Attendance at Public Hearing

You will find the time and place of a public hearing listed at the beginning of

this notice of proposed rulemaking. If you would like to attend the public hearing, please notify Ms. Brenda Edwards-Jones at (202) 586-2945. Foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. If you are a foreign national and wish to participate in the meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards-Jones so that the necessary procedures can be completed.

B. Procedure for Submitting Requests to Speak

We invite any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, to request an opportunity to make an oral presentation. You may hand deliver requests to speak, along with a computer diskette or CD (WordPerfect™ 8), to the address indicated at the beginning of this notice of proposed rulemaking between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send them by mail or e-mail to Brenda.Edwards-Jones@ee.doe.gov.

The person making the request should state why he or she, either individually or as a representative of a group or class of persons, is an appropriate spokesperson, briefly describe the nature of the interest in this rulemaking, and provide a telephone number for contact. We request each person selected to be heard to submit an advance copy of his or her statement no later than Tuesday, October 8, 2002. At our discretion, we may permit any person who cannot do this to participate if that person has made alternative arrangements with the Office of Building Research and Standards in advance. The request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Hearing

DOE will designate a DOE official to preside at the hearing and we may also use a professional facilitator to facilitate discussion. The meeting will not be a judicial or evidentiary-type hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and Section 336 of EPCA and a court reporter will be present to record the transcript of the proceedings. We reserve the right to schedule the presentations by hearing participants, and to establish the procedures governing the conduct of the hearing. Following the hearing, we will provide an additional comment period, during which interested parties will have an

opportunity to comment on the proceedings at the hearing, as well as on any aspect of the rulemaking.

The hearing will be conducted in an informal, conference style. We will present summaries of comments received before the hearing, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. DOE will permit each participant to make a prepared general statement, (with time limit as determined by DOE), prior to the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit each participant to clarify his or her statement briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to the hearing. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules, or modification of the above procedures, needed for the proper conduct of the hearing.

We will make the entire record of this proposed rulemaking, including the transcript from the hearing, available for inspection in DOE's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

D. Issues on Which Comments Are Requested

The Department of Energy is interested in receiving comments and/or data concerning the feasibility, workability, and appropriateness of the test procedure proposed in this notice. We also welcome discussion on improvements or alternatives to this approach. We are especially interested in any data and comment regarding:

(1) The frequency with which dishwasher loads are pre-rinsed;
 (2) The amount and type of soil representing typical dish loads;
 (3) Improving the repeatability of soil tests and minimizing test burden;
 (4) The average number of dishwasher cycles consumers run each year;
 (5) Any soil-sensing dishwashers adversely affected by the new test procedure and information identifying minimally compliant soil-sensing models;

(6) The method used to include standby power in the annual energy use calculations;

(7) Suggestions concerning the appropriate time frame and ways the Department can minimize the burden on manufacturers when it requests reports pursuant to EPCA section 326 (d)(1) relating to the testing of soil-sensing models under the new test procedure;

(8) Comments on whether the tolerance for the voltage specifications are attainable without undue burden, or whether they should be modified; and
 (9) Possible alternatives to the definition of standby mode.

In addition to these test procedure issues, we are interested in hearing comment on possible future strategies to capture greater efficiency benefits with dishwashers and to maintain and update this test procedure, as dishwasher technology and consumer dishwasher use evolve. We are especially interested in comment on the following:

(1) Assessing the energy impact of pre-rinsing dishes and the energy saving opportunities of greater utilization of dishwashers, without pre-rinsing dishes.

(2) Supporting industry efforts to update and maintain the AHAM DW-1.

(3) Maintaining the correct percentages for the weighting factors in the energy consumption formulas through follow-up assessments of households' dishwasher usage habits regarding soil loads.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, on August 27, 2002.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, the Department proposes to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as follows:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291-6309; 28 U.S.C. 2461 note.

2. Section 430.22 is amended in subpart B by revising paragraph (b)(7) to read as follows:

§ 430.22 Reference Sources.

* * * * *

(b) * * *

(7) Association of Home Appliance Manufacturers, 1111 19th Street, NW, Suite 402, Washington, DC 20036, (202)

872-5955, "American National Standard, Household Electric Dishwashers, ANSI/AHAM DW-1-1992" and the August 20, 1999 "Addendum to Appendix A of AHAM DW-1-1992," hereinafter collectively referred to as AHAM DW-1.

* * * * *

3. Section 430.23 of subpart B is amended by revising paragraph (c) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(c) *Dishwashers.* (1) The estimated annual operating cost (EAO) for dishwashers must be rounded to the nearest dollar per year and is defined as follows:

(i) When cold water (50 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of Appendix C to this subpart,

$$EAO = (D_e \times S) + (D_e \times N \times (M - (E_D/2)))$$

(B) For dishwashers not having a truncated normal cycle,

$$EAO = (D_e \times S) + (D_e \times N \times M)$$

where,

D_e = the representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary,

S = the annual standby electrical energy in kilowatt-hours per year and determined according to section 5.5 of Appendix C to this subpart,

N = the representative average dishwasher use of 215 cycles per year,

M = the machine electrical energy consumption per-cycle for the normal cycle as defined in section 1.6 of Appendix C to this subpart, in kilowatt-hours and determined according to section 5.1 of Appendix C to this subpart,

E_D = the energy consumed after the normal cycle is interrupted to eliminate the power dry feature after the termination of the last rinse option.

(ii) When electrically-heated water (120 °F or 140 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of Appendix C to this subpart,

$$EAO = (D_e \times S) + (D_e \times N \times (M - (E_D/2))) + (D_e \times N \times W)$$

(B) For dishwashers not having a truncated normal cycle,

$$E_{AOC} = (D_e \times S) + (D_e \times N \times M) + (D_e \times N \times W)$$

where,

D_e , S , N , M , and E_D are defined in paragraph (c)(1)(i) of this section, and

W = the total water energy consumption per cycle for the normal cycle as defined in section 1.6 of Appendix C to this subpart, in kilowatt-hours per cycle and determined according to section 5.3 of Appendix C to this subpart.

(iii) When gas-heated or oil-heated water is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of Appendix C to this subpart,

$$E_{AOC_g} = (D_e \times S) + (D_e \times N \times (M - (E_D/2))) + (D_g \times N \times W_g)$$

(B) For dishwashers not having a truncated normal cycle,

$$E_{AOC_g} = (D_e \times S) + (D_e \times N \times M) + (D_g \times N \times W_g)$$

where,

D_e , S , N , M , and E_D are defined in paragraph (c)(1)(i) of this section, D_g = the representative average unit cost in dollars per Btu for gas or oil, as appropriate, as provided by the Secretary, and

W_g = the total water energy consumption per cycle for the normal cycle as defined in section 1.6 of Appendix C to this subpart, in Btu's per cycle and determined according to section 5.4 of Appendix C to this subpart.

(2) The energy factor for dishwashers, EF , expressed in kilowatt-hours per cycle is defined as follows:

(i) When cold water (50 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of Appendix C to this subpart,

$$EF = 1/(M - (E_D/2))$$

(B) For dishwashers not having a truncated normal cycle,

$$EF = 1/M$$

where,

M , and E_D are defined in paragraph (c)(1)(i) of this section.

(ii) When electrically-heated water (120 °F or 140 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of Appendix C to this subpart,

$$EF = 1/(M - (E_D/2) + W)$$

(B) For dishwashers not having a truncated normal cycle,

$$EF = 1/(M + W)$$

where,

M , and E_D are defined in paragraph (c)(1)(i) of this section, and W is

defined in paragraph (c)(1)(ii) of this section.

(3) The estimated annual energy use, E_{AEU} , expressed in kilowatt-hours per year is defined as follows:

(i) For dishwashers having a truncated normal cycle as defined in section 1.15 of Appendix C to this subpart,

$$E_{AEU} = (M - (E_D/2) + W + S)$$

where,

M , E_D and S are defined in paragraph (c)(1)(i) of this section, and W is defined in paragraph (c)(1)(ii) of this section.

(ii) For dishwashers not having a truncated normal cycle,

$$E_{AEU} = (M + W + S)$$

where

M and S are defined in paragraph (c)(1)(i) of this section, and W is defined in paragraph (c)(1)(ii) of this section.

(4) Other useful measures of energy consumption for dishwashers are those which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix C to this subpart.

* * * * *

4. Appendix C to Subpart B of Part 430 is revised to read as follows:

Appendix C to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dishwashers

1. Definitions:

1.1 “*AHAM*” means the Association of Home Appliance Manufacturers.

1.2 “*Compact dishwasher*” means a dishwasher that has a capacity less than eight place settings plus six serving pieces as specified in AHAM DW-1 (see § 430.22).

1.3 “*Cycle*” means a sequence of operations of a dishwasher which performs a complete dishwashing function, and may include variations or combinations of washing, rinsing, and drying.

1.4 “*Cycle type*” means any complete sequence of operations capable of being preset on the dishwasher prior to the initiation of machine operation.

1.5 “*Non soil-sensing dishwasher*” means a dishwasher that does not have the ability to adjust automatically any energy consuming aspect of a wash cycle based on the soil load of the dishes.

1.6 “*Normal cycle*” means the cycle type recommended by the manufacturer for completely washing a full load of normally soiled dishes including the power-dry feature.

1.7 “*Power-dry feature*” means the introduction of electrically generated heat into the washing chamber for the purpose of improving the drying performance of the dishwasher.

1.8 “*Preconditioning cycle*” means any cycle that includes a fill, circulation, and drain to ensure that the water lines and sump area of the pump are primed.

1.9 “*Sensor heavy cycle*” means, for standard dishwashers, the set of operations

in a soil-sensing dishwasher that constitutes the response for completely washing a load of dishes, four place settings of which are soiled. For compact dishwashers, this definition is the same, except that two soiled place settings are used instead of four.

1.10 “*Sensor light cycle*” means, for both standard and compact dishwashers, the set of operations in a soil-sensing dishwasher that constitutes the response for completely washing a load of dishes, one place setting of which is soiled with half of the gram weight of soils for each item specified in a single place setting according to AHAM DW-1.

1.11 “*Sensor medium cycle*” means, for standard dishwashers, the set of operations in a soil-sensing dishwasher that constitutes the response for completely washing a load of dishes, two place settings of which are soiled. For compact dishwashers, this definition is the same, except that one soiled place setting is used instead of two.

1.12 “*Soil-sensing dishwasher*” means a dishwasher that has the ability to adjust automatically any energy consuming aspect of a wash cycle based on the soil load of the dishes.

1.13 “*Standard dishwasher*” means a dishwasher that has a capacity equal to or greater than eight place settings plus six serving pieces as specified in AHAM DW-1 (see section 430.22).

1.14 “*Standby mode*” means the power consumption condition when the dishwasher is connected to the main electricity supply and the door lock is unlatched.

1.15 “*Truncated normal cycle*” means the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.16 “*Truncated sensor heavy cycle*” means the sensor heavy cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.17 “*Truncated sensor light cycle*” means the sensor light cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.18 “*Truncated sensor medium cycle*” means the sensor medium cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.19 “*Water-heating dishwasher*” means a dishwasher which is designed for heating cold inlet water (nominal 50 °F) or a dishwasher for which the manufacturer recommends operation with a nominal inlet water temperature of 120 °F, and may operate at either of these inlet water temperatures by providing internal water heating to above 120 °F in at least one wash phase of the normal cycle.

2. Testing conditions:

2.1 *Installation Requirements.* Install the dishwasher according to the manufacturer's instructions. A standard or compact under-counter or under-sink dishwasher must be tested in a rectangular enclosure constructed of nominal 0.374 inch (9.5 mm) plywood painted black. The enclosure must consist of a top, a bottom, a back, and two sides. If the dishwasher includes a counter top as part of the appliance, omit the top of the enclosure. Bring the enclosure into the closest contact with the appliance that the configuration of the dishwasher will allow.

2.2 Electrical energy supply.

2.2.1 *Dishwashers that operate with an electrical supply of 120 volts.* Maintain the electrical supply to the dishwasher at 120 volts $\pm 2\%$ and within one percent of the nameplate frequency as specified by the manufacturer.

2.2.2 *Dishwashers that operate with an electrical supply of 240 volts.* Maintain the electrical supply to the dishwasher at 240 volts $\pm 2\%$ and within one percent of its nameplate frequency as specified by the manufacturer.

2.3 *Water temperature.* Measure the temperature of the water supplied to the dishwasher using a temperature measuring device as specified in section 3.1 of this Appendix.

2.3.1 *Dishwashers to be tested at a nominal 140 °F inlet water temperature.* Maintain the water supply temperature at 140 ± 5 °F.

2.3.2 *Dishwashers to be tested at a nominal 120 °F inlet water temperature.* Maintain the water supply temperature at 120 ± 2 °F.

2.3.3 *Dishwashers to be tested at a nominal 50 °F inlet water temperature.* Maintain the water supply temperature at 50 ± 2 °F.

2.4 *Water pressure.* Using a water pressure gauge as specified in section 3.3 of this Appendix, maintain the pressure of the water supply at 35 ± 2.5 pounds per square inch gauge (psig) when the water is flowing.

2.5 *Ambient and machine temperature.* Using a temperature measuring device as specified in section 3.1 of this Appendix, maintain the room ambient air temperature at 75 ± 5 °F, and ensure that the dishwasher and the test load are at room ambient temperature at the start of each test cycle.

2.6 Test Cycle and Load.

2.6.1 *Non soil-sensing dishwashers to be tested at a nominal inlet temperature of 140 °F.* These units must be tested on the normal cycle without a test load if the dishwasher does not heat water in the normal cycle.

2.6.2 *Non soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F or 120 °F.* These units must be tested on the normal cycle with a clean load of eight place settings plus six serving pieces, as specified in AHAM DW-1. If the capacity of the dishwasher, as stated by the manufacturer, is less than eight place settings, then the test load must be the stated capacity.

2.6.3 *Soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F, 120 °F, or 140 °F.* These units must be first tested on the sensor heavy cycle, then tested on sensor medium cycle, and finally on the sensor light cycle with the following combinations of soiled and clean test loads.

2.6.3.1 For tests of the sensor heavy cycle, as defined in section 1.9:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight AHAM DW-1 place settings plus six serving pieces. Four of the eight place settings must be soiled according to AHAM DW-1 while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four AHAM DW-1 place

settings plus six serving pieces. Two place settings must be soiled according to AHAM DW-1 while the remaining place settings, serving pieces, and all flatware are not soiled.

2.6.3.2 For tests of the sensor medium cycle, as defined in section 1.11:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight AHAM DW-1 place settings plus six serving pieces. Two of the eight place settings must be soiled according to AHAM DW-1 while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four AHAM DW-1 place settings plus six serving pieces. One place setting must be soiled according to AHAM DW-1 while the remaining place settings, serving pieces, and all flatware are not soiled.

2.6.3.3 For tests of the sensor light cycle, as defined in section 1.10:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight AHAM DW-1 place settings plus six serving pieces. One place setting must be soiled with half of the soil load specified for a single place setting according to AHAM DW-1 while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four AHAM DW-1 place settings plus six serving pieces. One place setting must be soiled with half of the soil load specified for a single place setting according to the AHAM DW-1 while the remaining place settings, serving pieces, and all flatware are not soiled.

2.7 *Detergent and rinse agent.* Use detergent and rinse agent in the types and quantities specified according to AHAM DW-1.

2.8 *Testing requirements.* Provisions in this Appendix pertaining to dishwashers that operate with a nominal inlet temperature of 50 °F or 120 °F apply only to water heating dishwashers.

2.9 *Preconditioning requirements.* Precondition the dishwasher by establishing the testing conditions set forth in sections 2.1 through 2.5 of this Appendix. Set the dishwasher to the preconditioning cycle as defined in section 1.8 of this Appendix, without using a test load, and initiate the cycle.

3. Instrumentation: Test instruments must be calibrated annually.

3.1 *Temperature measuring device.* The device must have an error no greater than ± 1 °F over the range being measured.

3.2 *Timer.* Time measurements for each monitoring period shall be accurate to within 2 seconds.

3.2.1 *Water meter.* The water meter must have a resolution of no larger than 0.1 gallons and a maximum error no greater than 1.5 percent for all water flow rates from one to five gallons per minute and for all water temperatures encountered in the test cycle.

3.3 *Water pressure gauge.* The water pressure gauge must have a resolution of one pound per square inch (psi) and must have an error no greater than 5 percent of any measured value over the range of 35 ± 2.5 psig.

3.4 *Watt-hour meter.* The Watt-hour meter must have a resolution of 1 watt-hour

or less and a maximum error of no more than 1 percent of the measured value for any demand greater than 50 Watts.

3.5 *Standby power meter.* The watt/watt-hour meter must have a resolution of 0.1 watt or less at 1.0 watt actual power consumption and accumulate into watt-hours at a minimum power level of 20 milliwatts. The watt/watt-hour meter must be capable of operating within the stated tolerances for input voltages at up to five percent total harmonic distortion and shall be capable of operating at frequencies from 47 hertz through 63 hertz. Power measurement instruments shall have a crest factor of not less than five at RMS currents of two amps or less.

4. Test cycle and measurements:

4.1 *Test cycle.* Perform a test cycle by establishing the testing conditions set forth in section 2 of this Appendix, setting the dishwasher to the cycle type to be tested, initiating the cycle, and allowing the cycle to proceed to completion.

4.2 *Machine electrical energy consumption.* Measure the electrical energy consumed by the machine during the test cycle, M, expressed in kilowatt-hours per cycle, using a water supply temperature as set forth in section 2.3 of this Appendix and using a watt-hour meter as specified in section 3.4 of this Appendix.

4.3 *Water consumption.* Measure the water consumption, V, specified as the number of gallons delivered to the dishwasher during the entire test cycle, using a water meter as specified in section 3.2 of this Appendix.

4.4 *Standby power.* Connect the dishwasher to a watt/watt-hr meter as specified in section 3.5. Select the conditions necessary to achieve operation in the standby mode as defined in section 1.14 of this Appendix. Monitor the power consumption but allow the dishwasher to stabilize for not less than 5 minutes. Commence energy consumption readings for a period of not less than an additional 5 minutes, checking the power and equipment during the recording period to make sure that the dishwasher has not entered another mode. Continue measurement until the necessary measurement period is complete. Record the duration of energy measurement and the total energy consumed in watt-hours over that time period. Calculate the average standby power, S_m , expressed in watts by dividing the measured energy consumption by the duration of the measurement.

5. Calculation of derived results from test measurements:

5.1 Machine energy consumption.

5.1.1 *Machine energy consumption for non soil-sensing electric dishwashers.* Take the value recorded in section 4.2 of this Appendix as the per-cycle machine electrical energy consumption. Express the value, M, in kilowatt-hours per cycle.

5.1.2 *Machine energy consumption for soil-sensing electric dishwashers.* The machine energy consumption for the sensor normal cycle, M, is defined as:

$$M = (M_{hc} \times F_{hc}) + (M_{mc} \times F_{mc}) + (M_{lc} \times F_{lc})$$

where,

M_{hc} = the value recorded in section 4.2 of this Appendix for the test of the sensor heavy

cycle, expressed in kilowatt-hours per cycle.

M_{mc} = the value recorded in section 4.2 of this Appendix for the test of the sensor medium cycle, expressed in kilowatt-hours per cycle.

M_{lc} = the value recorded in section 4.2 of this Appendix for the test of the sensor light cycle, expressed in kilowatt-hours per cycle.

F_{hc} = the weighting factor based on consumer use of heavy cycles = 0.05.

F_{mc} = the weighting factor based on consumer use of medium cycles = 0.33.

F_{lc} = the weighting factor based on consumer use of light cycles = 0.62.

5.2 Water consumption.

5.2.1 *Water consumption for non soil-sensing dishwashers using electrically heated, gas-heated, or oil-heated water.*

Take the value recorded in section 4.3 of this Appendix as the per-cycle water energy consumption. Express the value, V , in gallons per cycle.

5.2.2 *Water consumption for soil-sensing dishwashers using electrically heated, gas-heated, or oil-heated water.*

The water consumption for the sensor normal cycle, V , is defined as:

$$V = (V_{hc} \times F_{hc}) + (V_{mc} \times F_{mc}) + (V_{lc} \times F_{lc})$$

where,

V_{hc} = the value recorded in section 4.3 of this Appendix for the test of the sensor heavy cycle, expressed in gallons per cycle.

V_{mc} = the value recorded in section 4.3 of this Appendix for the test of the sensor medium cycle, expressed in gallons per cycle.

V_{lc} = the value recorded in section 4.3 of this Appendix for the test of the sensor light cycle, expressed in gallons per cycle.

F_{hc} = the weighting factor based on consumer use of heavy cycles = 0.05.

F_{mc} = the weighting factor based on consumer use of medium cycles = 0.33.

F_{lc} = the weighting factor based on consumer use of light cycles = 0.62.

5.3 *Water energy consumption for non soil-sensing or soil-sensing dishwashers using electrically heated water.*

5.3.1 *Dishwashers that operate with a nominal 140 °F inlet water temperature, only.*

For the normal and truncated normal test cycle, calculate the water energy consumption, W , expressed in kilowatt-hours per cycle and defined as:

$$W = V \times T \times K$$

where,

V = reported water consumption in gallons per cycle, as measured in section 4.3 of this Appendix,

T = nominal water heater temperature rise = 90 °F,

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.3.2 *Dishwashers that operate with a nominal inlet water temperature of 120 °F.*

For the normal and truncated normal test cycle, calculate the water energy consumption, W , expressed in kilowatt-hours per cycle and defined as:

$$W = V \times T \times K$$

where,

V = reported water consumption in gallons per cycle, as measured in section 4.3 of this Appendix,

T = nominal water heater temperature rise = 70 °F,

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.4 *Water energy consumption per cycle using gas-heated or oil-heated water.*

5.4.1 *Dishwashers that operate with a nominal 140 °F inlet water temperature, only.*

For each test cycle, calculate the water energy consumption using gas-heated or oil-heated water, W_g , expressed in Btu's per cycle and defined as:

$$W_g = V \times T \times C/e$$

where,

V = reported water consumption in gallons per cycle, as measured in section 4.3 of this Appendix,

T = nominal water heater temperature rise = 90 °F,

C = specific heat of water in btu's per gallon per degree Fahrenheit = 8.2,

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.4.2 *Dishwashers that operate with a nominal inlet water temperature of 120 °F.*

For each test cycle, calculate the water energy consumption using gas heated or oil heated water, W_g , expressed in Btu's per cycle and defined as:

$$W_g = V \times T \times C/e$$

where,

V is measured in section 4.3 of this Appendix,

T = nominal water heater temperature rise = 70 °F,

C = specific heat of water in btu's per gallon per degree Fahrenheit = 8.2,

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.5. *Annual standby energy consumption.*

Calculate the estimated annual standby energy consumption. First determine the number of standby hours per year, H_s , defined as:

$$H_s = H - (215 \text{ cycles/year} \times L)$$

where,

L = the duration of the normal cycle for tests of non soil-sensing dishwashers or the duration of the sensor medium cycle for tests of soil-sensing dishwashers, and
 H = the total number of hours per year = 8766 hours per year.

Then calculate the estimated annual standby power use, S , expressed in kilowatt-hours per year and defined as:

$$S = S_m \times ((H_s)/1000)$$

where,

S_m = the average standby power in watts as measured in section 4.4 of this Appendix.

[FR Doc. 02-22315 Filed 8-30-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-154920-01]

RIN 1545-BA33

Guidance Regarding the Definition of Foreign Personal Holding Company Income; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under section 954 of the Internal Revenue Code.

DATES: The public hearing originally scheduled for September 11, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on May 13, 2002, (67 FR 31995), announced that a public hearing was scheduled for September 11, 2002, at 10 a.m., in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 954 of the Internal Revenue Code. The public comment period for these proposed regulations expired on August 21, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of August 27, 2002, no one has requested to speak. Therefore, the public hearing scheduled for September 11, 2002, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02-22377 Filed 8-30-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Parts 110 and 165**

[CGD14-02-001]

RIN 2115-AA97

**Anchorage and Security Zones;
Oahu, Maui, Hawaii, and Kauai, HI****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of proposed rulemaking; change of effective period.

SUMMARY: The Coast Guard proposes to extend the effective period of security zones in designated waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI for a period of 6 months beyond their current October 19, 2002, expiration date. These security zones and a related amendment to regulations for anchorage grounds in Mamala Bay we also propose to extend are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature during operations and will extend from the surface of the water to the ocean floor. Entry into the proposed zones would be prohibited unless authorized by the Coast Guard Captain of the Port Honolulu, HI.

DATES: Comments and related material must reach the Coast Guard on or before October 8, 2002.

ADDRESSES: You may mail comments and related material to Commanding Officer, U.S. Coast Guard Marine Safety Office Honolulu, 433 Ala Moana Blvd., Honolulu, Hawaii 96813. Marine Safety Office Honolulu 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, will become part of this docket and will be available for inspection or copying at Marine Safety Office Honolulu between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

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

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 (CGD14-02-001), indicate the specific section of this

document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

The deadline to submit comments is less than 60 days from the publication of the notice of proposed rules (NPRM) in the **Federal Register**. This short comment period will permit the Coast Guard to publish a temporary final rule before expiration of the existing temporary security zone, and thus maintain public safety and security. To provide additional notice, we will place a notice of our proposed rule in the local notice to mariners. You may request a copy of this notice via facsimile by calling (808) 522-8260.

In our final rule, we will include a concise general statement of comments received and identify any changes from the proposed rule based on the comments. If, as we expect, we make the final rule effective in less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Honolulu 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 separate notice in the **Federal Register**.

Background and Purpose

Terrorist attacks in New York City, New York, and on the Pentagon Building in Arlington, Virginia, on September 11, 2001, have called for the implementation of additional measures to protect national security. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. This proposed rule is similar to a rule published April 29, 2002, (67 FR 20907) creating security zones in these areas until October 19, 2002.

Discussion of Proposed Rule

The Coast Guard proposes designated security zones in the waters adjacent to the islands of Oahu, Maui, Hawaii, and

Kauai, HI for a period of 6 months. These security zones are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature during operations.

In addition to extending the period of security zones, we are also proposing to give names to security zones and make a few editorial, non-substantive changes. These proposed security zones would extend from the surface of the water to the ocean floor.

This proposed rule would also amend an anchorage grounds regulation by adding the requirement that permission of the Captain of the Port be obtained before entering anchorage grounds in Mamala Bay.

Entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu, HI. Representatives of the Captain of the Port Honolulu will enforce these security zones. The Captain of the Port may be assisted by other federal or state agencies. Periodically, by Broadcast Notice to Mariners, the Coast Guard will announce the existence or status of the temporary security zones in this proposed rule.

This temporary proposed rule is intended to provide for the safety and security of the public, maritime commerce, and transportation, by extending security zones in designated harbors, anchorages, facilities, and adjacent navigable waters of the United States.

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).

The Coast Guard expects 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. This expectation is based on the short duration of the zone and the limited geographic zone affected by it.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a

substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. No small business impacts are anticipated due to the small size of the zones and the short duration of the security zones in any one area.

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 (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Because we did not anticipate any small business impacts, we did not offer assistance to small entities in understanding the rule.

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 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 proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 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 M16475.1D, this rule is categorically excluded from further environmental documentation. A

"Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

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

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

PART 110—ANCHORAGE REGULATIONS

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

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

2. In § 110.235, paragraph (c) added at 67 FR 20907, April 29, 2002, effective 6 a.m. April 19, 2002, until 4 p.m. October 19, 2002, is extended in effect until 4 p.m. April 19, 2003.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

4. Revise temporary § 165.T14–069 to read as follows:

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

(a) *Location.* The following areas, from the surface of the water to the ocean floor, are security zones—

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

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

(3) *Chevron Conventional Buoy Mooring.* The waters extending 1,000 yards in all directions around vessels

moored at the Chevron Conventional Buoy Mooring at approximate position 21°16.7' N, 158°04.2' W.

(4) *Kahului Harbor and Entrance Channel, Maui, HI.* All waters in the Kahului Harbor and Entrance Channel, Maui, HI, shoreward of the COLREGS DEMARCATION line defined in 33 CFR 80.1460.

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

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

(7) *Hilo Harbor and Entrance Channel, Hawaii, HI.* All waters in Hilo Harbor and Entrance Channel, Hawaii, HI shoreward of the COLREGS DEMARCATION line defined in 33 CFR 80.1480.

(8) *Area Around Cruise Ships in Lahaina Small Boat Harbor, Maui, and Kailua-Kona Small Boat Harbor, Hawaii.* The waters extending out 500 yards in all directions from cruise ship vessels anchored within 3 miles of:

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

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

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

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

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

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

(3) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at command center telephone number (808) 541-

2477 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his designated representatives.

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

(e) *Effective period.* This section is effective from 6 a.m. HST April 19, 2002, until 4 p.m. HST April 19, 2003.

Dated: August 22, 2002.

R.D. Utley,

*Rear Admiral, Coast Guard, Commander,
Fourteenth Coast Guard District.*

[FR Doc. 02-22340 Filed 8-30-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01-02-101]

RIN 2115-AE47

Drawbridge Operation Regulations; Dorchester Bay, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the drawbridge operating regulations governing the operation of the William T. Morrissey Boulevard Bridge, at mile 0.0, across Dorchester Bay at Boston, Massachusetts. This proposed temporary change to the drawbridge operation regulations would allow the bridge to remain in the closed position from November 1, 2002 through May 10, 2003. This action is necessary to facilitate rehabilitation construction at the bridge.

DATES: Comments must reach the Coast Guard on or before October 3, 2002.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA 02110-3350, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223-8364. The First Coast Guard District, Bridge Branch, 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, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m.,

Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223-8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01-02-101), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, 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**.

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) is being published with a shortened comment period of thirty days instead of the normal sixty day comment period because the bridge owner coordinated this closure with the members of the Dorchester Yacht Club, the sole marine facility upstream from the bridge, and the members of the yacht club agreed upon the time period that the bridge will be allowed to remain closed.

The Coast Guard anticipates that any temporary final rule enacted following public notice and comment may be effective in less than 30 days after publication.

Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest because the rehabilitation construction is necessary in order to assure continued reliable operation of the bridge.

Background

The William T. Morrissey Boulevard Bridge, at mile 0.0, across Dorchester Bay has a vertical clearance of 12 feet at mean high water and 22 feet at mean low water. The existing regulations at 33 CFR 117.597 require the draw to open on signal from April 16 through October 14; except that, the draw need not open for vessel traffic from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. except on Saturdays, Sundays, or holidays observed in the locality. From October 15 through April 15, the draw shall open on signal if at least twenty-four hours notice is given.

The bridge owner, the Metropolitan District Commission (MDC), asked the Coast Guard to temporarily change the drawbridge operation regulations to allow the bridge to remain in the closed position from November 1, 2002 through May 10, 2003, to facilitate rehabilitation construction at the bridge. The bridge owner and the Coast Guard contacted all known waterway users to advise them of the proposed closure. No objections or negative comments were received in response to this proposal.

Discussion of Proposal

This proposed temporary change to the drawbridge operation regulations would allow the William T. Morrissey Boulevard Bridge to remain in the closed position from November 1, 2002 through May 10, 2003. The bridge normally operates on a twenty-four hour advance notice from October 15 through April 15, during the winter months.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 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, Feb. 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. This conclusion is based on the fact that the only marine facility effected by this proposal has agreed to the closure dates for the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this proposed rule would have a significant economic impact on a

substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that the only marine facility effected by this proposal has agreed to the closure date for the bridge.

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 (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this rule.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have 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.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.597 [Suspended]

2. From November 1, 2002 through May 10, 2003, § 117.597 is suspended.

3. From November 1, 2002 through May 10, 2003, § 117.1602 is temporarily added to read as follows:

§ 117.1602 Dorchester Bay

The draw of the William T. Morrissey Boulevard Bridge, mile 0.0, at Boston, need not open for the passage of vessel traffic.

Dated: August 26, 2002.

V.S. Crea,

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

[FR Doc. 02–22337 Filed 8–30–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket WA–02–001; FRL–7271–9]

Finding of Attainment for PM₁₀; Wallula PM₁₀ Nonattainment Area, WA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to find that the Wallula nonattainment area in Washington has attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM₁₀) as of December 31, 2001. EPA's proposed finding is based on EPA's review of monitored air quality data reported for the years 1999 through 2001.

DATES: Written comments must be received on or before October 3, 2002.

ADDRESSES: Written comments may be mailed to Donna Deneen, Office of Air Quality, Mailcode OAQ–107, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of documents relevant to this action are available for public review during normal business hours (8 a.m. to 4:30 p.m.) at this same address.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle Washington, 98101, (206) 553–6706.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Designation and Classification of PM₁₀ Nonattainment Areas

The Wallula area was designated nonattainment for PM₁₀ and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act upon enactment of the Clean Air Act Amendments of 1990 (Act or CAA).¹ See 40 CFR 81.348 (PM₁₀ Initial Nonattainment Areas); see also 56 FR 56694 (November 6, 1991). Under subsections 188(a) and (c)(1) of the Act, all initial moderate PM₁₀ nonattainment areas had the same applicable attainment date of December 31, 1994.

States containing initial moderate PM₁₀ nonattainment areas were required to develop and submit to EPA by November 15, 1991, a state implementation plan (SIP) revision providing for, among other things, implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of attainment of the PM₁₀ NAAQS by December 31, 1994. See Section 189(a) of the CAA.² In response to this submission requirement, the Washington Department of Ecology (Ecology) submitted a SIP revision for Wallula on November 15, 1991. Subsequently, Ecology submitted additional information indicating that nonanthropogenic sources may be significant in the Wallula nonattainment area during windblown dust events. Based on our review of the State's submissions, we deferred action on several elements in the Wallula SIP, approved the control measures in the SIP as meeting RACM/RACT, and, under section 188(f) of the CAA, granted a temporary waiver to extend the attainment date for Wallula to December

31, 1997. See 60 FR 63109 (December 6, 1995)(proposed action); 62 FR 3800 (January 27, 1997) (final action). The temporary waiver was intended to provide Ecology time to evaluate further the Wallula nonattainment area and to determine the significance of the anthropogenic and nonanthropogenic sources impacting the area. Once these activities were complete or the temporary waiver expired, EPA was to make a decision on whether the area was eligible for a permanent waiver under section 188(f) of the CAA or whether the area had attained the standard by the extended attainment date. See 62 FR at 3802.

On February 9, 2001, EPA published a **Federal Register** notice making a final determination that the Wallula area had not attained the PM₁₀ standard by the attainment date of December 31, 1997. See 66 FR 9663 (February 9, 2001) (final action); (65 FR 69275 (November 16, 2000) (proposed action). EPA made this determination based on air quality data for calendar years 1995, 1996, and 1997. As a result of that finding, the Wallula PM₁₀ nonattainment area was reclassified by operation of law as a serious PM₁₀ nonattainment area effective March 12, 2001 with an attainment date of December 31, 2001.³ See 188(b)(2)(A) and 188(c)(2).

B. Attainment Determinations

Pursuant to sections 179(c) of the CAA, we have the responsibility of determining within six months of the applicable attainment date whether, based on air quality data, PM₁₀ nonattainment areas attained the PM₁₀ NAAQS by that date. Determinations under section 179(c)(1) of the Act are to be based upon the area's "air quality as of the attainment date."

Generally, we determine whether an area's air quality is meeting the PM₁₀ NAAQS for purposes of section 179(c)(1) based upon data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment areas and entered into the EPA Air Quality Subsystem (AQS). Data entered into the AQS has been determined to meet Federal monitoring requirements (see 40 CFR 50.6, 40 CFR part 50, appendix J, 40 CFR part 53, 40 CFR part 58, appendix A & B) and may be used to determine the attainment status of areas. We also

¹ The 1990 Amendments to the CAA made significant changes to the CAA. See Public Law 101–549, 104 Stat. 2399. References herein are to the CAA as amended in 1990. The Clean Air Act is codified, as amended, in the United States Code at 42 U.S.C. 7401 *et seq.*

² The moderate area SIP requirements are set forth in section 189(a) of the CAA.

³ Under section 188(c)(2) of the CAA, attainment areas designated nonattainment for PM₁₀ under section 107(d)(4) of the CAA were required to attain the PM₁₀ standard no later than December 31, 2001. As discussed above, Wallula was designated nonattainment under section 107(d)(4) of the CAA.

consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the Federal monitoring requirements for SLAMS. All data are reviewed to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

Attainment of the annual PM₁₀ standard is achieved when the annual arithmetic mean PM₁₀ concentration over a three-year period (for example 1999, 2000, and 2001 for areas with a December 31, 2001 attainment date) is equal to or less than 50 micrograms per cubic meter (µg/m³). Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM₁₀ concentrations greater than 150 µg/m³. The 24-hour standard is attained when the expected number of days with levels above 150 µg/m³ (averaged over a three-year period) is less than or equal to one. Three consecutive years of air quality data are generally required to show attainment of the annual and 24-hour standards for PM₁₀. See 40 CFR part 50 and appendix K.

II. EPA's Proposed Action

A. Monitored Air Quality Data

Ecology established and operates one PM₁₀ SLAMS monitoring sites in the Wallula PM₁₀ nonattainment area. The Wallula monitor meets EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E, and has been monitoring for PM₁₀ since before 1990. Because the Wallula monitor is scheduled to sample only once every six days, each measured exceedance is generally counted as six expected exceedances and would generally represent a violation of the 24-hour PM₁₀ standard.

The air quality data in AQS for this monitor shows that, for the three-year period from 1999 through 2001, there were no violations of the annual PM₁₀ standard. The annual PM₁₀ NAAQS is 50 µg/m³. The annual average concentration for 1999, 2000, and 2001 were 34 µg/m³, 29 µg/m³, and 29 µg/m³, respectively. Based on this information, EPA has determined that the area attained the annual PM₁₀ standard as of the extended attainment date of December 31, 2001.

With respect to the 24-hour PM₁₀ standard, a review of the air quality data in AQS for the three-year period from 1999 through 2001 shows that there were two recorded exceedance of the 24-hour PM₁₀ standard recorded at the Wallula monitor: A concentration of 297 µg/m³ on June 23, 1999, and a concentration of 215 µg/m³ on August

10, 2000. The State has flagged both of these exceedances as attributable to high wind "natural events." The next highest 24-hour PM₁₀ concentrations measured during this time period were 126 µg/m³ on June 29, 1999 and 109 µg/m³ on July 12, 2001. Other than those, no other concentrations above 100 µg/m³ were measured at the monitor during the rest of the 3-year period. These data suggest that the 24-hour average PM₁₀ concentration in the Wallula area is generally well below the standard, but for "natural events."

B. Natural Event Determinations

Wallula, Washington is located in eastern Washington on the Columbia Plateau. The Columbia Plateau is known for its prolonged periods of strong winds which carry dust particulates for hundreds of miles downwind. Wind erosion is a particular problem on the Plateau because of the natural dustiness of the region due to its dry environments, scant vegetation, unpredictable high winds, and soils which contain substantial quantities of PM₁₀ size and smaller particulate matter. See "Farming with the Wind: Best Management Practices for Controlling Wind Erosion and Air Quality on Columbia Plateau Croplands," (1998).

Under section 107(d)(4)(B)(ii) of the CAA and 40 CFR part 50, appendix K, section 2.4, specific exceedances due to uncontrollable natural events, such as unusually high winds, may be discounted or excluded entirely from decisions regarding an area's air quality status in appropriate circumstances. See Memorandum from EPA's Assistant Administrator for Air and Radiation to EPA Regional Air Directors entitled "Areas Affected by Natural Events," dated May 30, 1996 (EPA's Natural Events Policy). EPA has stated that it will treat ambient PM₁₀ exceedances caused by dust raised by unusually high winds as due to uncontrollable natural events (and thus excludable from attainment determinations) if either (1) the dust originated from nonanthropogenic sources or (2) the dust originated from anthropogenic sources controlled with best available control measures (BACM). See Natural Events Policy, pp. 4-5. This approach recognizes that while exceedances of the PM₁₀ standard during unusually high winds may not be entirely preventable, there still are measures that can be taken to help protect public health. EPA's Natural Events Policy sets forth a process for declaring an exceedance as due to natural events and for documenting a natural events claim. Where a State believes natural events

have caused a violation of the NAAQS, the State enters the exceedance in the EPA data base, flags the exceedance as being attributable to a natural event, documents a clear causal relationship between the measured exceedance and the natural event, and develops a natural events action plan (NEAP) that is tailored to the PM₁₀ sources and the circumstances which caused the exceedance. The NEAP should include commitments to: (1) Establish public education and notification programs; (2) minimize public exposure to high concentrations of PM₁₀ due to future natural events; (3) abate or minimize contributing controllable sources of PM₁₀ which includes the application of "best available control measures" (BACM) to any sources of soil that have been disturbed by anthropogenic activities; (4) identify, study, and implement practical mitigating measures as necessary; and (5) periodically reevaluate the NEAP. See Natural Events Policy, pp. 5-8. In the case of high-wind events where the sources of dust are anthropogenic, the State should also document that BACM were required for those sources and that sources were in compliance with BACM at the time of the high-wind event. If BACM are not required for some dust sources, the NEAP must include agreements with appropriate stakeholders to minimize future emissions from such sources using BACM.

As discussed above, Ecology flagged the June 23, 1999 and the August 10, 2000, exceedances in the AQS data base as exceedances caused by high winds under EPA's Natural Events Policy. Ecology has also flagged exceedances that occurred on June 21, 1997 and July 10, 1998 as natural events. As discussed in more detail below and in the technical support document, EPA concludes that the June 21, 1997, July 10, 1998, June 23, 1999, and August 10, 2000, exceedances qualify as high wind natural events under EPA's Natural Events Policy. Therefore, EPA proposes to exclude the 1999 and 2000 exceedances from consideration in determining whether the Wallula PM₁₀ nonattainment area attained the 24-hour as of December 31, 2001. As a result, the expected number of days over the 24-hour standard for 1999, 2000, and 2001 is 0.0 and, when averaged over the three-year period from 1999 through 2001, the three-year expected exceedance rate is also 0.0. EPA therefore believes that the Wallula PM₁₀ nonattainment area attained the 24-hour PM₁₀ standard as of the serious area attainment date of December 31, 2001.

(1) Causal Relationship Between High Winds and Exceedances

EPA's Natural Events Policy provides that "the State is responsible for establishing a clear causal relationship between the measured exceedance and the natural event." Natural Events Policy, p. 8. Ecology provided meteorological data to support its position that the exceedances measured at the Wallula monitor on June 21, 1997, July 10, 1998, June 23, 1999, and August 10, 2000 were due to high wind natural events. These data show that the highest average hourly values on three of the four days, June 21, 1997, June 10, 1998, and August 10, 2000, reached 31 mph, 27 mph, and 38 mph, respectively. These windspeeds were greater than 23 mph, which is the windspeed level Ecology uses generally to evaluate whether conditions are sufficient to produce significant concentrations of airborne dust. See, e.g., Documentation of Natural Event Due to High Winds, August 10, 2000, Wallula, Washington, page 3. Based on these recorded windspeeds, along with additional information documenting the lack of precipitation preceding those days, newspaper articles documenting severe dust storms resulting from the high winds, and additional information regarding wind direction and sources in the area, Ecology has shown a clear causal relationship between the high winds and the high PM₁₀ values for those days. See Ecology's Natural Event submissions for June 21, 1997, June 10, 1998, and August 10, 2000.

On June 23, 1999, the highest average hourly windspeed and average daily windspeed of 15 mph and 10 mph, respectively, were lower than for the other three days. Since these lower windspeeds, on their own, did not explain the high levels of PM₁₀ measured at the monitor, Ecology conducted an investigation to determine what other activities or sources may have led to the exceedance. First, Ecology investigated whether local sources, such as the nearby pulp mill (primarily a combustion source) or feed lot, may have contributed to the exceedance. Based on meteorological data showing that the winds came from the direction of the pulp mill and the feed lot for only a short period of time, Ecology determined that these local sources could have been only insignificant contributors to the 24-hour concentration on June 23, 1999. Second, Ecology also evaluated the results of filter analysis for June 23, 1999. This analysis showed that the particulate on the filter was primarily crustal material, rather than combustion material. The

presence of crustal material on the filter is consistent with what would be expected to be found as a result of a high wind event.

With the feedlot and pulp mill ruled out as the primary contributors to the exceedance on June 23, 1999, and no other local sources known to potentially have a large impact on the monitor, Ecology looked more closely at the regional meteorology and/or other unique conditions that could account for the high concentrations at the monitor. This investigation revealed that high average hourly windspeeds (more than 20 mph) had, in fact, been recorded at several meteorological stations in Eastern Washington on the evening of June 22, 1999 (*i.e.*, at Pasco, Ephrata, Moses Lake, Hanford, and Pendleton). In addition, weather data from Washington State University showed that in many areas in the region, no precipitation had been measured for as many as 36 days prior to June 23, 1999, making area soils vulnerable to entrainment by high winds. Ecology also considered in its investigation the unusually high concentration at the monitor (consistent with a high wind event), the possibility of elevated winds channeling through nearby Wallula Gap (but then dissipating at the monitor), and filter analysis showing wind blown dust on the filter. Ecology concluded that, although it was impossible to discern the exact high wind event that caused the June 23, 1999, exceedance, meteorological and other conditions clearly supported the occurrence of such a natural event and that it was therefore reasonable to attribute the June 23, 1999 exceedance as due to a high wind natural event.

Based on the information provided by Ecology, EPA agrees with Ecology that it is reasonable to treat the June 23, 1999, exceedance as due to a natural event. Note that consideration of this event as due to high winds does not eliminate the need for efforts to reduce the emissions of windblown dust to the extent practicable. This issue is discussed in more detail below.

(2) BACM on Contributing Anthropogenic Sources of Windblown Dust

EPA's Natural Events Policy states that PM₁₀ exceedances "due to dust raised by unusually high winds will be treated as due to uncontrollable natural events under the following conditions: (1) The dust originated from anthropogenic sources, or (2) the dust originated from anthropogenic sources controlled with BACM. "The BACM must be implemented at contributing anthropogenic sources of dust in order

for PM₁₀ NAAQS exceedances to be treated as due to uncontrollable natural events under this policy." Natural Events Policy, pp. 4-5. The Natural Events Policy further states that the Natural Events Action Plan developed by the State should include commitments to "abate or minimize appropriate contributing controllable sources of PM₁₀." In the case of high winds, such a program should include "application of BACM to any sources of soil that have been disturbed by anthropogenic activities." Natural Events Policy, p. 6. If BACM are not defined for the anthropogenic sources at the time the NEAP is developed, the NEAP should identify, study and implement practical mitigating measures as necessary. Natural Events Policy, p. 7.

In response to EPA's May 1996 Natural Events Policy, Ecology prepared and submitted a Natural Events Action Plan for the Columbia Plateau to EPA in March 1998 (Columbia Plateau NEAP), which includes the Wallula nonattainment area. Ecology also provided information following up on the Columbia Plateau NEAP in 1999 and March 2001. The Columbia Plateau NEAP identifies dust from upwind agricultural fields as the chief source of high levels of PM₁₀ in the Columbia Plateau. In the NEAP, Ecology described BACM for agricultural lands as being equivalent to Best Management Practices (BMPs) and explained that BMPs are measures that offer the greatest level of control given available technology and economic considerations. Columbia Plateau NEAP, pg. 12. BMPs for agricultural lands in the Columbia Plateau have been identified in "Farming with the Wind: Best Management Practices for Controlling Wind Erosion and Air Quality on Columbia Plateau Croplands," (1998), a publication that has been widely distributed to farmers in the Columbia Plateau.

Data collected by the Natural Resources Conservation Service (NRCS) provides information on the extent of the use of BMPs in Benton and Walla Walla Counties at the time of the exceedances. The data show that the overall trend of tillage BMPs⁴ in Benton and Walla Walla Counties is upward, with more than 50% of planted land using tillage BMPs in Benton County and with more than 77% of planted land using tillage BMPs in Walla Walla County, the county in which the

⁴ "Tillage" BMPs includes conservation tillage and conventional tillage with 15-30 percent residue.

majority of the nonattainment area is located.

The data also show an increase in the amount of acreage in Benton County and Walla Walla County that has been put in the USDA Conservation Reserve Program (CRP). The CRP is particularly effective in reducing dust emissions because permanent vegetative cover on those lands reduces the opportunity for erosion to occur. In both counties, the CRP acreage percentage increased substantially from 1994 to 2000. In Benton County, CRP acreage increased by over 100 percent, while in Walla Walla County, CRP acreage increased by almost 40 percent. This increase is another indication of the widespread use and the overall upward trend in the use of BMPs in the Wallula area. In sum, data show that of total planted and CRP acreage, 63 percent in Benton County and 84 percent in Walla Walla County used tillage BMPs or was placed in the CRP in 2000.

Based on the information provided by Ecology, other available information showing widespread use of, and an overall upward trend in, the use of BMPs in the Wallula area from 1994 to 2000, and the area's soil and climate characteristics, EPA concludes that BACM was being implemented at the time of the June 21, 1997, July 10, 1998, June 23, 1999, and August 10, 2000 exceedances. EPA, therefore, believes that these exceedances should be excluded from consideration in attainment determinations for the Wallula PM₁₀ nonattainment area and that, in the absence of any other exceedances during 1999, 2000, and 2001, the Wallula PM₁₀ nonattainment area attained the 24-hour PM₁₀ standard as of the serious area attainment date of December 31, 2001. EPA notes, however, that identification and application of BACM for agricultural lands is evolving. EPA expects Ecology to continue efforts in identifying and implementing BACM on sources of agricultural windblown dust in the Wallula area in order for future exceedances caused by high winds to be characterized as "natural events" and excluded in attainment determinations. This includes reviewing and revising the Columbia Plateau NEAP on a periodic basis to ensure continued implementation of BACM on sources of wind blown dust in the area.

C. Effect of Proposed Finding of Attainment

As discussed above, EPA proposes to find that the Wallula PM₁₀ nonattainment area attained the PM₁₀ NAAQS as of the serious area attainment date of December 31, 2001.

If we finalize this proposal, consistent with CAA section 188, the area will remain a serious PM₁₀ nonattainment area, but will avoid the additional planning requirements that apply to serious PM₁₀ nonattainment areas that fail to meet the attainment date under section 189(d) of the CAA.

This proposed finding of attainment should not be confused with a redesignation to attainment under CAA section 107(d). Washington has not submitted a serious area plan for the Wallula area that meets the requirements of section 189(b) of the CAA. In addition, Washington has not submitted a maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignations to attainment. The designation status in 40 CFR part 81 will remain serious nonattainment for the Wallula PM₁₀ nonattainment area until such time as Washington meets the CAA requirements for redesignations to attainment.

We are soliciting public comments on EPA's proposal to find that the Wallula PM₁₀ nonattainment area has attained the PM₁₀ NAAQS as of the December 31, 2001, attainment date. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely makes a determination based on air quality data and does not impose any requirements. Accordingly, the Administrator certifies that this proposed finding 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 proposed finding does not impose any enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed finding 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 proposed action merely makes a determination based on air quality data and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed finding 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.

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 because this proposed action does not involve technical standards. This proposed finding does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 23, 2002.

John Iani,

Regional Administrator, Region 10.

[FR Doc. 02-22362 Filed 8-30-02; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5b

Privacy Act, Exempt Record System

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office for Civil Rights (OCR) of the Department of Health and Human Services is implementing a new System of Records (SOR) called the "Program Information Management System (PIMS), HHS/OS/OCR (09-90-0052)." PIMS effectively combines, and

ultimately will replace, OCR's two existing systems of records, the "Case Information Management System (CIMS), HHS/OS/OCR (09-90-0050)," and the "Complaint File and Log, HHS/OS/OCR (09-90-0051)," to create a single, integrated system with enhanced electronic storage, retrieval and tracking capacities. The Department proposes to exempt the investigative records in PIMS from certain provisions of the Privacy Act, 5 U.S.C. 552a. The exemption is authorized by subsection (k)(2) of the Privacy Act, which applies to investigative materials compiled for law enforcement purposes. Unrestricted disclosure of confidential information in OCR files can impede ongoing investigations, invade the personal privacy of individuals, reveal the identities of confidential sources, or otherwise impair the ability of the Office for Civil Rights to conduct investigations. For these reasons, the Complaint File and Log system was exempted from the notification, access, correction and amendment provisions of the Privacy Act under subsection (k)(2) concerning records compiled for law enforcement purposes. 49 FR 14107 (April 10, 1984). Therefore, in this proposed rule, we merely extend this important exemption to OCR's new SOR.

OCR is authorized to gather information for civil and administrative law enforcement purposes pursuant to a number of statutes that prohibit discrimination based on race, color, national origin, disability, age, and, in some instances, sex and religion by recipients of Federal financial assistance, and, in certain instances, by public entities and the Department's federally conducted programs. OCR is also responsible for enforcement of medical records privacy protections under the Health Insurance Portability and Accountability Act (HIPAA). In order to maintain the integrity of the OCR investigative process and to assure that OCR will be able to obtain access to complete and accurate information, the Department proposes to exempt the investigative records in PIMS, under subsection (k)(2), from the notification, access, correction and amendment provisions of the Privacy Act, specifically subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f). The Department is requesting public comments on the proposed exemption.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on October 3, 2002.

ADDRESSES: The public should address comments to: Larry Velez, Program,

Policy and Training Division, Office for Civil Rights, Department of Health and Human Services, Room 509F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Comments also may be sent via e-mail to OCRmail@hhs.gov. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern standard time.

FOR FURTHER INFORMATION CONTACT:

Claudia Schlosberg, Acting Director, Program, Policy and Training Division, Office for Civil Rights, Department of Health and Human Services, Room 503F, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201, telephone (202) 619-3196. (TTY No. 1-800-537-7697).

SUPPLEMENTARY INFORMATION: The Office for Civil Rights (OCR) is responsible for enforcing Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and other statutes which prohibit discrimination by programs or entities that receive Federal financial assistance.

Additionally, OCR has jurisdiction over Federally conducted programs in cases involving disability-based discrimination under Section 504 of the Rehabilitation Act, over state and local public entities in cases involving disability-based discrimination under Title II of the Americans with Disabilities Act, and certain health plans, health clearinghouses and health care providers with respect to enforcement of health care privacy obligations under the Health Insurance Portability and Accountability Act (HIPAA).

OCR is implementing a new System of Records (SOR) called the "Program Information Management System (PIMS), HHS/OS/OCR (09-90-0052)," but in doing so seeks both to ensure personal privacy as well as its ability to conduct proper, unimpaired investigations. PIMS effectively combines and replaces OCR's two existing systems of records, the "Case Information Management System (CIMS), HHS/OS/OCR (09-90-0050)," and the "Complaint File and Log, HHS/OS/OCR (09-90-0051)," into a single, integrated system with enhanced electronic storage, retrieval and tracking capacities. While the types of information collected and stored in PIMS will be the same as the information collected in CIMS and the Complaint File and Log, PIMS will allow OCR to manage more effectively the information it does collect.

Under the Privacy Act, individuals generally have a right to access to information pertaining to them in government files. However, the Act permits agencies, by regulation, to exempt from the general access provision records which are "investigative material compiled for law enforcement purposes," 5 U.S.C. 552a(k)(2). This exemption is qualified in that if the material results in the denial of any right, privilege, or benefit to the individual, the individual will have access to the material (except to the extent necessary to protect confidential sources).

OCR investigative files are records compiled for law enforcement purposes. In the course of investigations, OCR often has a need to obtain confidential information involving individuals other than the complainant. In these cases, it is necessary for OCR to preserve the confidentiality of the information to avoid unwarranted invasions of personal privacy and to assure recipients of Federal financial assistance that such information provided to OCR will be kept confidential. This assurance is often central to resolving disputes concerning access by OCR to the recipient's records, and is necessary to facilitate prompt and effective completion of investigations.

Unrestricted disclosure of confidential information in OCR files can impede ongoing investigations, invade the personal privacy of individuals, reveal the identities of confidential sources, or otherwise impair the ability of the Office for Civil Rights to conduct investigations. For these reasons, the Complaint File and Log system was exempted from the notification, access, correction and amendment provisions of the Privacy Act under subsection (k)(2) concerning records compiled for law enforcement purposes. 49 FR 14107 (April 10, 1984).

PIMS, OCR's new System of Records, will consist of an electronic repository of information and documents, and supplementary paper document files. Like its predecessor, PIMS will include records compiled for law enforcement purposes such as complaint allegations, information gathered during complaint investigations or reviews, letters of findings and correspondence relating to investigations. The Department therefore is proposing an amendment to the agency's Privacy Act regulation at 45 CFR 5b.11 to ensure that OCR's investigative records remain exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of the Privacy Act pursuant to the provisions of subsection (k)(2), both during the period of transition to the

new SOR and when the new SOR becomes effective.

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis. The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule does not have federalism implications under Executive Order 13132. Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that this rule will not significantly affect a substantial number of small entities. The proposed rule imposes no duties or obligations on small entities. In accordance with the provisions of the Paperwork Reduction Act of 1995, it has been determined that this proposed rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 45 CFR Part 5b

Privacy.

For reasons set out in the preamble, the Department's Privacy Act Regulations, Part 5b of 45 CFR Subtitle A, is proposed to be amended as follows:

PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for part 5b continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. Section 5b.11 is amended by adding paragraph (b)(2)(ii)(G) to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(G) Investigative materials compiled for law enforcement purposes for the Program Information Management System, HHS/OS/OCR are exempt under (k)(2) of the Privacy Act.

* * * * *

Dated: August 29, 2002.

Richard M. Campanelli,
Director, Office for Civil Rights.

Dated: August 29, 2002.

Tommy G. Thompson,
Secretary.

[FR Doc. 02–22516 Filed 8–30–02; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH47

Endangered and Threatened Wildlife and Plants; Proposal To Delist the California Plant *Berberis* (= *Mahonia*) *sonnei* (Truckee barberry)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to delist or remove *Berberis* (= *Mahonia*) *sonnei* (Truckee barberry) from the List of Endangered and Threatened Plants. We propose this action based on a review of all available data, which indicate that this plant is not a discrete taxonomic entity and does not meet the definition of a species (which includes subspecies and varieties of plants) as defined by the Endangered Species Act of 1973, as amended (Act). *Berberis sonnei* has been synonymized with *B. repens*, a common and widespread taxon with a distribution from California northward to British Columbia and Alberta, and eastward to the Great Plains. If made final, this proposed rule would eliminate Federal protection for *Berberis sonnei* under the Act. Comments from the public regarding this proposal are sought. **DATES:** Comments from all interested parties must be received by November 4, 2002. Public hearing requests must be received by October 18, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal to delist or remove *Berberis* (= *Mahonia*) *sonnei* (Truckee barberry) from the List of Endangered and Threatened plants by any one of several methods:

You may submit written comments and information to Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, California 95825.

You may send electronic mail (e-mail) to barberry@fws.gov. See the Public

Comments Solicited section below for file format and other information about electronic filing.

You may hand-deliver comments to our Sacramento Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Kirsten Tarp or Jim Browning, at the above address (telephone 916/414–6600; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

Berberis (= *Mahonia*) *sonnei* (Truckee barberry) is a small colonial evergreen shrub known only from a 250-meter (m) (280-yard (yd)) section of Truckee River flood plain in the town of Truckee, Nevada County, California. *Berberis* (= *Mahonia*) *sonnei* (Truckee barberry) is a small colonial evergreen shrub known only from a 250-meter (m) (280-yard (yd)) section of Truckee River flood plain in the town of Truckee, Nevada County, California. LeRoy Abrams described *Berberis sonnei* as *Mahonia sonnei* in 1934. McMinn (1939) transferred *Mahonia sonnei* to the genus *Berberis*. Separation of *Berberis* and *Mahonia* at the generic level is in dispute among taxonomists. The generic name *Berberis* will be used throughout this discussion following Yoder-Williams (1985, 1987).

The collections amateur botanist Charles Sonne made between 1884–1886 from around the Truckee River in Nevada County, California, provided the material from which the *Berberis sonnei* type later was taken. Sonne placed his collections in *B. aquifolium*, which at the time was the only suitable name to which he could refer his specimens (Roof 1974).

LeRoy Abrams (1934) determined that Sonne's specimens were not *Berberis aquifolium* and recognized them as a new species, *B. sonnei*, in his revision of the western barberries. Abrams distinguished the new species from *B. aquifolium* by the numerous small teeth on the leaf margins, dull color of underside leaf surfaces, and presence of papillae (small round or conic projections), concluding that these characters indicated a closer relationship with *B. repens*.

Sonne's material, and an 1881 collection by Marcus Jones at Soda Springs, Nevada County, California, were the only specimens of *Berberis sonnei* available to botanists for many

years. The actual location of Jones' collection has never been determined conclusively; it possibly was the same area later collected by Sonne (U.S. Fish and Wildlife Service 1984). Howard McMinn searched unsuccessfully for *B. sonnei* for his 1939 treatment of California shrubs. A 1944 collection from an unknown site on the Truckee River was placed in *B. repens* and went unnoticed by botanists for nearly 30 years. In 1965, an examination of Sonne's field notes revealed a reference to *B. aquifolium*, which likely could have been *B. sonnei*, from Deer Creek in Placer County, California but the locality is undocumented by a specimen (Roof 1974). *Berberis sonnei* was not relocated until a 1973 collection by Tahoe-Truckee high school student, Cathy Kramer, from the site presumably visited by Sonne nearly 90 years earlier (Roof 1974).

Taxonomic relationships between members of the *Berberis aquifolium* complex, which includes *B. repens* and *B. sonnei*, have long been confused. Abrams (1934) and McMinn (1939) both recognized a close relationship between *B. sonnei* and *B. repens*. McMinn (1939) first questioned the validity of *B. sonnei*, observing that *B. sonnei* perhaps was "only a more upright form of" *B. repens*. Yoder-Williams (1985, 1986, 1987) attributed frequent misclassification of herbarium specimens to the use of taxonomic characters incapable of consistently separating taxa of the group because they failed to account for variability throughout the range of the complex.

Yoder-Williams (1985, 1986, 1987) evaluated the diagnostic value of *Berberis* characters, including presence of papillae, glossiness of upper and lower leaf surfaces, plant height, and leaf tooth spination. As a result of his evaluation, Yoder-Williams concluded in several unpublished manuscripts that an analysis of possible characters to separate *Berberis sonnei* from both *B. repens* and *B. aquifolium* as treated by Abrams (1934) "failed to produce any clear distinctions," and that the taxon *B. sonnei* should be reduced to synonymy under *B. repens*. He recommended further field work and a comprehensive taxonomic revision of the entire group.

Michael Williams (1993) based his treatment of California *Berberis* on his taxonomic studies of selected members of the *B. aquifolium* complex (Yoder-Williams 1985, 1986, 1987). Williams' treatment of the California taxa followed earlier authors (Scoggan 1978) in placing *B. repens* as a variety of *B. aquifolium*, and additionally synonymized *B. sonnei* with *B. aquifolium* var. *repens*. The latter is a

widespread taxon with a distribution from the Peninsular Ranges of southern California northward to British Columbia and eastward to the Great Plains.

In the Flora of North America (Whittemore 1997), both *Berberis aquifolium* var. *repens* and *B. sonnei* are considered to be synonyms for *B. repens*. *Berberis repens* occurs in open forest, grassland, and shrubland. Whittemore (1997) notes that Sonne's collections from Truckee are considered to be an aberrant form of *B. repens*, and that subsequent collections from this population show the morphology typical of *B. repens* (Whittemore 1997). The range for *B. repens* is similar to that described for *B. aquifolium* ssp. *repens*.

Previous Federal Action

Federal government actions on *Berberis sonnei* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975, and included *B. sonnei* as Endangered. We published a notice on July 1, 1975 (40 FR 27823), of our acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (petition provisions are now found in section 4(b)(3) of the Act) and our intention thereby to review the status of the plant taxa named therein. *Berberis sonnei* was included in the July 1, 1975, notice. On June 16, 1976, we published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species, including *B. sonnei*, to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and our July 1, 1975, publication.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, publication (43 FR 17909). We published the final rule to list *Berberis sonnei* as an endangered species on November 6, 1979 (44 FR 64246).

On February 2, 1997, we received a petition to delist Truckee barberry ("*Mahonia sonnei*" *sic*) from the National Wilderness Institute. However, in April 1995, the enactment of Public Law 104-6 (Pub. L. 104-6) prohibited the Service from expending any of the remaining appropriated funds for the final determinations and listing of

plants and animals under the Act. Subsequent Listing Priority Guidance, published on December 5, 1996 (61 FR 64479), identified all delisting actions as Tier 4, and deferred action on all delisting packages until Fiscal Years 1998 and 1999. As a result of this guidance we were unable to address the petition to delist the species. In May 1998, the Final Listing Priority Guidance for Fiscal Years 1998 and 1999 (63 FR 25508) identified all delisting actions as Tier 2 priority actions. Beginning in 1999, funding for work on delisting actions was provided through the recovery program rather than the listing program (64 FR 57114, published October 22, 1999). The basis for the National Wilderness Institute petition was original taxonomic data error. This notice serves as our combined 90-day and 12-month findings on the petition and our proposal to delist *B. sonnei*.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act set forth the procedures for listing, reclassifying, and delisting species on the Federal lists. A species may be listed if one or more of the five factors described in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), only if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, and/or (3) because the original data for classification of the species were in error. We have carefully assessed the best scientific and commercial information available regarding the taxonomic classification of *Berberis* (= *Mahonia*) *sonnei* and have determined that the previous classification of the species is not taxonomically correct and therefore the species does not meet the definition of "species" as defined in the Act. Therefore, we propose to delist or remove *Berberis* (= *Mahonia*) *sonnei* from the List of Endangered and Threatened Plants.

The five factors affecting the species, as described in section 4(a)(1) of the Act, and their current application to *Berberis* (= *Mahonia*) *sonnei* (Abrams) McMinn (Truckee barberry) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Berberis sonnei* has been synonymized with *B. repens*, which ranges from California northward to British

Columbia and Alberta and eastward to the Great Plains (Whittemore 1997). This widespread taxon is not significantly threatened. The final rule that designated *B. sonnei* as an endangered species identified urbanization and further modification of streamside habitat of the one known Truckee River population as threats. Because *B. sonnei* is not a distinct taxon and does not meet the definition of "species" as defined in the Act, and the taxon with which it has now been combined is common and wide ranging and is not threatened by habitat destruction or modification, this threat does not apply.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The final rule cited removal of plants from the one known population as a threat because *Berberis* species are widely used as ornamentals. This threat is not applicable to the wide ranging and common *Berberis repens*. Since *B. sonnei* is now combined with *B. repens*, the identified threat does not apply.

C. *Disease or predation.* Neither disease nor predation were cited as threats in the final rule to list *Berberis sonnei* as an endangered species, and they do not threaten the common and widespread taxon *B. repens*, to which *B. sonnei* has been combined.

D. *The inadequacy of existing regulatory mechanisms.* The common and widespread taxon *Berberis repens*, with which *B. sonnei* has been combined, does not require regulatory mechanisms to sustain it. The California Department of Fish and Game tentatively plans to prepare a proposal to delist *B. sonnei* sometime in the future (Kevin Shaffer, California Department of Fish and Game, pers. comm. 1994; Sandra Morey, California Department of Fish and Game, pers. comm. 2001).

E. *Other natural or manmade factors affecting its continued existence.* The final rule listing *Berberis sonnei* as an endangered species cited low seed set and seed viability as threats to the one known population. Neither of these factors threatens the common and widespread *B. repens*. No additional natural or manmade factors are known to threaten *B. repens*. Accordingly, there are no other natural or manmade factors affecting the continued existence of *B. sonnei* which has been combined with *B. repens*.

The regulations of 50 CFR 424.11(d) state that a species may be delisted if—(1) it becomes extinct, (2) it recovers, and/or (3) the original classification data were in error. We believe current scientific information demonstrates that

Berberis sonnei does not represent a valid taxonomic entity and, therefore, does not meet the definition of "species" as defined in section 3(15) of the Act. Therefore, *B. sonnei* no longer warrants listing under the Act.

Effects of the Rule

If finalized, the proposed action would remove *Berberis sonnei* from the List of Endangered and Threatened Plants. The endangered designation under the Act for this species would be removed. The prohibitions and conservation measures provided by the Act would no longer apply to this species. Therefore, interstate commerce, import, and export of *B. sonnei* would no longer be prohibited under the Act. In addition, Federal agencies no longer would be required to consult with us to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of *B. sonnei*. The take and use of *B. sonnei* must comply with State regulations. There is no designated critical habitat for this species.

Future Conservation Measures

There are no specific preservation or management programs for this shrub that would be terminated. Section 4(g)(1) of the Act requires us to monitor a species for at least 5 years after it is delisted based on recovery. Because *Berberis sonnei* is being delisted due to new information that demonstrates that the original classification was in error, rather than due to recovery, the Act does not require us to monitor this plant species following its delisting.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning the taxonomic classification of *Berberis sonnei*.

Submit comments as indicated under **ADDRESSES**. If you wish to submit comments by e-mail, please submit these comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: [RIN 1018-AH47]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at phone number 916-414-6600. Please

note that the e-mail address "fw1_barberry@fws.gov" will be closed at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and other information received, as well as supporting information used to write this rule, will be available for public inspection, by appointment, during normal business hours at the above address.

In making a final decision on this proposal, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final regulation that differs from this proposal.

Public Hearing

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W-2605, Sacramento, California 95825.

Required Determinations

Executive Order 12866

Executive Order 12866 requires each Federal agency to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following—(1) Is the discussion in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of

sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

Send a copy of any comments that concern how we could make this proposal easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also send the comments by e-mail to Exsec@ios.doi.gov.

This rule has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Paperwork Reduction Act

OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, require that Federal agencies obtain approval from OMB before collecting information from the public. Implementation of this rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Author

The primary author of this document is Kirsten Tarp, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.12 [Amended]

2. Section 17.12(h) is amended by removing the entry for *Berberis sonnei* (= *Mahonia* s.), Truckee barberry, under “FLOWERING PLANTS,” from the List of Endangered and Threatened Plants.

Dated: August 15, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–22300 Filed 8–30–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Notice of Intent To Prepare a Status Review for the Westslope Cutthroat Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent.

SUMMARY: We, the Fish and Wildlife Service, announce initiation of a new status review for the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) in the United States, pursuant to a recent Court order and the Endangered Species Act of 1973, as amended. We request additional data, information, technical critiques, and relevant comments that may be available for this species.

DATES: Data, information, technical critiques, and comments must be submitted by November 4, 2002 to be considered in the status review and 12-month finding.

ADDRESSES: Comments should be submitted to Westslope Cutthroat Comments, U.S. Fish and Wildlife Service, 2900 4th Avenue North, Room 301, Billings, MT 59102. The amended petition and its bibliography, our initial status review document and petition finding, related **Federal Register** notices, the recent Court Order and Judgement and Memorandum Opinion, and other pertinent information are available for inspection, during normal business hours and by appointment, at that address. The above information also may be obtained at our Internet Web site <<http://mountain-prairie.fws.gov/endspp/fish/wct/>>. Comments may be

submitted electronically to <fw6_westslope@fws.gov>.

FOR FURTHER INFORMATION CONTACT:

Lynn R. Kaeding at e-mail (Lynn_Kaeding@fws.gov) or telephone (406) 582–0717.

SUPPLEMENTARY INFORMATION

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that within 90 days of receipt of the petition, to the maximum extent practicable, we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. If the petition contains substantial information, the Act requires that we initiate a status review for the species and publish a 12-month finding indicating whether the petitioned action is—(a) not warranted, (b) warranted, or (c) warranted but precluded from immediate listing proposal by other pending proposals of higher priority. Notice of such 12-month findings are to be published promptly in the **Federal Register**.

On June 6, 1997, we received a formal petition to list the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) as threatened throughout its range and designate critical habitat for this subspecies pursuant to the Act. The petitioners were American Wildlands, Clearwater Biodiversity Project, Idaho Watersheds Project, Inc., Montana Environmental Information Center, the Pacific Rivers Council, Trout Unlimited’s Madison-Gallatin Chapter, and Mr. Bud Lilly.

The westslope cutthroat trout (WCT) is 1 of 14 subspecies of cutthroat trout native to interior regions of western North America (Behnke 1992). Cutthroat trout owe their common name to the distinctive red slash that occurs just below both sides of the lower jaw. Adult WCT typically exhibit bright yellow, orange, and red colors, especially among males during the spawning season. Characteristics of WCT that distinguish this fish from the other cutthroat subspecies include a pattern of irregularly shaped spots on the body that has few spots below the lateral line, except near the tail; a unique number of chromosomes; and other genetic and morphological traits that appear to reflect a distinct evolutionary lineage (Behnke 1992).

The historic range of WCT is considered the most geographically widespread among the 14 subspecies of inland cutthroat trout (Behnke 1992).

Although not known precisely, the historic distribution of WCT in streams and lakes can be summarized as follows—West of the Continental Divide, the subspecies is native to several major drainages of the Columbia River basin, including the upper Kootenai River drainage from its headwaters in British Columbia, through northwest Montana, and into northern Idaho; the Clark Fork River drainage of Montana and Idaho downstream to the falls on the Pend Oreille River near the Washington-British Columbia border; the Spokane River above Spokane Falls and into Idaho's Coeur d'Alene and St. Joe River drainages; and the Salmon and Clearwater River drainages of Idaho's Snake River basin. The historic distribution of WCT also includes disjunct areas draining the east slope of the Cascade Mountains in Washington (Methow River and Lake Chelan drainages), the John Day River drainage in northeastern Oregon, and the headwaters of the Kootenai River and several other, disjunct regions in British Columbia. East of the Continental Divide, the historic distribution of WCT includes the headwaters of the South Saskatchewan River drainage (U.S. and Canada); the entire Missouri River drainage upstream from Fort Benton, Montana, and extending into northwest Wyoming; and the headwaters of the Judith, Milk, and Marias Rivers, which join the Missouri River downstream from Fort Benton. Today, various WCT stocks remain in each of these major river basins in Montana, Idaho, Washington, Oregon, and Wyoming.

On July 2, 1997, we notified the petitioners that our Final Listing Priority Guidance, published in the December 5, 1996, **Federal Register** (61 FR 64425), designated the processing of new listing petitions as being of lower priority than completion of emergency listings and processing of pending proposed listings. A backlog of listing actions, as well as personnel and budget restrictions in Region 6 (Mountain-Prairie Region), which was assigned responsibility for the WCT petition, prevented our staff from working on a 90-day finding for the petition.

On January 25, 1998, the petitioners provided an amended petition to list the WCT as threatened throughout its range and designate critical habitat for the subspecies. The amended petition contained additional new information in support of the requested action. Because substantial new information was provided, we treated the amended petition as a new petition.

On June 10, 1998, we published a notice in the **Federal Register** (63 FR

31691) of a 90-day finding that the amended WCT petition provided substantial information indicating that the requested action may be warranted and immediately began a comprehensive status review of WCT (U.S. Fish and Wildlife Service 1999). In the notice, we asked for data, information, technical critiques, comments, or questions relevant to the amended petition.

In response to our June 10, 1998, **Federal Register** notice, we received information on WCT from State game and fish departments, the U.S. Forest Service, National Park Service, tribal governments, and private corporations, as well as private citizens, organizations, and other entities (U.S. Fish and Wildlife Service 1999). That information indicated WCT presently occur in about 4,275 tributaries or stream reaches that collectively encompass more than 23,000 linear miles (36,800 kilometers) of stream habitat (U.S. Fish and Wildlife Service 1999). Those WCT stocks are distributed among 12 major drainages and 62 component watersheds in the Columbia, Missouri, and Saskatchewan River basins. In addition, WCT were determined to occur naturally in 6 lakes totaling about 72,900 hectares (180,000 acres) in Idaho and Washington, and in at least 20 lakes totaling 2,165 hectares (5,347 acres) in Glacier National Park in Montana. The status review also revealed that most of the habitat for extant WCT stocks lies on lands administered by Federal agencies, particularly the U.S. Forest Service (U.S. Fish and Wildlife Service 1999). Moreover, most of the strongholds for WCT stocks occur within roadless or wilderness areas or national parks, all of which afford considerable protection to WCT. In addition, there are numerous Federal and State regulatory mechanisms that, if properly administered and implemented, protect WCT and their habitats throughout the range of the subspecies.

On April 14, 2000, we published a notice in the **Federal Register** (65 FR 20120) of our 12-month finding that the WCT is not likely to become a threatened or endangered species within the foreseeable future. We found that, although the overall WCT population has been reduced from historic levels and extant stocks of this subspecies face threats in several areas of the historic range, the magnitude and imminence of those threats are small when considered in the context of the widespread distribution and current status of the overall WCT population. Therefore, we concluded that listing of the WCT as a

threatened or endangered species under the Act was not warranted at that time.

On October 23, 2000, plaintiffs filed, in the U.S. District Court for the District of Columbia, a suit alleging four claims. Plaintiffs alleged that our consideration of existing regulatory mechanisms was arbitrary. Plaintiffs further claimed that our consideration of hybridization as a threat to WCT was arbitrary because, while identifying hybridization as a threat to WCT, we relied on a draft Intercross policy (61 FR 4710) to include hybridized WCT in the total WCT population considered for listing under the Act. Plaintiffs' third claim averred that we arbitrarily considered the threats to the trout posed by the geographic isolation of some WCT stocks and the loss of some WCT life-history forms. Finally, plaintiffs claimed that we failed to account for the threat of whirling disease and other important factors, and that our decision to not list the WCT as threatened was arbitrary and capricious. In subsequent oral argument, plaintiffs conceded that their strongest argument, and the one from which their other concerns stemmed, was that we included hybridized fish in the WCT population considered for listing under the Act, while also recognizing hybridization as a threat to the subspecies.

On March 31, 2002, the U.S. District Court for the District of Columbia found that our listing determination for WCT did not reflect a reasoned assessment of the Act's statutory listing factors on the basis of the best available science. The Court remanded the listing decision to us with the order that we reconsider whether to list WCT as a threatened subspecies, and that in so doing we evaluate the threat of hybridization as it bears on the Act's statutory listing factors. Specifically, the Court ordered us to determine—(1) the current distribution of WCT, taking into account the prevalence of hybridization; (2) whether the WCT population is an endangered or threatened subspecies because of hybridization; and (3) if existing regulatory mechanisms are adequate to address threats posed by hybridizing, nonnative fishes.

The Court also pointed out that the draft Intercross policy (61 FR 4710) in no way indicates what degree of hybridization would threaten WCT, or that the existing levels of hybridization do not currently threaten WCT. Furthermore, the Court ruled that plaintiffs would have us assert a scientifically based conclusion about the extent to which it is appropriate to include hybrid WCT stocks and stocks of unknown genetic characteristics in the WCT population considered for

listing. We are particularly interested in receiving data, information, technical critiques, and relevant comments that will help us address this and other issues raised by the Court.

Request for Information

We are soliciting comments from all interested parties regarding the status of this species. We are particularly interested in receiving information that will help us address the issues outlined above.

References Cited

- Behnke, R.J. 1992. Native trout of western North America. American Fisheries Society Monograph 6.
- U.S. Fish and Wildlife Service. 1999. Status review for westslope cutthroat trout in the United States. Regions 1 and 6. Available at our Web site (see **ADDRESSES** section).

Authors

The primary author of this document is Lynn R. Kaeding, Chief, Branch of Native Fishes Management, Montana

Fish and Wildlife Management Assistance Office, U.S. Fish and Wildlife Service, 4052 Bridger Canyon Road, Bozeman, MT 59715.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: August 12, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02-22303 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-55-P

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

Farm Service Agency

Notice of Funds Availability; 2002 Cattle Feed Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the availability of \$150 million under section 32 of the Act of August 24, 1935 (section 32) and Commodity Credit Corporation (CCC)-owned nonfat dry milk (NDM) to implement the 2002 Cattle Feed Program (CFP). This program will provide feed assistance to foundation beef cattle operations in Nebraska, South Dakota, Colorado, and Wyoming. The CFP is designed to provide feed assistance to eligible foundation beef herd owners/lessees in areas most severely stricken by drought. The program is available only in Nebraska, Colorado, Wyoming and South Dakota. These States were selected because the most recent data shows that at least 75 percent of the pasture and range crops in these states are rated "poor" or "very poor" with more than 50 percent of these acres rated as "very poor." At the time of the selection of States for participation in the 2002 Cattle Feed Program, other drought-impacted States' pasture and range crops rating were in the 75 percent category; however, their "very poor" rating was significantly less than 50 percent. Accordingly, the four States with the very worst overall ratings were determined to have the most dire immediate need for assistance to prevent further liquidation of foundation beef herds. An approximate forty-day supply of feed will be provided under CFP, which should feed the eligible livestock in these four States until fall grazing and additional roughage becomes available. This forty-

day feed assistance period is neither too short a time to be ineffective nor an unnecessarily long period for sustenance, and was a consideration in determining the States to be included as eligible for participation in 2002 CFP. The Farm Service Agency (FSA), through a signup process, will determine eligible producers and the amount of assistance that will be available in the form of a feed credit to be used at participating feed dealers. FSA will also cooperate with feed mills to help distribute the supplemental feed. Stocks of nonfat dry milk owned by the CCC will be made available to the feed industry at a reduced price to help reduce the feed cost.

DATES: FSA will begin accepting applications on August 28, 2002. The deadline for receipt of an application Form FSA-551 is December 2, 2002. FSA will not consider any application received after the deadline.

FOR FURTHER INFORMATION CONTACT: Lynn Tjeerdsma, Chief, Emergency Preparedness and Programs Branch, USDA/FSA/DAFP/Stop 0517, 1400 Independence Ave., SW., Washington, DC 20250-0522; telephone (202) 720-7641; facsimile (202) 690-3610; electronic mail: Lynn.Tjeerdsma@wdc.usda.gov; or Candy Thompson, Deputy Director, Warehouse and Inventory Division USDA/FSA/DACO/Stop 0553, 1400 Independence Ave. SW., Washington, DC 20250-0; telephone (202) 720-6004; facsimile (202) 690-3123; electronic mail:

Candy_Thompson@wdc.usda.gov. Persons with disabilities who require alternative means for communication of regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires with State and local officials.

Environmental Compliance

The environmental impacts of the program to be implemented by this notice have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321, *et seq.*)

Based on the nature and scope of this notice, FSA has concluded that the notice will not have any significant impacts upon the human environment as documented through the completion of an environmental evaluation. A copy of the environmental evaluation is available for inspection and review upon request. Therefore, the agency has determined that this program is a categorical exclusion and no further environmental review is required.

Paperwork Reduction Act

A request for emergency clearance of the information collections associated with this notice has been approved by the Office of Management and Budget (OMB) under 5 CFR 1320.13(a)(2)(iii), and been assigned clearance number 0560-0222.

I. Definitions Applicable to 2002 Cattle Feed Program

Agency means the Farm Service Agency, or the Commodity Credit Corporation, their employees, and any successor agency.

Applicant means the individual or business entity applying for assistance.

Beef cattle means bovine livestock produced for the sole purpose of providing meat for human consumption.

Breeding bull means a male bovine of adequate age to be used for breeding purposes and is included in a foundation beef herd.

Brood cow means a female bovine that has delivered one or more offspring, and is part of a foundation beef herd.

Business entity means a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

Deputy Administrator or DAFP means the Deputy Administrator of Farm Programs, Farm Service Agency (FSA), or a designee.

Eligible feed means manufactured feed that is suitable to be fed to beef cows, bulls, and replacement heifers, and made available from the eligible feed supplier to be exchanged for feed credit.

Eligible livestock means foundation beef livestock that have been owned, or cash leased by the applicant for 3 or more months prior to August 12, 2002. Foundation beef livestock subject to a contract for purchase by the applicant that was negotiated prior to May 12, 2002, are eligible livestock.

Eligible State means Colorado, Nebraska, South Dakota, or Wyoming.

Eligible Feed Supplier means a feed supplier or dealer who has signed a contract with FSA to participate in the 2002 Cattle Feed Program, and has been assigned a 4-digit numeric ID code by FSA.

Foundation livestock means a herd of beef cattle kept for the sole purpose of breeding and reproduction of beef cattle. A foundation herd consists of brood cows, replacement bred heifers (not to exceed 15 percent of the number of brood cows in the foundation beef herd), and breeding bulls (not to exceed one bull per 15 head of brood cows and replacement bred heifers).

Ineligible livestock means buffalo; beefalo; dairy cattle; cattle added to the foundation beef herd after May 12, 2002; neutered beef cattle; foundation

livestock that died or were sold by the applicant before August 12, 2002. All other bovine livestock that are not foundation livestock or beef cattle are ineligible.

Replacement bred heifer means a pregnant female bovine that has not borne any offspring.

II. Appeals

An applicant may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR parts 11 and 780, or its successor regulation.

III. Eligibility Requirements

Applicants must meet all of the following requirements to be eligible for the 2002 Cattle Feed Program:

1. *Timely application.* The applicant must submit a signed Form FSA-551 completed to the best of the applicant's

ability to the Agency, no earlier than August 28, 2002, and no later than December 2, 2002, or such earlier date as FSA may announce.

2. *Foundation livestock owner or lessee.* The applicant must own, be subject to a contract to purchase, or cash lease, eligible livestock.

3. *Foundation livestock located in eligible state.* The applicant's eligible livestock must have been physically located in an eligible State on August 12, 2002.

IV. Gross Revenue Limitation: None

V. Payment Limitation: None

VI. Determining the Amount of Assistance

The National Agricultural Statistics Service (NASS) and other USDA data indicate the following:

FOUNDATION BEEF LIVESTOCK NUMBERS IN FOUR ELIGIBLE STATES

State	Beef cows	Beef cow replacement heifers	Bulls	Total
Colorado	799,000	120,000	45,000	964,000
Nebraska	1,932,000	285,000	100,000	2,317,000
South Dakota	1,792,000	300,000	95,000	2,187,000
Wyoming	815,000	165,000	50,000	1,030,000
Total	5,338,000	870,000	290,000	6,498,000

A total of \$150 million in Section 32 funds is available to FSA. A reserve of \$546,000 allows a total of \$149,454,000 available for feed credit. Dividing that available funding by the 6,498,000 estimated eligible livestock in the four States results in \$23.00. Thus, feed credit in the amount of \$23.00 will be made available from FSA for each head of eligible livestock.

VII. Applicant Certification of Eligible Livestock

The quantity of eligible livestock must be specified by the owner or lessee on Form FSA-551. The applicant will report to FSA the number of eligible livestock that died or are sold, beginning with the date of application through December 12, 2002, only when the number of dead or sold eligible livestock exceeds 5 percent of the total number of eligible foundation livestock certified on the Form FSA-551.

VIII. Payment Eligibility

In order to receive a payment the applicant must, as of May 12, 2002, be an owner, lessee, or under contract to purchase eligible foundation beef livestock in an eligible State; submit a Form FSA-551 to FSA; receive FSA approval on such form; and meet all other eligibility requirements.

IX. Payment Amount (Feed Credit)

The number of eligible foundation beef cattle multiplied by the rate of \$23.00 equals the feed credit amount to be used to purchase feed for eligible livestock at participating FSA-approved feed processor/dealer.

X. Length of Term Feed Assistance Will Provide

For a beef cow, the feed requirement used for previous FSA-administered feed assistance programs, such as the Livestock Assistance Program found at 7 CFR 1439 is converted to a corn equivalent of 15.7 pounds of corn per day. Using an Olympic five-year average of 1995-2000 corn prices, the national average price for corn is calculated at \$2.07 per bushel or \$0.037 per pound. The support feeding rate of 15.7 pounds of corn multiplied by \$0.037 per pound of corn required per day to support a beef cow is equivalent to \$0.58 per day to feed a beef cow. The subsistence level of \$0.58 per day divided into the \$23.00 feed assistance results in an approximate 40 day period that the 2002 Cattle Feed Program will provide assistance to feed eligible beef cattle.

XI. How the 2002 CFP Will Work

On the CFP application, the applicant who is an owner of eligible livestock in

Colorado, Nebraska, South Dakota, or Wyoming will provide FSA with and certify to (1) The applicant's name; (2) taxpayer identification number; (3) address; (4) number of eligible livestock, and (5) pasture location and acreage. The applicant also will identify from an FSA supplied list of feed suppliers, the supplier where the applicant will receive feed credit from FSA for manufactured feed for eligible livestock. FSA will enter into a contract with participating feed processors/dealers to: (1) Provide feed to producers according to their eligibility and at no cost to the producer, and (2) purchase NDM at \$0.01 per 25 kg/55.115 lb. bag, to be used to supplement the protein content of the manufactured feed for the eligible beef cattle under CFP. After FSA County Committee approval of the CFP application, the information on the application will be transmitted to FSA's Kansas City Commodity Office (KCCO) from the county office. KCCO will transmit each eligible producer's name, taxpayer identification number, and eligibility amount, to feed processors under contract with FSA. Feed suppliers will establish a credit for use by the producer to obtain eligible feed from the feed supplier. Feed suppliers will invoice FSA periodically for

payment of feed provided to the producers.

XII. Misrepresentation, Scheme or Device

A person shall be ineligible to receive assistance under this part, and be subject to such other remedies as may be allowed by law, if, with respect to such program, it is determined by an official of FSA, that such person has:

- (a) Adopted any scheme or other device that tends to defeat the purpose of the program operated under this Notice;
- (b) Made any fraudulent representation with respect to this program; or
- (c) Misrepresented any fact affecting a program determination.

XIII. Liens and Claims of Creditors

Any benefit or portion thereof due any person under this program shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person, including agencies of the U.S. Government.

XIV. Power of Attorney

In those instances in which, prior to the issuance of this Notice, a producer has signed a power of attorney on an approved form FSA-211 for a person or entity indicating that such power shall extend to all programs listed on the form, without limitation, such power will be considered to extend to this program unless by September 6, 2000, the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

XV. Administration

Where circumstances preclude compliance due to circumstances beyond the applicant's control, the county or State FSA committee may request that relief be granted by the Deputy Administrator under this Notice. In such cases, except for statutory deadlines and other statutory requirements, the Deputy Administrator may, in order to more equitably accomplish the goals of this Notice, waive or modify deadlines and other program requirements if the failure to meet such deadlines or other requirements does not adversely affect operation of the program and are not prohibited by statute.

Signed at Washington, DC, on August 27, 2002.

Teresa C. Lasseter,

Acting Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02-22437 Filed 8-29-02; 9:04 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

2002-Crop Sugar Marketing Allotments and Cane Sugar Allotment Hearing

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of 2002-crop sugar marketing allotments and public hearing.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this notice to advise the public that CCC has established the overall allotment quantity for sugar for the 2002 crop year and will hold a public hearing regarding the 2002-crop cane State sugar marketing allotments and the allocation of cane State sugar marketing allotments to processors, as requested by affected sugar processors and growers. CCC will also use this forum to entertain comments on the overall structure and implementation of the sugar allotment program.

DATES: The public hearing will be held September 4, 2002, in the Jefferson Auditorium of USDA South Building, 1400 Independence Ave, SW., Washington, DC. The hearing will start at 10 a.m. All times noted are Eastern Standard Time (EST).

ADDRESSES: Thomas Bickerton, Economic Policy and Analysis Staff, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250-0516; telephone (202) 720-6733; FAX (202) 690-1480; e-mail: Thomas.Bickerton2@usda.gov.

FOR FURTHER INFORMATION CONTACT: Thomas Bickerton at (202) 720-6733.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture's Commodity Credit Corporation (CCC) has established the overall allotment quantity for sugar for the 2002 crop year as required by the Farm Security and Rural Investment Act of 2002. USDA earlier had announced that domestic marketing allotments would be in effect for the upcoming marketing year and this notice establishes the quantity involved.

On August 1, USDA made preliminary estimates of 2002-crop

consumption, reasonable carryover stocks, carry-in stocks, production and imports in accordance with provisions of the new Farm Bill. These estimates were reevaluated following the release of more current market information in the August 12, 2002 USDA World Agricultural Supply and Demand Estimates (WASDE) report.

Based on the allotment formula guidelines in the farm bill, USDA has calculated the overall allotment quantity for sugar based on the estimated domestic deliveries for food use and beginning sugar stocks from the August 12 WASDE report.

The farm bill further requires that USDA establish the allotments so that no sugar is forfeited under the program and that the overall program can be operated at no-net cost to taxpayers. Market uncertainties such as changes in consumption and imports and 2001-crop sugar carryover not subject to allotments, also factored into the estimate of reasonable ending sugar stocks.

The overall allotment quantity determined in this manner is 7.700 million tons, short tons, raw value (STRV), for the 2002 crop year (Fiscal Year 2003). The resulting sector allocations are 4.185 million STRV for beet sugar and 3.515 million STRV for cane sugar.

USDA will closely monitor consumption, beginning stocks and reasonable ending stocks and all other program variables on an ongoing basis. Appropriate adjustments can be made at any time to the overall allotment quantity, as required, both to avoid forfeitures and to ensure an adequate sugar supply for the domestic market in FY 2003.

Public Hearing

USDA will hold a public hearing as required by the new statute regarding the 2002-crop cane State sugar marketing allotments and the allocation of cane State sugar marketing allotments to processors, as requested by affected sugar processors and growers. CCC will also use this forum to entertain comments on the overall structure and implementation of the sugar allotment program. Attendance is open to sugarcane growers, sugarcane processors, cane sugar refiners, sugar beet growers, sugar beet processors, sugar users, and all other interested parties.

The hearing will be held on September 4, 2002 from 10 a.m. Eastern Standard Time (EST) to 4 p.m., in the Jefferson Auditorium of USDA South Building, 1400 Independence Ave., SW., Washington, DC.

Anyone wishing to make an oral statement may do so, time permitting. Comments will be limited to 5 minutes. Those wishing to make an oral statement should submit a request to Thomas Bickerton (address follows). A sign-up sheet for statements will also be available one hour before the hearing begins. Oral statements will be made in the order the request was received. Also, written statements may be submitted in lieu of an oral statement and must be received by the close of business on September 4, 2002. These should be sent to Thomas Bickerton, Economic Policy and Analysis Staff, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 0516, Washington, DC 20250-0516; Telephone: (202) 720-3008; Fax: (202) 690-1480; e-mail: Thomas.Bickerton2@usda.gov.

Persons with disabilities who require special accommodations to attend or participate in the meetings should contact Thomas Bickerton.

Signed in Washington, DC, on August 27, 2002.

Teresa C. Lasseter,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02-22438 Filed 8-29-02; 9:04 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92-463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, September 16, 2002. The Madera Resource Advisory Committee will meet at the Spring Valley Elementary School in O'Neals, CA. The purpose of the meeting is to review presentation for the Madera County Board of Supervisor's meeting September 17, 2002, update RAC committee outreach, and view presentation: "History and Future of Sierra Forest" CD, 30 minute presentation—Oregon State University, by Thomas Bonickerson, Texas A&M.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, September 16, 2002. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Spring Valley Elementary School, 46655 Road 200, O'Neals, CA 93645.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA 93643 (559) 877-2218 ext. 3100; e-mail: dmartin05@fs.fed.us.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review presentation for the Madera County Board of Supervisor's meeting September 17, 2002, (2) update on RAC committee outreach, and, (3) view presentation "History and Future of Sierra Forest"—a 30 minute CD presentation—Oregon State University, by Thomas Bonickerson, Texas A&M. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 25, 2002.

David W. Martin,

District Ranger.

[FR Doc. 02-22306 Filed 8-30-02; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02-02-C]

Opportunity To Comment on the Applicants for the Springfield (IL) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) requests comments on the applicants for designation to provide official services in the geographic areas assigned to Springfield Grain Inspection, Inc. (Springfield).

DATES: Comments must be postmarked, or electronically dated by October 1, 2002.

ADDRESSES: Comments must be submitted in writing to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250-3604.

Telecopier (FAX) users may send comments to the automatic telecopier machine at 202-690-2755, attention: Janet M. Hart. Electronic mail users may send comments to:

Janet.M.Hart@usda.gov. All comments received will be made available for public inspection at the above address at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202-720-8525, e-mail: Janet.M.Hart@usda.gov.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 3, 2003, **Federal Register** (67 FR 38249), GIPSA asked persons interested in providing official services in the Springfield area to submit an application for designation. There were two applicants for the Springfield area: Springfield and Keokuk Grain Inspection Service (Keokuk). Springfield applied for designation to provide official services in the entire area currently assigned to them. Keokuk, a designated official grain inspection agency operating in Iowa and Illinois, applied for designation to provide official services in Cass and Schuyler Counties, Illinois.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: August 13, 2002.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02-22084 Filed 8-30-02; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02-01-S]

Designation for the Aberdeen (SD), Decatur (IL), Grand Forks (ND), Hastings (NE), McCrea (IA), Missouri, and South Carolina Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act): Aberdeen Grain Inspection, Inc. (Aberdeen); Decatur Grain Inspection, Inc. (Decatur); Grand Forks Grain Inspection Department, Inc. (Grand Forks); Hastings Grain Inspection, Inc. (Hastings); John R. McCrea Agency, Inc. (McCrea); Missouri Department of Agriculture (Missouri);

South Carolina Department of Agriculture (South Carolina);
EFFECTIVE DATES: October 1, 2002.
ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250-3604.
FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202-720-8525, e-mail Janet.M.Hart@usda.gov.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 1, 2002, **Federal Register** (67 FR 9434), GIPSA asked persons interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by April 1, 2002. Aberdeen, Decatur, Grand Forks, Hastings, McCrea, Missouri, and South

Carolina were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act and, according to section 7(f)(1)(B), determined that Aberdeen, Decatur, Grand Forks, Hastings, McCrea, Missouri, and South Carolina are able to provide official services in the geographic areas specified in the March 1, 2002, **Federal Register**, for which they applied. Effective October 1, 2002, and ending September 30, 2005, Aberdeen, Decatur, Hastings, McCrea, Missouri, and South Carolina are designated to provide official services in the geographic areas for which they applied. Effective October 1, 2002, and ending September 30, 2003, Grand Forks is designated for one year only to provide official services in the geographic area for which they applied. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start—end
Aberdeen	Aberdeen, SD; 605-225-8432 Additional Service Location: Marion, SD	10/01/2002-09/30/2005
Decatur	Decatur, IL; 217-429-2466	10/01/2002-09/30/2005
Grand Forks	Grand Forks, ND; 701-772-0151 Additional Service Locations: Devils Lake, Gladstone, ND	10/01/2002-09/30/2003
Hastings	Hastings, NE; 402-462-4254 Additional Service Location: Grand Island, NE	10/01/2002-09/30/2005
McCrea	Clinton, IA; 563-242-2073	10/01/2002-09/30/2005
Missouri	Jefferson City, MO; 573-751-5515 Additional Service Locations: Kansas City, Ladonia, Marshall, New Madrid, St. Joseph, MO.	10/01/2002-09/30/2005
South Carolina	Columbia, SC; 803-734-2200 Additional Service Location: North Charleston, SC	10/01/2002-09/30/2005

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: August 13, 2002.

Donna Reifschneider,
Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02-22082 Filed 8-30-02; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02-03-A]

Opportunity for Designation in the Jamestown (ND), Lincoln (NE), Memphis (TN), Omaha (NE), Sioux City (IA), and Tischer (IA) Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in March 2003. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing official services in the areas served by

these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies:

Grain Inspection, Inc. (Jamestown), Lincoln Inspection Service, Inc. (Lincoln), Memphis Grain Inspection Service (Memphis), Omaha Grain Inspection Service, Inc. (Omaha), Sioux City Inspection and Weighing Service Company (Sioux City), and A. V. Tischer and Son, Inc. (Tischer).

DATES: Applications and comments must be postmarked or sent by telecopier (FAX) on or before October 1, 2002.

ADDRESSES: Submit applications and comments to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S,

1400 Independence Avenue, SW., Washington, DC 20250-3604; FAX 202-690-2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at Room 1647-S, 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202-720-8525, e-mail Janet.M.Hart@usda.gov.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified

area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

1. Current Designations Being Announced for Renewal

Official agency	Main office	Designation start	Designation end
Jamestown	Jamestown, ND	04/01/2003	03/31/2006
Lincoln	Lincoln, NE	04/01/2003	03/31/2006
Memphis	Memphis, TN	04/01/2003	03/31/2006
Omaha	Omaha, NE	04/01/2003	03/31/2006
Sioux City	Sioux City, IA	04/01/2003	03/31/2006
Tischer	Fort Dodge, IA	04/01/2003	03/31/2006

a. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of North Dakota, is assigned to Jamestown.

Bounded on the North by Interstate 94 east to U.S. Route 85; U.S. Route 85 north to State Route 200; State Route 200 east to U.S. Route 83; U.S. Route 83 southeast to State Route 41; State Route 41 north to State Route 200; State Route 200 east to State Route 3; State Route 3 north to U.S. Route 52; U.S. Route 52 southeast to State Route 15; State Route 15 east to U.S. Route 281; U.S. Route 281 south to Foster County; the northern Foster County line; the northern Griggs County line east to State Route 32;

Bounded on the East by State Route 32 south to State Route 45; State Route 45 south to State Route 200; State Route 200 west to State Route 1; State Route 1 south to the Soo Railroad line; the Soo Railroad line southeast to Interstate 94; Interstate 94 west to State Route 1; State Route 1 south to the Dickey County line;

Bounded on the South by the southern Dickey County line west to U.S. Route 281; U.S. Route 281 north to the Lamoure County line; the southern Lamoure County line; the southern Logan County line west to State Route 13; State Route 13 west to U.S. Route 83; U.S. Route 83 south to the Emmons County line; the southern Emmons County line; the southern Sioux County line west to State Route 49; State Route 49 north to State Route 21; State Route 21 west to the Burlington-Northern line; the Burlington-Northern line northwest to State Route 22; State Route 22 south to U.S. Route 12; U.S. Route 12 west-northwest to the North Dakota State line; and

Bounded on the West by the western North Dakota State line north to Interstate 94.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Fessenden Coop Association, Fessenden, and Fessenden Coop Association, Manfred, both in Wells County (located inside Grand Forks Grain Inspection Department, Inc.'s, area).

Jamestown's assigned geographic area does not include the following grain elevators inside Jamestown's area which have been and will continue to be serviced by the following official agency: Minot Grain Inspection, Inc.; Benson Quinn Company, Underwood; and Falkirk Farmers Elevator, Washburn, both in McLean County.

b. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Iowa and Nebraska, is assigned to Lincoln.

Bounded on the North (in Nebraska) by the northern York, Seward, and Lancaster County lines; the northern Cass County line east to the Missouri River; the Missouri River south to U.S. Route 34; (in Iowa) U.S. Route 34 east to Interstate 29;

Bounded on the East by Interstate 29 south to the Fremont County line; the northern Fremont and Page County lines; the eastern Page County line south to the Iowa-Missouri State line; the Iowa-Missouri State line west to the Missouri River; the Missouri River south-southeast to the Nebraska-Kansas State line;

Bounded on the South by the Nebraska-Kansas State line west to

County Road 1 mile west of U.S. Route 81; and

Bounded on the West (in Nebraska) by County Road 1 mile west of U.S. Route 81 north to State Highway 8; State Highway 8 east to U.S. Route 81; U.S. Route 81 north to the Thayer County line; the northern Thayer County line east; the western Saline County line; the southern and western York County lines.

Lincoln's assigned geographic area does not include the following grain elevators inside Lincoln's area which have been and will continue to be serviced by the following official agency: Omaha Grain Inspection Service, Inc.; Goode Seed & Grain, McPaul, Fremont County, Iowa; and Haveman Grain, Murray, Cass County, Nebraska.

c. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Arkansas, Tennessee, and Texas, is assigned to Memphis.

The entire State of Arkansas. Carroll, Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Henderson, Lauderdale, Madison, McNairy, Shelby, and Tipton Counties, Tennessee.

Bowie and Cass Counties, Texas.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Cargill, Inc., Tiptonville, Lake County, Tennessee (located inside Cairo Grain Inspection Agency, Inc.'s, area).

d. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Iowa and Nebraska, is assigned to Omaha.

Bounded on the North by Nebraska State Route 91 from the western Washington County line east to U.S. Route 30; U.S. Route 30 east to the Missouri River; the Missouri River north to Iowa State Route 175; Iowa State Route 175 east to Iowa State Route 37; Iowa State Route 37 southeast to the eastern Monona County line;

Bounded on the East by the eastern Monona County line; the southern Monona County line west to Iowa State Route 183; Iowa State Route 183 south to the Pottawattamie County line; the northern and eastern Pottawattamie County lines; the southern Pottawattamie County line west to M47; M47 south to Iowa State Route 48; Iowa State Route 48 south to the Montgomery County line;

Bounded on the South by the southern Montgomery County line; the southern Mills County line west to Interstate 29; Interstate 29 north to U.S. Route 34; U.S. Route 34 west to the Missouri River; the Missouri River north to the Sarpy County line (in Nebraska); the southern Sarpy County line; the southern Saunders County line west to U.S. Route 77; and

Bounded on the West by U.S. Route 77 north to the Platte River; the Platte River southeast to the Douglas County line; the northern Douglas County line east; the western Washington County line northwest to Nebraska State Route 91.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Hancock Elevator, Elliot, Montgomery County, Iowa; Hancock Elevator (2 elevators), Griswold, Cass County, Iowa (located inside Central Iowa Grain Inspection Service, Inc.'s, area); United Farmers Coop, Rising City, Butler County, Nebraska; United Farmers Coop (2 elevators), Shelby, Polk County, Nebraska (located inside Fremont Grain Inspection Department, Inc.'s, area); and Goode Seed & Grain, McPaul, Fremont County, Iowa; Haveman Grain, Murray, Cass County, Nebraska (located inside Lincoln Inspection Service, Inc.'s, area).

Omaha's assigned geographic area does not include the following grain elevators inside Omaha's area which have been and will continue to be serviced by the following official agency: Fremont Grain Inspection Department, Inc.: Farmers Cooperative, and Krumel Grain and Storage, both in Wahoo, Saunders County, Nebraska.

e. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Iowa, Nebraska, and South Dakota, is assigned to Sioux City.

In Iowa:

Bounded on the North by the northern Iowa State line from the Big Sioux River east to U.S. Route 59;

Bounded on the East by U.S. Route 59 south to B24; B24 east to the eastern O'Brien County line; the O'Brien County line south; the northern Buena Vista County line east to U.S. Route 71; U.S. Route 71 south to the southern Sac County line;

Bounded on the South by the Sac and Ida County lines; the eastern Monona County line south to State Route 37; State Route 37 west to State Route 175; State Route 175 west to the Missouri River; and

Bounded on the West by the Missouri River north to the Big Sioux River; the Big Sioux River north to the northern Iowa State line.

In Nebraska:

Cedar, Dakota, Dixon, Pierce (north of U.S. Route 20), and Thurston Counties.

In South Dakota:

Bounded on the North by State Route 44 (U.S. 18) east to State Route 11; State Route 11 south to A54B; A54B east to the Big Sioux River;

Bounded on the East by the Big Sioux River; and

Bounded on the South and West by the Missouri River.

f. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Iowa, is assigned to Tischer.

Bounded on the North by Iowa-Minnesota State line from U.S. Route 71 east to U.S. Route 169;

Bounded on the East by U.S. Route 169 south to State Route 9; State Route 9 west to U.S. Route 169; U.S. Route 169 south to the northern Humboldt County line; the Humboldt County line east to State Route 17; State Route 17 south to C54; C54 east to U.S. Route 69; U.S. Route 69 south to the northern Hamilton County line; the Hamilton County line west to R38; R38 south to U.S. Route 20; U.S. Route 20 west to the eastern and southern Webster County lines to U.S. Route 169; U.S. Route 169 south to E18; E18 west to the eastern Greene County line; the Greene County line south to U.S. Route 30;

Bounded on the South by U.S. Route 30 west to E53; E53 west to N44; N44 north to U.S. Route 30; U.S. Route 30 west to U.S. Route 71; and

Bounded on the West by U.S. Route 71 north to the Iowa-Minnesota State line.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: West Central Coop, Boxholm, Boone County (located inside Central Iowa Grain Inspection Service, Inc.'s, area); and West Bend Elevator Co., Algona,

Kossuth County; Stateline Coop., Burt, Kossuth County; Gold-Eagle, Goldfield, Wright County; and North Central Coop, Holmes, Wright County (located inside D. R. Schaal Agency's area).

2. Opportunity for Designation

Interested persons, including Jamestown, Lincoln, Memphis, Omaha, Sioux City, and Tischer, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder.

Designation in the specified geographic areas is for the period beginning April 1, 2003, and ending March 31, 2006.

Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on Jamestown, Lincoln, Memphis, Omaha, Sioux City and Tischer official agencies. Commenters are encouraged to submit pertinent data concerning these official agencies including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: August 13, 2002.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02-22083 Filed 8-30-02; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Title 5, United States Code, appendix 2, section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a joint meeting followed by separate and concurrently held meetings of the Census Advisory Committees (CACs) on

the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the 2010 reengineered decennial census, including the American Community Survey and other related decennial programs. The five Census Advisory Committees on Race and Ethnicity will meet in plenary and concurrent sessions on October 2 and 3. Last minute changes to the schedule are possible, which could prevent us from giving advance notification.

DATES: October 2–3, 2002. On October 2, the meeting will begin at approximately 8:15 a.m. and end at approximately 5:30 p.m. On October 3, the meeting will begin at approximately 8:15 a.m. and end at approximately 5:30 p.m.

ADDRESSES: The meeting will be held at the Alexandria Hilton Mark Center Hotel, 5000 Seminary Road, Alexandria, Virginia 22311.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone 301–763–2070, TTY 301–457–2540.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations are comprised of nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the U.S. Census Bureau. The Committee provides an outside user perspective about how research and design plans for the 2010 reengineered decennial census, the American Community Survey and other related programs realize goals and satisfy needs associated with these communities. They also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users.

All meetings are open to the public. A brief period will be set aside at the meeting for public comment. However, individuals with extensive questions or statements must submit them in writing to the Committee Liaison Officer, named above, at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer.

Dated: August 28, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–22323 Filed 8–30–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet September 17, 2002, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on pending regulations.
4. Discussion of TSR MTOP limit comments.
5. Discussion of Unverified List.
6. Review of SNAP 2002 status.
7. Discussion of AES regulations & SED recordkeeping requirements.
8. Discussion on implementation of CCL User Friendliness recommendations.
9. Updates from working groups.

Closed Session

10. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to the

following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 12, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: August 27, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–22387 Filed 8–30–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request Administrative Review of Antidumping or Countervailing Duty Order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2001) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of September 2002, interested parties may request administrative review of the

following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
<i>Antidumping Duty Proceedings:</i>	
Argentina: Certain Hot-Rolled Carbon Steel Flat Products, A-357-814	5/3/01-8/31/02
Belarus: Steel Concrete Reinforcing Bars, A-822-804	1/30/01-8/31/02
Canada: New Steel Rail, Except Light Rail, A-122-804	9/1/01-8/31/02
Indonesia: Steel Concrete Reinforcing Bars, A-560-811	1/30/01-8/31/02
Italy: Stainless Steel Wire Rod, A-475-820	9/1/01-8/31/02
Japan: Flat Panel Displays, A-588-817	9/1/01-8/31/02
Japan: Stainless Steel Wire Rod, A-588-843	9/1/01-8/31/02
Latvia: Steel Concrete Reinforcing Bars, A-449-804	1/30/01-8/31/02
Moldova: Steel Concrete Reinforcing Bars, A-841-804	1/30/01-8/31/02
Poland: Steel Concrete Reinforcing Bars, A-455-803	1/30/01-8/31/02
Republic of Korea: Stainless Steel Wire Rod, A-580-829	9/1/01-8/31/02
Republic of Korea: Steel Concrete Reinforcing Bars, A-580-844	1/30/01-8/31/02
Romania: Certain Hot-Rolled Carbon Steel Flat Products, A-485-806	5/3/01-8/31/02
South Africa: Certain Hot-Rolled Carbon Steel Flat Products, A-791-809	5/3/01-8/31/02
Spain: Stainless Steel Wire Rod, A-469-807	9/1/01-8/31/02
Sweden: Stainless Steel Wire Rod, A-401-806	9/1/01-8/31/02
Taiwan: Stainless Steel Wire Rod, A-583-828	9/1/01-8/31/02
The People's Republic of China: Foundry Coke, A-570-862	3/8/01-8/31/02
The People's Republic of China: Freshwater Crawfish Tail Meat, A-570-848	9/1/01-8/31/02
The People's Republic of China: Greige Polyester/Cotton Printcloth, A-570-101	9/1/01-8/31/02
The People's Republic of China: Steel Concrete Reinforcing Bars, A-570-860	1/30/01-8/31/02
Ukraine: Silicomanganese, A-823-805	9/17/01-8/31/02
Ukraine: Solid Agricultural Grade Ammonium Nitrate, A-823-810	3/5/01-8/31/02
Ukraine: Steel Concrete Reinforcing Bars, A-823-809	1/30/01-8/31/02
<i>Countervailing Duty Proceedings:</i>	
Argentina: Certain Hot-Rolled Carbon Steel Flat Products, C-357-815	1/1/01-12/31/01
Canada: New Steel Rail, Except Light Rail, C-122-805	1/1/01-12/31/01
Italy: Stainless Steel Wire Rod, C-475-821	1/1/01-12/31/01
<i>Suspension Agreements</i>	
None.	

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington,

DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of September 2002. If the Department does not receive, by the last day of September 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 27, 2002.

Holly A. Kuga,
Senior Office Director, Group II, Office 4, Import Administration.
 [FR Doc. 02-22357 Filed 8-30-02; 8:45 am]
BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year ("Sunset") Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year ("Sunset") reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the suspended investigations listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice

of *Institution of Five-Year Reviews* covering these same suspended investigations.

FOR FURTHER INFORMATION CONTACT: James P. Maeder or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482-3330 or (202) 482-5050, respectively, or Mary Messer, Office of Investigations, International Trade Commission, at (202) 205-3193.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the "Act"), are references to

the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (2001). Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth

in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

Initiation of Review

In accordance with 19 CFR 351.218(c) we are initiating sunset reviews of the following suspended investigations:

DOC case No.	ITC case No.	Country	Product
A-570-849	731-TA-753	China	Cut-to length Carbon Steel Plate.
A-821-808	731-TA-754	Russia	Cut-to-length Carbon Steel Plate.
A-791-804	731-TA-755	South Africa	Cut-to-length Carbon Steel Plate.
A-823-808	731-TA-756	Ukraine	Cut-to-length Carbon Steel Plate.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset Internet website at the following address: "<http://ia.ita.doc.gov/sunset/>".

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset website for any updates to the service lists before filing any submissions. The Department will make additions to and/or deletions from the service lists provided on the sunset website based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the service lists all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset reviews. The Department's regulations on submission

of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304-306.

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically terminate the suspended investigations without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic interested parties. Also, note that the Department's information requirements are distinct from the International Trade

Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.¹ Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: August 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-22355 Filed 8-30-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-817]

Oil Country Tubular Goods From Mexico: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

¹ A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation, 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

ACTION: Notice of rescission of Antidumping Duty Administrative Review.

SUMMARY: On October 1, 2001, the Department of Commerce (the Department) published in the **Federal Register** a notice announcing the initiation of an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Mexico. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 49924 (October 1, 2001). The period of review (POR) is August 1, 2000 to July 31, 2001. This review has now been rescinded because one party requesting the review withdrew its request, and the remaining exporter named in the request for review had no entries for consumption of subject merchandise that are subject to review in the United States during the POR.

EFFECTIVE DATE: September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall or Abdelali Elouaradia, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482-1398 or (202) 482-1374 respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (2001).

Scope of Review

Imports covered by this review are oil country tubular goods, hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40,

7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The Department has determined that couplings, coupling stock and drill pipe are not within the scope of the antidumping order on OCTG from Mexico. *See Letter to Interested Parties; Final Affirmative Scope Decision*, August 27, 1998. *See Continuation of Countervailing and Antidumping Duty Orders on Oil Country Tubular Goods From Argentina, Italy, Japan, Korea and Mexico, and Partial Revocation of Those Orders From Argentina and Mexico With Respect to Drill Pipe*, 66 FR 38630, July 25, 2001.

Background

On August 31, 2001, North Star Steel Ohio (petitioner), a division of North Star Steel Company, requested an administrative review of Tubos de Acero de Mexico S.A. (TAMSA), a Mexican producer and exporter of OCTG, with respect to the antidumping order published in the **Federal Register**. *See Antidumping Duty Order: Oil Country Tubular Goods From Mexico*, 60 FR 41055 (August 11, 1995). Additionally, respondent Hylsa, S.A. de C.V. (Hylsa) requested that the Department conduct an administrative review of Hylsa. We initiated the review for both companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 49924 (October 1, 2001). On October 2, 2001, Hylsa withdrew its request and requested that the Department terminate the review with respect to Hylsa. On December 20, 2001, the Department issued an antidumping duty

questionnaire to TAMSA for the POR. On January 8, 2002, TAMSA resubmitted its no consumption entry/sales certifications. On January 24, 2002, February 22, 2002, March 18, 2002 and March 21, 2002, TAMSA submitted information in response to requests for information from the Department. On January 18, 2002 and February 8, 2002, we received comments from petitioner. These comments are discussed below. On August 14, 2002 and August 15, 2002, the Department informed petitioners of its intent to rescind the review. *See memos to file dated August 15, 2002 and August 16, 2002.* The Department did not receive any comments from petitioners.

SUPPLEMENTARY INFORMATION: On October 5, 2001 TAMSA claimed that "it did not directly or indirectly, enter for consumption, or sell, export or ship for entry for consumption in the United States subject merchandise during the period of review." On December 20, 2002, the Department issued an antidumping duty questionnaire to TAMSA and requested that TAMSA resubmit its no consumption/entry/sales certification. On January 8, 2002, TAMSA submitted its no consumption/entry/sales certifications. Petitioner subsequently claimed on January 18, 2002, that publicly available import data from the Department's IM-145 database showed that 3,355 metric tons of seamless OCTG from Mexico entered the United States during the period of review. Petitioner asserted that TAMSA was the only producer of seamless OCTG in Mexico. Petitioner requested that the Department investigate these transactions to determine whether this merchandise is subject to review. After TAMSA submitted information on certain transactions, on February 8, 2002, petitioners pointed out that the transactions did not account for the total amount of seamless OCTG shown in the IM-145 database.

The Department has thoroughly investigated U.S. Customs Service (Customs) proprietary information for all HTSUS numbers covered by the scope of this review. As part of this investigation, the Department requested additional information from TAMSA for two entries. *See Memo to the File dated February 12, 2002 and February 26, 2002.* TAMSA submitted the requested information. One of the entries was misclassified and the other entry was for testing purposes. On May 2, 2002, Customs confirmed that for one of the entries, TAMSA was the manufacturer. This was the entry for testing purposes that the Department had previously investigated. On April 3, 2002, the

Department sent a no shipment inquiry to Customs. On April 19, 2002, in response to the no shipment inquiry, Customs sent a list of entries that had not been liquidated. The Department reviewed the data which did not show any additional shipments from TAMSA other than entries that had already been investigated. The Department has not been able to identify any other entries for consumption from TAMSA during the POR. See Memo to the File dated July 24, 2002. Since there were no entries for consumption during the POR of OCTG from TAMSA, and because Hylsa timely withdrew its request for review, we are rescinding this review in accordance with the Department's practice. The cash deposit rates for these firms will continue to be the rates established in the most recently completed segment of this proceeding.

This notice is issued and published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: August 27, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02-22358 Filed 8-30-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052802E]

Small Takes of Marine Mammals Incidental to Specified Activities; Missile Launch Operations from San Nicolas Island, CA

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of pinnipeds by harassment incidental to missile launch operations from the western end of San Nicolas Island, CA (SNI) has been issued to the U.S. Navy, Naval Air Warfare Center Weapons Division (NAWCWD), Point Mugu, CA.

DATES: Effective from August 26, 2002, until August 26, 2003.

ADDRESSES: The application, authorization and a list of references used in this document are available by

writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning one of the contacts listed here. Publications referenced in this document are available for viewing, by appointment during regular business hours, at this address.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, NMFS, (301) 713-2322, ext. 128 or Christina Fahy, NMFS, (562) 980-4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

...any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of

an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On April 9, 2002, NMFS received an application from the Naval Air Weapons Station, China Lake (NAWS) requesting an authorization for the harassment of small numbers of three species of marine mammals incidental to target missile launch operations conducted by NAWCWD on SNI, one of the Channel Islands in the Southern California Bight. These operations may occur at any time during the year depending on test and training requirements and meteorological and logistical limitations. On occasion, two or three launches may occur in quick succession on a single day. In 2001, NAWCWD conducted 9 launches of Vandal and similar sized targets and 3 launches of subsonic targets from SNI. NAWS' request for an authorization to incidentally harass small numbers of marine mammals on SNI in 2002 and 2003 anticipates 15 launches of Vandal (or similar sized) vehicles from the Alpha Launch Complex on SNI and 5 launches of smaller subsonic missiles and targets for one year from either the Alpha Launch Complex or Building 807 commencing in August 2002. A detailed description of the operations is contained in the application (NAWS, 2002) which is available upon request (see ADDRESSES).

Measurement of Airborne Sound Levels

The types of sounds discussed in NAWS' IHA application are airborne and impulsive. For this reason, the applicant has referenced both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re micro-Pascal (micro-Pa), and for energy, the sound exposure level (SEL) is described in terms of dB re micro-Pa²-second. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second).

Airborne noise measurements are usually expressed relative to a reference pressure of 20 micro-Pa, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa. However, the conversion from air to water intensities is more involved than this (Buck, 1995)

and beyond the scope of this document. Also, airborne sounds are often expressed as broadband A-weighted sound levels (dBA). A-weighting refers to frequency-dependent weighting factors applied to sound in accordance with the sensitivity of the human ear to different frequencies. While it is unknown whether the pinniped ear responds similarly to the human ear, a study by C. Malme (pers. commun. to NMFS, March 5, 1998) found that for predicting noise effects, A-weighting is better than unweighted pressure levels because the pinniped's highest hearing sensitivity is at higher frequencies than that of humans. As a result, whenever possible, NMFS provides both A-weighted and unweighted sound pressure levels; where not specified for in-air sounds, A-weighting is implied (ANSI, 1994). In this document, all sound levels have been provided with A-weighting.

Description of the Specified Activity

Target missile launches from SNI are used to support test and training activities associated with operations on the Sea Range off Point Mugu, CA. SNI is under the land management responsibility of NAWAS; however, planned missile and other target launches are conducted by NAWCWD. In general, two types of launch vehicles are used, the Vandal and the smaller subsonic missiles and targets. Other vehicles used would be similar in size and weight or slightly smaller and would have characteristics generally similar to the Vandal.

Vandal Target Missiles

The Vandal target missile is a relatively large, air-breathing (ramjet) vehicle with no explosive warhead that is designed to provide a realistic simulation of the mid-course and terminal phase of a supersonic anti-ship cruise missile. These missiles are 7.7 meters (m) (25.2 feet (ft)) in length with a mass at launch of 3,674 kilograms (kg) (8,100 lbs) including the solid propellant booster. There are variants of the Vandal; they all have the same dimensions, but differ in their operational range. The Vandals are remotely controlled, non-recoverable missiles. These and most other targets are launched from a land-based launch site (hereafter referred to as Alpha Launch Complex) on the west-central part of SNI. The Alpha Launch Complex is 192 m (630 ft) above sea level and is approximately 2 kilometers (km) (1.25 miles (mi)) from the nearest pinniped haul-out site. Launch trajectories from Alpha Launch Complex vary from a near-vertical liftoff, crossing the west

end of SNI at an altitude of approximately 3,962 m (13,000 ft) to a nearly horizontal liftoff, crossing the west end of SNI at an altitude of approximately 305 m (1,000 ft).

Vandal launches produce the strongest noise source originating from aircraft or missiles in flight over SNI beaches. Sound measurements were collected during two Vandal launches in 1997 and 1999 and are reported in Burgess and Greene (1998) and Greene (1999). Greene (1999) reported that received A-weighted SPL were found to range from 123 dB (re 20 micro-Pa) (SEL of 126 dB re 20 micro-Pa² -sec) at 945 m (3,100 ft) to 136 dB (re 20 μ Pa) (SEL of 131 dB re 20 micro-Pa² -sec) at 370 m (1,215 ft). The most intense sound exposure occurred during the first 0.3 to 1.9 seconds after launch.

Subsonic Targets and Other Missiles

The subsonic targets and other missiles are small unmanned aircraft that are launched using jet-assisted take-off (JATO) rocket bottles. Once launched, they continue offshore where they are used in training exercises to simulate various types of subsonic threat missiles and aircraft. The larger target, BQM-34, is 7 m (23 ft) long and has a mass of approximately 1,134 kg (2,500 lbs) plus the JATO bottle. The smaller BQM-74, is 420 centimeters (cm) (165.5 inches (in)) long and has a mass of approximately 250 kg (550 lbs) plus the JATO bottle. Other types of small missiles that may be launched include the Exocet, Tomahawk, and Rolling Airframe Missile (RAM). All of these smaller targets are launched from either the Alpha Launch Complex or from Building 807, a second launch site on the west end of SNI. Building 807 is approximately 10 m (30 ft) above sea level and accommodates several fixed and mobile launchers that range from 30 m (98 ft) to 150 m (492 ft) from the nearest shoreline. For these smaller missiles, launch trajectories from Building 807 range from 6 to 45 degrees and cross over the nearest beach at altitudes from 9 to 183 m (30 to 600 ft).

Sound measurements were collected from the launch of a BQM-34S at Naval Air Station, Point Mugu (NAS) in 1997. Burgess and Greene (1998) found that for this launch, the A-weighted SPL ranged from 92 dB (re 20 micro-Pa) (SEL of 102.2 dB re 20 micro-Pa² -sec) at 370 m (1,200 ft) to 145 dB (re 20 micro-Pa) (SEL of 142.2 dB re 20 micro-Pa² -sec) at 15 m (50 ft). These estimates are approximately 20 dB lower than that of a Vandal launch at similar distances (Greene, 1999).

General Launch Operations

Aircraft and helicopter flights between NAS on the mainland, the airfield on SNI and the target sites in the Sea Range will be a routine part of any planned launch operation. These operational flights do not pass at low level over the beaches where pinnipeds are expected to be hauled out. In addition, movements of personnel are restricted near the launch sites 2 hours prior to a launch, no personnel are allowed on the western end of SNI during Vandal launches, and various environmental protection restrictions exist near the island's beaches during other times of the year.

Comments and Responses

On July 1, 2002 (67 FR 44180), NMFS published a notice of receipt and a 30-day public comment period was provided on the application and proposed authorization. Comments were received from the Marine Mammal Commission (MMC).

MMPA Concerns

Comment 1: The MMC believes that NMFS' efforts to redefine Level B harassment administratively to include only "biologically significant" disturbance is ill-advised and contrary to the statutory definition of the term. In this regard, the MMC refers NMFS to letters from the MMC dated December 7, 2000, January 26, 2001, and February 7, 2001, for a more complete discussion of this issue.

Response: A definition of Level B harassment is provided in 50 CFR 216.3 and stated previously in this document. The current interpretation of this regulatory definition by NMFS, as applied to incidental takings, is that one or more pinnipeds blinking its eyes, lifting or turning its head, or moving a few feet along the beach as a result of a human activity should not be considered a "take" under the MMPA definition of harassment. As stated by NMFS previously (see 66 FR 9291, February 7, 2001), if the only reaction to the activity on the part of the marine mammal is within the normal repertoire of actions that are required to carry out the "behavioral pattern", NMFS considers the activity not to have caused an incidental disruption of the "behavioral pattern", provided the animal's reaction is not otherwise significant due to length or severity, and therefore the reaction is not considered a take by Level B harassment. As stated by NMFS previously (see 66 FR 41834, August 9, 2001), in 50 CFR 17.3, the U.S. Fish and Wildlife Service (USFWS) defines harassment as: "... actions that

create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, and sheltering." NMFS supports such a definition when marine mammals are taken incidental to the conduct of missile launches. NMFS believes that interpretation of the definition of Level B harassment to include every potential or possible reaction is inappropriate for the issuance of IHAs since the reaction does not have important biological context and would needlessly increase the affected universe of individuals and activities in potential violation of the MMPA unless holding an IHA or a Letter of Authorization issued under section 101(a)(5)(A) of the MMPA.

In addition, NMFS' decision to issue or deny an IHA request is based on the best scientific evidence available showing that the total taking by the specified activity during the specified time period will have a negligible impact on species or stocks of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals intended for subsistence uses. In the Determinations section of this document, NMFS states that it has determined that the short-term impact of the activities will result, at worst, in a temporary modification in behavior by certain species and that this behavioral modification, or change, is expected to have a negligible impact on the animals. Where negligible impact is defined in regulation (50 CFR 216.103) as: "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival".

Comment 2: The MMC recommends that NMFS, if it has not already done so, consult with the Navy to determine whether it would be appropriate to seek a more comprehensive, 5-year authorization for harassment, and other possible types of taking, under section 101(a)(5)(A) of the MMPA, rather than separate, 1-year authorizations, under section 101(a)(5)(D) of the Act.

Response: The Navy applied for the IHA, under section 101(a)(5)(D) of the MMPA, in order to be in compliance with the law during implementation of its 2002–2003 SNI launch schedule. NAWCWD is planning to submit an application for a 5-year authorization, under section 101(a)(5)(A) of the MMPA in the near future.

Endangered Species Act(ESA) Concerns

Comment 3: The MMC recommends that NMFS, if it has not already done so, advise the applicant to consult with the USFWS concerning the need for an authorization to take small numbers of sea otters incidental to the proposed activities.

Response: Under the authority of Public Law 99–625, the USFWS established an experimental population of California sea otters at SNI. In 1985, the ESA was amended to allow for the establishment of this experimental population of California sea otters on SNI (H.R. 1027 Committee Report, May 15, 1985). As part of these 1985 amendments, section 5(c) describes the status of the experimental sea otter population under the ESA. This section includes a limited exception to section 7 consultations for agency actions proposed to be carried out directly by a military department and occurring within the California sea otter translocation zone. This limited exception means that for purposes of defense-related actions within the SNI translocation zone, sea otters in the experimental population shall be treated as if it was proposed for listing under the ESA and therefore subject to the informal consultation process under section 7(a)(4) of the ESA. The Navy has consulted with USFWS regarding the take of sea otters incidental to missile launch operations on SNI. However, no takes of sea otters are expected as a result of launch activities.

Mitigation Concerns

Comment 4: The MMC recommends that any authorization issued to the applicant specify that, if a mortality or serious injury of a seal or sea lion occurs which appears to be related to target launch activities, operations be suspended while the Service determines whether steps can be taken to avoid further injuries or mortalities or whether an incidental take authorization under section 101(a)(5)(A) of the MMPA to cover such taking is needed.

Response: NMFS has no authority to suspend missile launch operations. Such authority is under the jurisdiction of the Department of the Navy and is not within the jurisdiction of the Secretary of Commerce. The IHA authorizes the unintentional incidental take of marine mammals in connection with specified activities and prescribes methods of taking and other means of reducing potential adverse impacts on the species or stocks and their habitats. Therefore, NMFS does have the authority to suspend the incidental harassment authorization if: (1) the conditions and

requirements prescribed in the authorization are not being substantially complied with; or (2) the authorized taking, either individually or in combination with other authorizations, is having, or may have, more than a negligible impact on the species or stock. Because taking a marine mammal by mortality or serious injury incidental to missile launch activities from SNI is not authorized by this incidental harassment authorization, the authorization for incidental harassment may be suspended if a mortality or serious injury of a seal or sea lion is determined to be related to missile launch activities. Prior to suspension of an incidental harassment authorization NMFS must satisfy the statutory requirement of notice and public comment, under section 101(a)(5)(C) of the MMPA, unless NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stock(s) concerned. The level of risk would depend on the level of taking, the status of the affected stock(s), and the likelihood of additional mortality or serious injury takings. The IHA issued to NAWCWD contains the following mitigation measure related to morality and serious injury: If injurious or lethal take is discovered during monitoring, launch procedure and monitoring methods must be reviewed (in cooperation with NMFS) and appropriate changes made prior to the next launch.

Monitoring Concerns

Comment 5: The MMC recommends that prior to issuing the requested authorization, NMFS should be satisfied that the applicant's monitoring program is sufficient to detect the effects of the proposed target launches, including any mortality and/or serious injury that results from startle responses or stampedes, on entire haul-out aggregations.

Response: The Navy's proposed video monitoring program provides the best compromise between the desire to conduct detailed surveys of the haul-out areas for mortality and/or serious injury, and the logistical limitations and further risks in conducting such surveys. Due to the physical characteristics of many of the haul-out areas, only observers looking directly down at the rear of the areas, or from close offshore, would be able to detect injured or dead animals in these groups. After much discussion with biologists with many years of experience observing the pinnipeds on SNI, the Navy concluded that such attempts to survey the haul-out groups at close range prior to and following launches was undesirable on the basis

that such searches would result in significant disturbance to the pinnipeds, and greater risk of the types of injury the Navy is attempting to minimize. In addition, safety considerations limit access to the area before launches. Also, there are sensitive biological and cultural resources in the haul-out areas that cannot be disturbed (special restrictions are in place to limit personnel movements near the beaches). SNI has been owned and operated by the Navy for more than 50 years and the island has been used previously for missile and target launches. Despite this history of use, the Navy is not aware of any data to suggest that there has been an increase in the mortality rates for those pinniped species hauling out on SNI. In addition, surveys suggest that by far the greatest source of mortality for pinnipeds on the island are El Niño events. The Navy will be using three hi-resolution video cameras (one of which has full remote tilt, pan, and zoom capabilities), and two portable cameras, to monitor the haul-out groups. The Navy believes these cameras will provide the least invasive means of assessing the pinnipeds' responses to target missile launches, and the most practicable means to detect the (unlikely) occurrence of injured or dead pinnipeds following a launch.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Channel Islands/southern California Bight ecosystem and its associated marine mammals can be found in several documents (Le Boeuf and Brownell, 1980; Bonnell et al., 1981; Lawson et al., 1980; Stewart, 1985; Stewart and Yochem, 2000; Sydeman and Allen, 1999) and is not repeated here.

Marine Mammals

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds including: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern fur seals (*Callorhinus ursinus*), and Steller sea lions (*Eumetopias jubatus*). On SNI, three of these species, northern elephant seals, harbor seals, and California sea lions, can be expected to occur on land in the area of the proposed activity either regularly or in large numbers during certain times of the year. Descriptions of the biology and distribution of these three species and others in the region can be found in Stewart and Yochem (2000, 1994), Sydeman and Allen (1999), Barlow et al. (1993), Lowry et al. (1996), Schwartz

(1994), Lowry (1999) and several other documents (Barlow et al., 1997; NMFS, 2000; NMFS, 1992; Koski et al., 1998; Gallo-Reynoso, 1994; Stewart et al., 1987). Please refer to those documents and the application for further information on these species.

Potential Effects of Target Missile Launches and Associated Activities on Marine Mammals

Sounds generated by the launches of Vandal target missiles and smaller subsonic targets and missiles (BQM-34 or BQM-74 type) as they depart sites on SNI towards operational areas in the Point Mugu Sea Range have the potential to take marine mammals by harassment. Taking by harassment will potentially result from these launches when pinnipeds on the beaches near the launch sites are exposed to the sounds produced by the rocket boosters and the high-speed passage of the missiles as they depart the island on their routes to the Sea Range. Extremely rapid departure of the Vandal and smaller targets means that pinnipeds would be exposed to increased sound levels for very short time intervals (i.e., a few seconds). Noise generated from aircraft and helicopter activities associated with the launches may provide a potential secondary source of marine mammal harassment. The physical presence of aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues. There are no anticipated effects from human presence on the beaches, since movements of personnel are restricted near the launch sites two hours prior to launches for safety reasons.

Reactions of pinnipeds on the western end of SNI to Vandal target launches have not been well-studied, but based on studies of other rocket launch activities and their effects on pinnipeds in the Channel Islands (Stewart et al., 1993), anticipated impacts can be predicted. In general, other studies have shown that responses of pinnipeds on beaches to acoustic disturbance arising from rocket and target missile launches are highly variable. This variability may be due to many factors, including species, age class, and time of year. Among species, northern elephant seals seem very tolerant of acoustic disturbances (Stewart, 1981), whereas harbor seals (particularly outside the breeding season) seem more easily disturbed. Research and monitoring at Vandenberg Air Force Base found that prolonged or repeated sonic booms, very strong sonic booms or sonic booms accompanying a visual stimulus, such as a passing aircraft, are most likely to stimulate seals to leave the haul-out area

and move into the water. During three launches of Vandal missiles from SNI, California sea lions near the launch track line were observed from video recordings to be disturbed and to flee (both up and down the beach) from their former resting positions. Launches of the smaller BQM-34 targets from NAS have not normally resulted in harbor seals leaving their haul-out area at the mouth of Mugu Lagoon, which is approximately 3.2 km (2 mi) from the launch site. An Exocet missile launched from the west end of SNI appeared to cause far less disturbance to hauled out California sea lions than Vandal launches. Given the variability in pinniped response to acoustic disturbance, the Navy conservatively assumes that biologically significant disturbance (i.e. takes by harassment) will sometimes occur upon exposure to launch sounds with SEL's of 100 dBA (re 20 micro-Pa²-sec) or higher.

From Lawson et al. (1998), the Navy determined a conservative estimate of the SEL at which temporary threshold shift (TTS) (Level B harassment) may be elicited in harbor seals and California sea lions (SEL of 145 dB re 20 micro-Pa²-sec) and northern elephant seals (SEL of 165 dB re 20 micro-Pa²-sec). The sound levels necessary to elicit mild TTS in captive California sea lions and harbor seals exposed to impulse noises, such as sonic booms, were tens of decibels higher (Bowles et al., 1999) than sound levels measured during Vandal launches (Burgess and Greene, 1998; Greene, 1999). This evidence, in combination with the known sound levels produced by missiles launched from SNI (described later in this document), suggests that no pinnipeds will be exposed to TTS-inducing SELs during planned launches.

Based on modeling of sound propagation in a free field situation, Burgess and Greene (1998) data were used by the Navy to predict that Vandal target launches from SNI could produce a 100-dBA acoustic contour that extends an estimated 4,263 m (13,986 ft) perpendicular to its launch track. In other words, Vandal target launch sounds are predicted to exceed the SEL (100 dBA) disturbance criteria out to a distance of 4,263 m (13,986 ft) from the Alpha Launch Complex. Northern elephant seals, harbor seals, and California sea lions haul out in areas within the perimeter of this 100-dBA contour for Vandal launches. For BQM-34 launches from Alpha Launch Complex, the Navy assumes that the 100 dBA contour extends an estimated 1,372 m (4,500 ft), perpendicular to its launch track (C. Malme, Engineering and Scientific Services, Hingham, MA,

unpublished data). Along the launch track and ahead of the BQM-34, the 100 dBA contour extends a shorter distance (549 m or 1,800 ft). For the smaller BQM-74 and Exocet missiles, the Navy predicts that the 100 dBA contours will be smaller still. The free field modeling scenario used to predict these acoustic contours does not account for transmission losses caused by wind, intervening topography, and variations in launch trajectory or azimuth. Therefore, the predicted 100 dBA contours may be smaller at certain beach locations and for different launch trajectories.

In general, the extremely rapid departure of the Vandal and smaller targets means that pinnipeds could be exposed to increased sound levels for

very short time intervals (a few seconds) potentially leading to alert and startle responses from individuals on haul out sites in the vicinity of launches. Since preliminary observations of the responses of pinnipeds to Vandal launches at SNI have not shown injury, mortality, or extended biological disturbance, the Navy anticipates that the effects of the planned target launches will have no more than a negligible impact on pinniped populations.

Given that this activity will happen infrequently, and will produce only brief, rapid-onset sounds, it is unlikely that pinnipeds hauled out on beaches at the western end of SNI will exhibit much, if any, habituation to target missile launch activities. In addition,

the infrequent and brief nature of these sounds will cause masking for not more than a very small fraction of the time (usually less than 2 seconds per launch) during any single day. Therefore, the Navy assumes that these occasional and brief episodes of masking will have no significant effects on the abilities of pinnipeds to hear one another or to detect natural environmental sounds that may be relevant to the animals.

Numbers of Marine Mammals Expected to Be Taken by Harassment

NAWS estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species by MMPA Stock Designation	Minimum Abundance Estimate of Stock ¹	Harassment Takes in 2002/2003
Northern Elephant Seal (California Stock)	51,625	<2,390
Harbor Seal (California Stock)	27,962	<457
California Sea Lion (U.S. Stock)	109,854	10,086
Northern Fur Seal (San Miguel Stock)	2,336	3

¹From 1999–2000 NMFS Marine Mammal Stock Assessment Reports.

Effects of Target Missile Launches and Associated Activities on Subsistence Needs

There are no subsistence uses for these pinniped species in California waters, and, thus, there are no anticipated effects on subsistence needs.

Effects of Target Missile Launches and Associated Activities on Marine Mammal Habitat on SNI

During the effectiveness period of this IHA, harbor seals, California sea lions, and northern elephant seals will use various beaches around SNI as places to rest, molt, and breed. These beaches consist of sand (e.g., Red Eye Beach), rock ledges (e.g., Phoca Beach) and rocky cobble (e.g., Vizcaino Beach). The pinnipeds do not feed when hauled out on these beaches, and the airborne launch sounds will not persist in the water near the island for more than a few seconds. Therefore, the Navy does not expect that launch activities will have any impact on the food or feeding success of these animals. The solid rocket booster from the Vandal target and the JATO bottles from the BMQs are jettisoned shortly after launch and fall into the sea west of SNI. While it is theoretically possible that one of these boosters might instead land on a beach, the probability of this occurring is very low. Fuel contained in the boosters and JATO bottles is consumed rapidly and completely, so there would be no risk of contamination even if a booster or bottle

did land on the beach. Overall, the proposed target missile launches and associated activities are not expected to cause significant impacts on habitats or on food sources used by pinnipeds on SNI.

Mitigation

To avoid additional harassment to the pinnipeds on beach haul out sites and to avoid any possible sensitizing or predisposing of pinnipeds to greater responsiveness towards the sights and sounds of a launch, NAWCWD Point Mugu will limit its activities near the beaches in advance of launches. Existing safety protocols for Vandal launches provide a built-in mitigation measure. That is, personnel are normally not allowed near any of the pinniped beaches close to the flight track on the western end of SNI within two hours prior to a launch. Where practicable, NAWCWD Point Mugu will adopt the following additional mitigation measures when doing so will not compromise operational safety requirements or mission goals: (1) The Navy will limit launch activities during pinniped pupping seasons, particularly harbor seal pupping season; (2) the Navy will not launch target missiles at low elevation (under 305 m (1,000 ft)) on launch azimuths that pass close to beach haul-out site(s); (3) the Navy will avoid multiple target launches in quick succession over haul-out sites,

especially when young pups are present; and, (4) the Navy will limit launch activities during the night.

Monitoring

As part of its application, NAWS provided a proposed monitoring plan, similar to that adopted for the 2001–2002 IHA (see 66 FR 41834, August 9, 2001), for assessing impacts to marine mammals from Vandal and smaller subsonic target and missile launch activities on SNI. This monitoring plan is described in their application (NAWS, 2002).

The Navy will conduct the following monitoring during 2002–2003:

Land-Based Monitoring

In conjunction with a biological contractor, the Navy will continue its land-based monitoring program to assess effects on the three common pinniped species on SNI: northern elephant seals, harbor seals, and California sea lions. This monitoring would occur at three different sites of varying distance from the launch site before, during, and after each launch. The monitoring would be via digital video cameras.

During the day of each missile launch, the observer would place three digital video cameras overlooking chosen haul out sites. Each camera would be set to record a focal subgroup within the haul out aggregation for a maximum of 4

hours or as permitted by the videotape capacity.

Following each launch, all digital recordings will be transferred to DVDs for analysis. A DVD player/computer with high-resolution freeze-frame and jog shuttle will be used to facilitate distance estimation, event timing, and characterization of behavior. Details of analysis methods can be found in LGL Ltd. Environmental Research Associates et al. (LGL, 2002).

Acoustical Measurements

During each launch, the Navy would obtain calibrated recordings of the levels and characteristics of the received launch sounds. Acoustic data would be acquired using three Autonomous Terrestrial Acoustic Recorders (ATAR) at three different sites of varying distances from the target's flight path. ATARs can record sounds for extended periods (dependent on sampling rate) without intervention by a technician, giving them the advantage over traditional digital audio tape (DAT) recorders should there be prolonged launch delays of as long as 10 hours. Insofar as possible, acoustic recording locations would correspond with the sites where video monitoring is taking place. The collection of acoustic data would provide information on the magnitude, characteristics, and duration of sounds that pinnipeds may be exposed to during a launch. In addition, the acoustic data can be combined with the behavioral data collected via the land-based monitoring program to determine if there is a dose-response relationship between received sound levels and pinniped behavioral reactions. Once collected, sound files will be transferred onto compact discs (CDs) and sent to the acoustical contractor for sound analysis.

For further details regarding the installation and calibration of the acoustic instruments and analysis methods refer to LGL (2002).

Reporting Requirements

Under the IHA, NAWS will provide an initial report on activities to NMFS after the first 90 days of the authorization period. This report will summarize the timing and nature of the launch operation(s), summarize pinniped behavioral observations, and estimate the amount and nature of all takes by harassment or in other ways. In the event that any cases of pinniped mortality are determined by trained biologists to result from launch activities, this information will be reported to NMFS immediately.

A draft final technical report will be submitted to NMFS 120 days prior to

the expiration of the IHA. This technical report will provide full documentation of methods, results, and interpretation of all monitoring tasks for launches during the first 6 months of the IHA period, plus preliminary information for launches during months 7 and 8.

The revised final technical report, including all monitoring results during the authorization, will be due 90 days after the end of the 1-year IHA period.

ESA

NAWS has not requested the take of any listed species nor is any listed species under NMFS jurisdiction expected to be impacted by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required at this time.

National Environmental Policy Act (NEPA)

In accordance with section 6.01 of the National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has analyzed both the context and intensity of this action and determined, based on a programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996); an Environmental Assessment and Finding of No Significant Adverse Impact conducted by NMFS on this action in 2001; the NAWCWD's March, 2002 Final Environmental Impact Statement to assess the effects of its ongoing and proposed operations in the Sea Range of Point Mugu; and the content and analysis of NAWS's 2002 request for an IHA that the proposed issuance of this IHA to NAWS by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Therefore, based on this analysis, the action of issuing an IHA for these activities meets the definition of a "Categorical Exclusion" as defined under NOAA Administrative Order 216-6 and is exempted from further environmental review.

Coastal Zone Management Act Consistency

On February 14, 2001, by a unanimous vote, the State of California Coastal Commission concluded that, with the monitoring and mitigation commitments the Navy has incorporated into their various testing and training activities on the Point Mugu Sea Range, including activities on SNI, and

including the commitment to enable continuing Commission staff review of finalized monitoring plans and ongoing monitoring results, the activities are consistent with the marine resources, environmentally sensitive habitat and water quality policies (Sections 30230, 30240, and 30231) of the California Coastal Act.

Determinations

Based on the evidence provided in the application, the several NEPA documents, and this document, and taking into consideration the comments submitted on the application and proposed authorization notice, NMFS has determined that there will be no more than a negligible impact on marine mammals from the issuance of the harassment authorization to NAWCWD Point Mugu. NMFS is assured that the short-term impact of conducting missile launch operations from SNI in the Channel Islands off southern California will result, at worst, in a temporary modification in behavior by certain species of pinnipeds. While behavioral modifications may be made by these species as a result of launch activities, this behavioral change is expected to have no more than a negligible impact on the pinniped species and stocks.

Since the number of potential harassment takings of northern elephant seals, harbor seals, California sea lions, and northern fur seals is estimated to be small, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document and required under the IHA, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

NMFS has issued an IHA to NAWCWD Point Mugu for 15 launches of Vandal (or similar) missiles and 5 launches of smaller subsonic targets from San Nicolas Island, CA for a 1-year period, provided the mitigation, monitoring, and reporting requirements described in this document and the IHA are undertaken.

Dated: August 26, 2002.

David Cottingham,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 02-22351 Filed 8-30-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 082702G]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Reef Fish Stock Assessment Panel (RFSAP).

DATES: This meeting will begin at 9 a.m. on Tuesday, September 17, and conclude by 12 noon on Friday, September 20, 2002.

ADDRESSES: The meeting will be held at the NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813-228-2815.

SUPPLEMENTARY INFORMATION: The RFSAP will convene to review stock assessments on the status of the red grouper and yellowedge grouper stocks in the Gulf of Mexico. These stock assessments were prepared by the NMFS and will be presented to the RFSAP. The last red grouper assessment was made in 1999. In October 2000, NMFS declared red grouper to be overfished based on the 1999 assessment plus additional analyses requested by the RFSAP. In July 2002, the Council approved a red grouper rebuilding plan, which is being submitted to NMFS for review, approval and implementation. There have been no previous assessments of yellowedge grouper, and the status of the stock is unknown.

The RFSAP is composed of biologists who are trained in the specialized field of population dynamics. They advise the Council on the status of stocks and, when necessary, recommend a level of acceptable biological catch (ABC) needed to prevent overfishing or to effect a recovery of an overfished stock. They may also recommend catch restrictions needed to attain management goals.

Based on its review of the red grouper and yellowedge grouper stock assessments, the RFSAP may recommend whether to declare the

stocks overfished and/or undergoing overfishing, and may recommend a range of acceptable biological catch (ABC) for 2003. The RFSAP may also recommend management measures to achieve the ABC.

The conclusions of the RFSAP will be reviewed by the Council's Standing and Special Reef Fish Scientific and Statistical Committee (SSC), Socioeconomic Panel (SEP), and Reef Fish Advisory Panel (RFAP) at meetings to be held in October, 2002. Red grouper is a component of the shallow-water grouper complex (which consists of red grouper, gag, yellowfin grouper, black grouper, scamp, yellowmouth grouper, rock hind, and red hind). Yellowedge grouper is a component of the deep-water grouper complex (which consists of misty grouper, snowy grouper, yellowedge grouper, warsaw grouper, speckled hind, and, after the shallow-water grouper quota is filled, scamp). The Council may set year 2003 total allowable catches (TAC) as well as other management measures for the red grouper component of the shallow-water grouper complex and the yellowedge grouper component of the deep-water grouper complex at its meeting in Key Largo, FL on November 12-15, 2002.

Although other non-emergency issues not on the agendas may come before the RFSAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the RFSAP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the above address by September 10, 2002.

Dated: August 27, 2002.

Richard W. Surdi,

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

[FR Doc. 02-22353 Filed 8-30-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Telecommunications and Information Administration**

Docket No. 020816196-2196-01

Request for Comments on the Court Documents Exception to the Electronic Signatures in Global and National Commerce Act

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce

ACTION: Notice, Request for Comments

SUMMARY: Section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, *codified at* 15 U.S.C. §§ 7001 *et seq.* ("ESIGN" or "the Act"), preserves the legal effect, validity, and enforceability of signatures and contracts relating to electronic transactions and electronic signatures used in the formation of electronic contracts. 15 U.S.C. § 7001(a). Sections 103 (a) and (b) of the Act, however, provide that the provisions of section 101 do not apply to contracts and records governed by statutes and regulations regarding probate and domestic law matters; state commercial law; consumer law covering utility services, real property defaults and foreclosures, and insurance benefits; product recall notices; and hazardous materials papers. Section 103 of the Act also requires the Secretary of Commerce, through the Assistant Secretary for Communications and Information, to review the operation of these exceptions to evaluate whether they continue to be necessary for consumer protection, and to make recommendations to Congress based on this evaluation. 15 U.S.C. § 7003(c)(1). This Notice is intended to solicit comments from interested parties for purposes of this evaluation, specifically on the court documents and records exception to ESIGN. *See* 15 U.S.C. § 7003(b)(1). NTIA will publish separate notices requesting comment on the other exceptions listed in section 103 of the ESIGN Act.¹

DATES: Written comments and papers are requested to be submitted on or before November 4, 2002.

ADDRESSES: Written comments should be submitted to Josephine Scarlett, National Telecommunications and Information Administration, 14th Street

¹ Comments submitted in response to *Federal Register* notices requesting comment on the other exceptions to ESIGN will be considered as part of the same section 103 evaluation and not as a separate review of the Act.

and Constitution Ave., N.W., Washington, DC 20230. Paper submissions should include a three and half inch computer diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. In the alternative, comments may be submitted electronically to the following electronic mail address: esignstudy-ctdocs@ntia.doc.gov. Comments submitted via electronic mail also should be submitted in one or more of the formats specified above.

FOR FURTHER INFORMATION CONTACT: For questions about this request for comment, contact: Josephine Scarlett, Attorney, Office of the Chief Counsel, NTIA, Room 4713, 14th Street and Constitution Ave., N.W., Washington, DC 20230, telephone (202) 482-1816 or electronic mail: jscarlett@ntia.doc.gov. Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482-7002.

SUPPLEMENTARY INFORMATION:

Electronic Signatures in Global and National Commerce Act

Congress enacted the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), to facilitate the use of electronic records and signatures in interstate and foreign commerce and to remove uncertainty about the validity of contracts entered into electronically. Section 101 requires, among other things, that electronic signatures, contracts, and records be given legal effect, validity, and enforceability. Sections 103(a) and (b) of the Act provide that the requirements of section 101 shall not apply to contracts and records governed by statutes and regulations regarding: court documents and records; probate and domestic law matters; state commercial law; consumer law covering utility services, real property defaults and foreclosures, and insurance benefits; product recall notices; and hazardous materials documents.

The statutory language providing for an exception to section 101 of ESIGN for court documents and notices is found in section 103(b) of the Act:

Sec. 103. [15 U.S.C. 7003] Specific Exceptions.

* * * *

(b) *Additional Exceptions.*—The provisions of section 101 shall not apply to—

(1) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;

* * * *

The statutory language requiring the Assistant Secretary for Communications and Information to submit a report to Congress on the results of the evaluation of the section 103 exceptions to the ESIGN Act is found in section 103(c)(1) of the Act as set forth below.

(c) *Review of Exceptions.*—

(1) *Evaluation required.*—The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after the date of enactment of this Act, the Assistant Secretary shall submit a report to Congress on the results of such evaluation.

Federal and State Court Electronic Document Systems

Over the last few years, federal and state courts have established a substantial number of electronic systems for filing and public access to court documents. The federal courts have been a leader in this area, with the establishment of the Case Management/Electronic Case Files (CM/ECF) system. Through this system, attorneys can file court documents from their offices; judges, court staff, attorneys and the public have immediate access to most of those documents. Currently, nine district courts and twenty-five bankruptcy courts accept electronic filings. Over the next several years, additional courts are expected to do so. As of July 2002, more than 15,000 attorneys and others have filed court documents over the Internet. The federal courts have over 3 million cases, containing many millions of documents, available to the public over the Internet. See Administrative Office of the Courts, Case Management and Electronic Case Files (CM/ECF), *available at* http://www.uscourts.gov/cmecf/cmecf_faqs.html.

State courts have also followed the trend set by the federal courts by allowing public access to court documents, and some states also have developed online filing and court document management systems. A report of the Maryland Judiciary's Committee on Access to Court Records, released July 5, 2002, states that 17 percent (or 9 states) of all states employ

some type of computer access to court records, while 31 percent offer "limited-to-substantial" free or inexpensive web access to court records. See "State and Federal Policy on Electronic Access to Court Records," Subcommittee on Access to Court Records, at 2, *available at* <http://www.courts.state.md.us/access/finalreport2-05.pdf>.

The ESIGN Section 103 Evaluation

The ESIGN Act directs the Assistant Secretary of Communications and Information to conduct an evaluation of the exceptions set out in section 103 of the Act to determine whether the exceptions continue to be necessary for the protection of consumers, and to submit a report to Congress on the results of the evaluation no later than June 30, 2003. The Assistant Secretary for Communications and Information is the chief administrator of NTIA. As the President's principal advisor on telecommunications policies pertaining to the Nation's economic and technological advancement, NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy.

The ESIGN Section 103 evaluation of the court documents exception is intended to evaluate the current state of federal and state court electronic filing systems and electronic access for public access in preparation to report to Congress regarding whether the exception remains necessary for the protection of consumers. The purpose of this evaluation is not to review or analyze federal and state court regulations and rules for the purpose of recommending changes to the regulations, but rather to advise Congress of the state of law, practice, and procedure regarding this issue. Comments filed in response to this Notice should not be considered to have a connection with or impact on federal and state court procedures or rulemaking proceedings.

Invitation to Comment

NTIA requests that interested parties, including members of the bar, courts and consumer representatives, submit written comment on any issue of fact, law, or policy that may assist in the evaluation of the court documents and records exception required by section 103(c). We invite comment on ESIGN generally to assist in evaluating the narrower issues associated with the substantive law governing the exception. The following questions are intended to provide guidance as to the specific subject areas expected to be examined as a part of the evaluation.

Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

1. Describe the current developments with respect to electronic filing and electronic access procedures for court documents, if any, in federal, state or local rules and regulations.

2. Discuss whether all types of federal or state court documents (pleadings, briefs, motions, orders, etc.) are available in an electronic format. If not, describe court documents that have been excluded from court filing or access systems and explain the basis for their exclusion.

3. Discuss whether documents may be filed electronically in all types of cases (i.e., civil, criminal, bankruptcy) and are available for public access in electronic formats?

4. If access to documents is limited based on case type, for what kinds of cases is access restricted (e.g., juvenile or adoption cases)? Please discuss what interests may be served by these access restrictions and whether it is necessary to retain the court documents exception to preserve and protect the interest(s).

5. Discuss whether the current Uniform Electronic Transactions contain exceptions for court orders, notices, and documents.

6. Describe any state or federal regulations, other than ESIGN and UETA, that preclude electronic filing or access to court documents.

7. Given the current developments in federal court regulations with respect to electronic transactions in this area, is it necessary to retain the court documents exception to the ESIGN requirements? If so, what is the interest that this exception continues to serve or protect?

8. Given the current development in state court regulations with respect to electronic transactions in this area, is it necessary to retain the court documents exception to the ESIGN requirements? If so, what is the interest that this exception continues to serve or protect?

9. Discuss any unique issues surrounding the electronic filing, delivery, or service of court documents (such as authentication, privacy, and security) that should be considered in determining whether to eliminate the court documents exception from ESIGN.

10. Are there technological issues that either enable or impair electronic filing and electronic access to court documents? Please describe in detail the available technology that enables electronic filing and electronic access to court documents and records.

Please provide copies of studies, reports, opinions, research or other empirical data referenced in the responses.

Dated: August 28, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02-22350 Filed 8-30-02; 8:45 am]

BILLING CODE 3510-60-S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket No. 020816197-2197-01

Request for Comments on the Hazardous Materials and Dangerous Goods Shipping Papers Exception to the Electronic Signatures in Global and National Commerce Act

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce

ACTION: Notice, Request For Comments

SUMMARY: Section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, codified at 15 U.S.C. §§ 7001 *et seq.* ("ESIGN" or "the Act"), preserves the legal effect, validity, and enforceability of signatures and contracts relating to electronic transactions and electronic signatures used in the formation of electronic contracts. 15 U.S.C. § 7001(a). Section 103 (a) and (b) of the Act, however, provides that the provisions of section 101 do not apply to contracts and records governed by statutes and regulations regarding court documents; probate and domestic law matters; certain provisions of state uniform commercial codes; utility service cancellations, real property foreclosure and defaults; insurance benefit cancellations; product recall notices; and any document required to accompany hazardous materials or dangerous goods. Section 103 of the Act also requires the Secretary of Commerce, through the Assistant Secretary for Communications and Information, to review the operation of these exceptions to evaluate whether they continue to be necessary for consumer protection, and to make recommendations to Congress based on this evaluation. 15 U.S.C. § 7003(c)(1). This Notice is intended to solicit comments from interested parties for purposes of this evaluation, specifically on the hazardous materials and dangerous goods documents exception to ESIGN. See 15 U.S.C. § 7003(b)(3). NTIA will publish separate notices requesting comment on the other

exceptions listed in section 103 of the ESIGN Act.¹

DATES: Written comments and papers are requested to be submitted on or before November 4, 2002.

ADDRESSES: Written comments should be submitted to Josephine Scarlett, National Telecommunications and Information Administration, 14th Street and Constitution Ave., N.W., Washington, DC 20230. Paper submissions should include a three and half inch computer diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. In the alternative, comments may be submitted electronically to the following electronic mail address: esignstudy-hazmat@ntia.doc.gov. Comments submitted via electronic mail also should be submitted in one or more of the formats specified above.

FOR FURTHER INFORMATION CONTACT: Josephine Scarlett, Attorney, Office of the Chief Counsel, NTIA, 14th Street and Constitution Ave., N.W., Washington, DC 20230, telephone (202) 482-1816 or electronic mail: jscarlett@ntia.doc.gov. Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202)482-7002.

SUPPLEMENTARY INFORMATION:

Background: Electronic Signatures in Global and National Commerce Act

Congress enacted the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), to facilitate the use of electronic records and signatures in interstate and foreign commerce and to remove uncertainty about the validity of contracts entered into electronically. Section 101 requires, among other things, that electronic signatures, contracts, and records be given legal effect, validity, and enforceability. Sections 103(a) and (b) of the Act provides that the requirements of section 101 shall not apply to contracts and records governed by statutes and regulations regarding: court records,

¹ Comments submitted in response to *Federal Register* notices requesting comment on the other exceptions to ESIGN will be considered as part of the same section 103 evaluation and not as a separate review of the Act.

probate and domestic law matters; state commercial law; consumer law covering utility services, real property defaults and foreclosures, and insurance benefits; product recall notices; and hazardous materials documents.

The statutory language providing for an exception to section 101 of ESIGN for the transportation and handling of hazardous materials, pesticides, or other toxic or dangerous materials is found in section 103(b) of the Act:

Sec. 103. [15 U.S.C. 7003] Specific Exceptions.

* * * *

(b) *Additional Exceptions.*— The provisions of section 101 shall not apply to—

* * * *

(3) any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

* * * *

The statutory language requiring the Assistant Secretary for Communications and Information to submit a report to Congress on the results of the evaluation of the section 103 exceptions to the ESIGN Act is found in section 103(c)(1) of the Act as set forth below.

(c) *Review of Exceptions.*

(1) *Evaluation required.*— The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after the date of enactment of this Act, the Assistant Secretary shall submit a report to Congress on the results of such evaluation.

Hazardous Materials Documents and DOT Shipping Paper Regulations

As authorized by the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101–51270, the Department of Transportation's (DOT) Research and Special Programs Administration (RSPA) has authority to regulate the transportation of hazardous materials in commerce. RSPA has subsequently developed a comprehensive set of regulations that govern the safe transportation of hazardous materials (Hazardous Materials Regulations; 49 CFR Parts 171–180). The Hazardous Materials Regulations (HMR) address a comprehensive approach to hazardous materials transportation, including: documentation that must accompany

shipments (shipping papers and emergency response information); other hazardous communication requirements, including hazard warning labels and placards; packaging marking; and packaging manufacture and use requirements.

Every state has adopted, and currently enforces, regulations that are consistent with the HMR for the transportation of hazardous materials. These requirements, including those addressing hazard communication, are generally consistent with the international recommendations and requirements for the shipment of hazardous materials issued by the United Nations Committee on the Transport of Dangerous Goods, the International Maritime Organization, and the International Civil Aviation Organization.

RSPA requires physical, hard copy shipping papers and emergency response information to accompany each shipment of hazardous materials. The shipping paper must remain on the transport vehicle or with the shipment while in transportation to serve as part of the hazard communication system. In addition to providing information to the transporter, the shipping paper and other aspects of the hazard communication system allows emergency responders (e.g., firefighters and police officers) to quickly and safely identify the hazardous materials being transported in case of an emergency. The shipping paper allows emergency responders to make critical decisions concerning evacuation radii, personal protection equipment, fire dispersants, and response strategy.

RSPA recently published a final rule which requires shippers and carriers of hazardous materials to retain a copy of each hazardous material shipping paper or an electronic image thereof, for a period of 375 days after the date the hazardous material is accepted by a carrier. See 67 FR 46123, July 12, 2002; 49 CFR 172.201(e). This requirement is consistent with section 5110(e) of Federal hazmat law which requires that a copy of each shipping paper be retained for a period of one year after shipment of the hazardous materials ends. Electronic images of shipping papers are authorized. An electronic image includes an image transmitted by facsimile (FAX) machine, an image on the screen of a computer, or an image generated by an optical imaging machine.

In addition, the Resource Conservation and Recovery Act (RCRA) authorizes the Environmental Protection Agency (EPA) to regulate the transportation of hazardous wastes,

which are also regulated by DOT as hazardous materials. See 42 U.S.C. § 6923(a), (b)(1976). Since the enactment of the ESIGN Act in 2000, both DOT and EPA have initiated rulemaking proceedings to revise their regulations regarding the transportation and handling of hazardous wastes to allow specific hazardous waste information to be transmitted electronically between generators, treatment and disposal facilities, and state governments. On May 22, 2001, EPA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** requesting comment on its proposal. See 66 FR 28239. The Notice proposed to change EPA's hazardous waste regulations, which establish a manifest system to track shipments of hazardous waste from a generator's site to the site where the hazardous waste is to be managed. See 40 CFR parts 262 through 265; 45 FR 12724, February 26, 1980.

The central purpose of the uniform hazardous waste manifest (UHWM) system is to provide documentation showing chain of custody of the hazardous waste at all times, where the waste is destined for disposition, and when the waste arrives at the disposal facility. The UHWM system allows generators, shippers, and waste handlers to use a single form to satisfy both EPA's manifest requirements and DOT's shipping paper requirements. See 49 FR 10490, March 20, 1984. Thus, the UHWM can also serve as a DOT-required shipping paper conveying essential emergency information during transportation, such as the proper shipping name and hazard class of a material, and the telephone number where more information about the material can be obtained.

EPA's NPRM proposes to modify the UHWM regulations to allow waste handlers (generators, transporters, and treatment, storage or disposal facilities) the option of preparing, transmitting, signing, and storing their manifests electronically. See 66 FR 28240, 28266. This proposal includes a standard for signing the manifest with electronic signatures, electronic data interchange (EDI) and Internet file standards, and computer security standards. The EPA proposal, however, also contains a requirement that a paper copy of the electronic manifest accompany the shipment in order to satisfy the HMR requirement that a shipping paper accompany each hazardous materials shipment for emergency response purposes.

In connection with EPA's notice, RSPA, issued an NPRM proposing to revise its regulations on the use of the UHWM for hazardous waste shipments.

RSPA's proposed regulatory changes parallel EPA's proposal. See 66 FR 41490, August 8, 2001. Specifically, RSPA proposes to modify title 49 of the Code of Federal Regulations, part 172.505 to provide that a printout of the electronic manifest or a separate shipping paper must accompany the shipment of hazardous waste when an electronic manifest is used. *Id.* at 41491.

Both EPA's and DOT's proposed and current regulations regarding hazardous materials and hazardous wastes will be impacted by elimination of the ESIGN Act's hazardous and dangerous materials documents exception. Thus, the section 103 evaluation initiated by this Notice has implications for companies that engage in the manufacture, sale, transportation, and disposal of hazardous materials. It also has implications for emergency responders who rely on the immediate availability of critical information in the event of a release of hazardous materials in transportation.²

The ESIGN Section 103 Evaluation

The ESIGN Act directs the Assistant Secretary of Communications and Information to conduct an evaluation of the exceptions set out in section 103 of the Act to determine whether the exceptions continue to be necessary for the protection of consumers, and to submit a report to Congress on the results of the evaluation no later than June 30, 2003. The Assistant Secretary for Communications and Information is the chief administrator of NTIA. As the President's principal advisor on telecommunications policies pertaining to the Nation's economic and technological advancement, NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy.

The ESIGN section 103 evaluation of the hazardous materials documents exception is intended to evaluate the current status of federal and state regulations and practices, and the course of dealing among companies that handle and transport hazardous wastes, in preparation for a report to Congress on whether the exception of documents related to the transportation and handling of hazardous materials

² Several federal agencies have various responsibilities concerning hazardous materials and dangerous substances. There are also numerous state agencies and organizations that act to protect the public from misuse, mishandling, or errors in labeling of hazardous materials. EPA and DOT have proposed regulations implicating the transmission of electronic documents that provide notice regarding hazardous materials. Reference to these agencies is not intended to exclude other agencies that play a valuable role in protecting consumers.

remains necessary to protect consumers. The purpose of this evaluation is not to review or analyze federal and state regulations and rules relating to hazardous materials documents for the purpose of recommending changes to those regulations, but rather to advise Congress of the current state of law, practice, and procedure regarding this issue. Comments filed in response to this Notice should not be considered to have a connection with or impact on federal and state procedures or rulemaking proceedings concerning hazardous materials documents.

Due to the comprehensive nature of EPA and DOT's rulemaking proceedings and the scope of the issues raised therein, NTIA may consider comments submitted in those proceedings in the preparation of the report to Congress.³

Invitation to Comment

NTIA requests that all interested parties submit written comment on any issue of fact, law, or policy that may assist in the evaluation required by section 103(c). We invite comment on ESIGN generally to assist in evaluating the narrower issues associated with the substantive law governing the hazardous materials and dangerous substances documents exception. The following questions are intended to provide guidance as to the specific subject areas to be examined as a part of the evaluation. Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

1. Describe federal, state and local regulations, laws, and ordinances that require documentation for handling of hazardous materials and dangerous substances.

2. Describe the current developments with respect to electronic documentation and recordkeeping, if any, in federal, state or local regulation of hazardous materials or dangerous substance handling.

3. Discuss what effect, if any, the removal of the hazardous and dangerous materials documents exception in section 103(b)(3) from ESIGN Act would have on the ability of state and federal agencies to perform their missions.

4. What effective means of hazard communication would be available if a paper copy of the hazardous materials shipping paper is eliminated or made optional?

5. Given the current developments in Federal regulations with respect to

³ The NTIA Request for Comments and resulting evaluation, however, have no legal effect on existing EPA or DOT rules or their ongoing regulatory proceedings.

electronic transactions in this area, is it necessary to retain the hazardous materials exception to the ESIGN requirements? If so, what is the interest that this exception continues to serve or protect?

6. Given the current developments in State regulations with respect to electronic transactions in this area, is it necessary to retain the hazardous materials exception to the ESIGN requirements? If so, what is the interest that this exception continues to serve or protect?

7. If the ESIGN Act continues to except hazardous materials, pesticides, and other toxic or dangerous materials shipping documents from the ESIGN Act requirements, how will that impact EPA's electronic hazardous waste manifest proposed rule?

Please provide copies of studies, reports, opinions, research or other empirical data referenced in the responses.

Dated: August 28, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02-22349 Filed 8-30-02; 8:45 am]

BILLING CODE 3510-60-S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 19 September 2002 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001-2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, August 26, 2002.

Charles H. Atherton,

Secretary.

[FR Doc. 02-22305 Filed 8-30-02; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denying Entry to Textiles and Textile Products Produced in Certain Companies in Macau

August 27, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs directing Customs to deny entry to shipments manufactured in certain companies in Macau.

EFFECTIVE DATE: September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

The U.S. Customs Service has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, U.S. Customs has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the U.S. Customs Service to issue regulations regarding the denial of entry of shipments from such companies. (See Federal Register notice 64 FR 41395, published on July 30, 1999). In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA is directing the U.S. Customs Service to deny entry to textile and textile products allegedly manufactured by Cheerful Garment Factory, Sai Land Garment Factory, and Tung Land Garment Factory for five years; and by Mei Lai and Vai Iat Lda. for six months. Customs has informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

Should CITA determine that this decision should be amended, such

amendment will be published in the Federal Register.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 27, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The U.S. Customs Service has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, U.S. Customs has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the U.S. Customs Service to issue regulations regarding the denial of entry of shipments from such companies (see directive dated July 27, 1999 (64 FR 41395), published on July 30, 1999). In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA directs the U.S. Customs Service, effective for goods exported on and after September 3, 2002 and extending through September 2, 2007, to deny entry to textiles and textile products allegedly manufactured by the Macau companies Cheerful Garment Factory, Sai Land Garment Factory, and Tung Land Garment Factory. The Chairman of CITA also directs the U.S. Customs Service, effective for goods exported on and after September 3, 2002 and extending through March 2, 2003, to deny entry to textiles and textile products allegedly manufactured by the Macau companies Mei Lai and Vai Iat Lda. Customs has informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02-22292 Filed 8-30-02; 8:45 am]

BILLING CODE 3510-DR-S

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Navy proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on October 3, 2002, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B10), 2000 Navy Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685-6545 or DSN 325-6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on August 22, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: August 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N07230-1

SYSTEM NAME:

Unified Civilian Mariner Payroll System (UCPS).

SYSTEM LOCATION:

Military Sealift Command Afloat, Personnel Management Center, Building 231, B Street, Camp Pendleton, Virginia Beach, VA 23451-0000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civil service mariners employed by Military Sealift Command and paid from command working capital funds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Civil service mariners (CIVMARS) pay and leave records; source documents for posting of time and leave attendance; individual retirement deduction records, source documents, and control files; wage and separation information files; health benefit records; income tax withholding records; allowance and

differential eligibility files; withholding and deduction authorization files, such as, but not limited to federal income tax withholding, insurance and retirement deductions; accounting documents files, input data posting media, including personnel actions affecting pay; accounting and statistical reports and computer edit listings; claims and waivers affecting pay; control logs and collection/disbursement vouchers; listings for administrative purposes, such as, but not limited to health insurance, life insurance, bonds, locator files, and checks to financial institutions; correspondence with the human resource office, dependents, attorneys, survivors, insurance companies, financial institutions, and other governmental agencies; leave and earnings statements; separation documents; official correspondence; federal, state and city tax reports and files; forms for pay changes and deductions; and documentation pertaining to garnishment of wages.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. Chapter 53, 55, and 81; and E.O. 9397 (SSN).

PURPOSE(S):

To accurately compute individual employees pay entitlements, withhold required and authorized deductions, and issue payments for amounts due. The data in the payroll system is forwarded as required to the subject matter areas to ensure accurate accounting and recording of pay to civilian employees.

To verify and balance all payments, deductions, and contributions with the NC Form 1128 (Payroll for Personal Services Certification and Summary) in the APMC civilian pay office and other applicable subject matter areas, and to report this information to the recipients and other government and non-government agencies.

To extract or compile data and reports for management studies and statistical analyses for use internally as required by the Department of Defense and the Department of the Navy.

All records in this system are subject to use in authorized computer matching programs within DoD and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records

or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal Reserve Banks under procedures specified in 31 CFR part 210 for health benefit carriers to ensure proper credit for employee-authorized health benefit deductions.

To officials of labor organizations recognized under 5 U.S.C. Chapter 71 and applicable Executive Orders, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions (including disclosure of reasons for non-deduction of dues, if applicable).

To the U.S. Treasury to maintain cash accountability.

To the Internal Revenue Service to record withholding and Social Security information.

To the Bureau of Employment Compensation to process disability claims.

To the Social Security Administration and Office of Personnel Management to credit the employee's account for Federal Insurance Contributions Act or Civil Service Retirement withheld.

To the National Finance Center, Office of Thrift Savings Plan, for participating employees.

To state revenue departments to reflect annual income subject to taxation.

To state employment agencies which require wage information to determine eligibility for unemployment compensation benefits of former employees.

To city revenue departments of appropriate cities to credit employees for city tax withheld.

To any agency or component thereof that needs the information for proper accounting of funds, such as, but not limited to the Office of Personnel Management to assist in resolving complaints, grievances, etc., and to compute Civil Service Retirement annuity.

To Federal, State, and local agencies for the purpose of conducting computer matching programs as regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a).

To extract or compile data and reports for management studies and statistical analyses for use internally or externally as required by other government agencies.

The DoD 'Blanket Routine Uses' published at the beginning of the Navy's compilation of systems of records notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computerized records.

RETRIEVABILITY:

Information is retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) who are properly screened and are responsible for and authorized to use the system of records in the performance in an official duty status. Records are in office buildings controlled by the screening of personal visitors. Access to the base is controlled by a guard. Payroll storage is in locked building only accessible by payroll staff or security staff. Payroll office entrance is through one door and to receptionist desk.

RETENTION AND DISPOSAL:

Individual Employee Pay Records of Civilian Employees where no site audit is performed are maintained in an electronic database that may be a stand-alone payroll system or part of a combined personnel/payroll system are transferred to National Personnel Records Center (NPRC) after three years. NPRC will destroy 56 years after date of last entry.

Where an audit is performed, they are transferred two years after GAO on-site audit to NPRC (Civilian Personnel Records), 111 Winnebago Street, St.

Louis, MO 63118. Earnings records are destroyed when 56 years after date of last entry.

Combined Federal Campaign (CFC): Records for Authorization for Individual Allotment to CFC are destroyed after the GAO Audit or when 3 years old, whichever is sooner.

Savings Bond Purchase File: Records of Authorization for Purchase and Request for Change are destroyed when superseded or after employee separates.

Bond registration files are destroyed 4 months after date of issue.

Reports of insurance deductions and related records are destroyed when 6 years old.

Other authorizations, such as union dues and savings, are destroyed after the GAO audit, or when 3 years old, whichever is sooner.

Thrift Savings Plan Election Form 1 authorizing deductions is destroyed when superseded or after employee separates.

Tax Files: Employee withholding allowance certificates are destroyed after superseded or obsolete upon separation of employee.

Copies of Report of Taxes Withheld and related papers are destroyed when 4 years old. Agency copies of Employee Wages and Tax Statements, such as IRS Form W-2, are destroyed when 4 years old.

Copies of report of federal tax withheld, such as IRS Form W-3, with papers relating to income, Social Security tax, Medicare, and those deductions are destroyed when 4 years old.

Civilian Payroll Accounting Records (Payrolls, Checklists and related Certification Sheets): The accounting copies are cut off at the end of the Fiscal Year, transferred to NPRC when 3 years old and destroyed when 10 years old. Information copies are destroyed when one year old.

Forms Used for Accumulating Civilian Personnel Cost and Payroll Data: Payroll messages, correspondence and other similar papers or cards. These records are destroyed when 2 years old.

Payroll control records and all subsidiary (supporting) documents, including payroll work-sheets or cards or rough payrolls in other forms; data processing printouts and audit trials that are used in reconciling data with payroll control records (except time cards). Where and off-site audit is made, the records are destroyed after The GAO audit. Where no on-audit is made records are destroyed when 3 years old.

Leave Records: Individual records of leave used and balances by type of leave are maintained in electronic database. This database may be a stand alone

payroll system. Records are destroyed when 3 years old.

Time and Attendance Input Records.

Records in either paper or electronic form that are used for accounting of time and attendance data into a payroll system are retained at the APMC.

Records are destroyed after GAO audit or when 6 years old, whichever is sooner.

Record of Employee Leave, such as SF 1150, are prepared upon transfer or separation. Upon transfer or separation are filed on the right side of the Official Personnel Folder and destroyed when 3 years old.

Levy and Garnishment Files: The Official Notice of Levy or Garnishment (IRS Form 668A or equivalent), change slips, work papers, correspondence, release and other forms, and other records relating to a charge against a salary or other compensation for payment of back income taxes, child support or other debts of Federal employees. Records are destroyed 3 years after garnishment is terminated.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Afloat Personnel Management Center, Code: APMC 8, P.O. Box 120, Virginia Beach, VA 23458-0120.

Courier/Express Mailing Address: Director, Afloat Personnel Management Center, Building 231, B Street, Camp Pendleton, Virginia Beach, VA 23451-0000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Afloat Personnel Management Center, Code: APMC 8, P.O. Box 120, Virginia Beach, VA 23458-0120.

Requesters should submit a written signed request that contains their full name, Social Security Number, position, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Afloat Personnel Management Center, Code: APMC 8, PO Box 120, Virginia Beach, VA 23458-0120.

Requesters should submit a written signed request that contains their full name, Social Security Number, position, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations

are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; Standard Forms 50 (Personnel Action); time and attendance records; applications for leave and overtime authorizations; allotment authorizations; court orders, for garnishment of wages for child support and alimony payment; previous employers; financial institutions; medical institutions; automated systems and computer matching, state or local governments, other DoD components and Federal agencies such as, but not limited to, Social Security Administration, Internal Revenue Service, state revenue departments, State Department, Department of Defense components, and correspondence with attorneys, dependents, survivors, or guardians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02-22289 Filed 8-30-02; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by September 6, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before November 4, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically

mailed to the Internet address
Karen_F_Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: August 27, 2002.

John D. Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: State-Flex Application.

Abstract: Application for State-Flexibility Authority ("State-Flex"). By statute, the Department can grant State-Flex to up to 7 SEAs through a competitive process. State-Flex SEAs receive (1) the flexibility to consolidate certain Federal formula funds reserved for State administration and State-level

activities for any educational purpose authorized under the ESEA to assist the SEAs, and the local educational agencies (LEAs) with which it enters into performance agreements, in making adequate yearly progress and narrowing achievement gaps; (2) the authority to specify how LEAs in the State use Innovative Program funds under Part A of Title V; and (3) the authority to, in turn, enter into performance agreements with four to ten LEAs in the State (half of which must be high poverty LEAs), permitting those LEAs to consolidate certain Federal funds and to use those funds for any ESEA purpose consistent with the SEA's State-Flex plan. The purpose of State-Flex is to assist SEAs and LEAs in those states to meet the State's definition of adequate yearly progress (AYP) and narrowing achievement gaps.

Additional Information: Flexibility provisions are one of the hallmarks of the No Child Left Behind Act, and early implementation of these flexibility provisions is a high priority for the Department; the State Flexibility Authority is arguably the most prominent of these provisions. An emergency clearance is necessary to enable prospective applicants sufficient time to prepare a competitive application; otherwise, harm to the public would thus occur if this clearance is not approved.

Frequency: Semi-Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 21.

Burden Hours: 13,440.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2136. 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, contact Kathy Axt via her e-mail 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. 02-22319 Filed 8-30-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02-36-000]

Canyon Creek Compression Company; Notice of Tariff Filing

August 27, 2002.

Take notice that on August 21, 2002, Canyon Creek Compression Company, (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet No. 165A, to become effective September 20, 2002.

Canyon states that the purpose of this filing is to revise the provisions of the General Terms and Conditions in Canyon's Tariff relating to capacity releases by shippers which are not creditworthy or which become noncreditworthy.

Canyon states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502-8222 or for TTY, (202) 208-1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-22296 Filed 8-30-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00-34-009]

Dauphin Island Gathering Partners; Notice of Negotiated Rate Tariff Filing

August 27, 2002.

Take notice that on August 21, 2002, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheet listed below to become effective July 1, 2002. Dauphin Island states that this tariff sheet reflects changes to rates and Maximum Daily Quantities (MDQ's).

Tenth Revised Sheet No. 9

Dauphin Island states that copies of the filing are being served contemporaneously on its customers and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502-8222 or for TTY, (202) 208-1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-22295 Filed 8-30-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02-2338-001]

Energy Investments Management, Inc.; Notice of Filing

August 27, 2002.

Take notice that on August 23, 2002, Energy Investments Management, Inc. (EIM) tendered for filing with the Federal Energy Regulatory Commission (Commission) a letter submitting certain additional information with respect to EIM's Application for market-based rate authority filed on July 9, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502-8222 or TTY, (202) 208-1659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 6, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-22294 Filed 8-30-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-504-000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

August 27, 2002.

Take notice that on August 20, 2002, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, proposed to become effective September 20, 2002:

Third Revised Sheet No. 10
Original Sheet No. 10A
Original Sheet No. 10B
Original Sheet No. 10C
Sixth Revised Sheet No. 11
Third Revised Sheet No. 11A
Fifth Revised Sheet No. 11B
Second Revised Sheet No. 66A
Fourth Revised Sheet No. 67

Iroquois proposes to clarify and modify the provisions of its tariff concerning its customers ability to make changes to their receipt and delivery points. The filing would also provide Iroquois with the ability to reserve existing firm transportation capacity that becomes available for future expansion projects under certain specified circumstances; such capacity may be marketed on an interim basis.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502-8222 or for

TTY, (202) 208-1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-22299 Filed 8-30-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02-111-000]

Midwest Independent System Operator, PJM Interconnection, L.L.C., et al.: Notice Cancelling Settlement Conference

August 27, 2002.

On August 22, 2002, the Commission issued a Notice of Settlement Conference in this matter pursuant to Rule 601 of the Commission's Rules of Practice and Procedure, 18 CFR 385.601. The settlement conference in the above docketed proceeding was to be held at the Commission's offices on September 5, 2002, to address the issue of eliminating rate pancaking between the Midwest ISO and PJM, as discussed in the Commission's July 31, 2002 order, 100 FERC ¶ 61,137 (paragraphs 49-52, and ordering paragraphs D and E). This conference is cancelled.

At the August 22, 2002, Single Market Design Forum, the MISO and PJM stakeholders made progress in discussing this issue and agreed to hold additional stakeholder meetings on the issue prior to September 16, 2002. In consideration of the time demands on all participants and the need to avoid multiple processes, the settlement conference scheduled through the Commission's Dispute Resolution Service is canceled. The Dispute Resolution Service is available to assist any of the parties with future needs.

If a party has any questions regarding this notice cancelling the settlement conference, please call Steven Rothman at (202) 502-8643 or send an e-mail to Steven.Rothman@ferc.gov. Parties may also communicate with Richard Miles, the Director of the Commission's Dispute Resolution Service at 1(877) FERC-ADR (337-2237) or (202) 502-

8702 and his e-mail address is Richard.Miles@ferc.gov.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-22293 Filed 8-30-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-503-000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 27, 2002.

Take notice that on August 19, 2002, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective October 1, 2002:

Third Revised Volume No. 1

Eighteenth Revised Sheet No. 14.

Original Volume No. 2

Thirty-Third Revised Sheet No. 2.1.

Northwest states that the purpose of this filing is to propose an increase from 1.71% to 1.72% in the fuel reimbursement factor (Factor) for Northwest's transportation rate schedules. The Factor allows Northwest to be reimbursed in-kind for the fuel used during the transmission of gas and for the volumes of gas lost and unaccounted-for that occur as a normal part of operating the transmission system.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the

last three digits in the docket number field to access the document. For Assistance, call (202) 502-8222 or for TTY, (202) 208-1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-22298 Filed 8-30-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02-37-000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

August 28, 2002.

Take notice that on August 21, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A certain tariff sheets as listed in Appendix A to the filing.

GTN indicates that these tariff sheets are being submitted in order to (1) modify GTN's Tariff to provide for the termination of a shipper's contract for failure to pay and (2) to address how temporary replacement shippers will be affected in the event a releasing shipper's contract is terminated. GTN requests an effective date of October 1, 2002 for these tariff sheets.

GTN states further that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the

Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502-8222 or for TTY, (202) 208-1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-22297 Filed 8-30-02; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7271-6]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address a lawsuit (the "lawsuit") filed by Louisiana Environmental Action Network ("LEAN"), represented by Tulane Environmental Law Clinic: *Louisiana Environmental Action Network v. Whitman*, No. 02-226-B-M2 (M.D. La.). On or about March 1, 2001, LEAN filed a Complaint seeking to compel Christine Todd Whitman, in her official capacity as Administrator of the EPA, to respond to two administrative petitions to object to state operating permits issued by the Louisiana Department of Environmental Quality ("LDEQ"). Under the terms of the proposed settlement agreement, EPA will respond to the petitions by September 30, 2002, and October 31, 2002, respectively. Within thirty days of EPA's response to said petitions, LEAN will file a motion for voluntary dismissal of the Complaint, with prejudice to its refile.

DATES: Written comments on the proposed settlement agreement must be received by October 3, 2002.

ADDRESSES: Written comments should be sent to Cecilia Kim, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460. Copies of the proposed settlement are available from Phyllis J. Cochran, (202) 564-7606.

SUPPLEMENTARY INFORMATION: The Clean Air Act affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this 45-day review period to object to state operating permits if EPA has not done so. LEAN filed two administrative petitions to object to state operating permits issued by LDEQ. The first petition, submitted by letter dated January 2, 2001, challenges the issuance of a Title V operating permit to Borden Chemical, Inc., for the construction of a formaldehyde plant in Geismar, Louisiana (the "Borden Petition"). The second petition, submitted by letter dated June 18, 2001, challenges the issuance of a Title V operating permit to Dow Chemicals, Inc., for construction of a facility in Plaquemine, Louisiana (the "Dow Petition"). The lawsuit alleges that EPA has a nondiscretionary duty to grant or deny such petitions within 60 days, and seeks to compel EPA to respond to the petitions.

The settlement agreement provides that, within ten days after execution by the parties, the parties will file a joint motion with the court requesting the lawsuit be stayed. LEAN may request the court to lift the stay of the lawsuit, and establish a schedule for further proceedings, if EPA fails to sign a response to the Borden Petition by September 30, 2002, or fails to sign a response to the Dow Petition by October 31, 2002.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: August 27, 2002.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 02-22367 Filed 8-30-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[MO 163-1163; FRL-7271-8]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Doe Run Buick Mine and Mill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to state operating permit.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to the operating permit issued to Doe Run Buick Mine and Mill by the Missouri Department of Natural Resources (MDNR). Specifically, the Administrator has partially granted and partially denied a petition submitted by the Sierra Club to object to the State operating permit issued to Doe Run Buick Mine and Mill in Boss, Missouri. **ADDRESSES:** You may review copies of the final order, the petition, and other supporting information at the EPA, Region 7, 901 N. Fifth Street, Kansas City, Kansas 66101. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at <http://www.epa/region07/programs/artd/air/title5/petitiondb/petitiondb2000.htm>.

FOR FURTHER INFORMATION CONTACT: Harriett Jones, EPA, Region 7, Air, RCRA, and Toxics Division, Air Permitting and Compliance Branch (ARTD/APCO), 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551-7730, or by e-mail at jones.harriett@epa.gov.

SUPPLEMENTARY INFORMATION: The Clean Air Act (Act) affords EPA a 45-day period to review, and, as appropriate, object to operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorized any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to state operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the

petitioner demonstrates that it was impracticable to raise these issues during the comment period, or the grounds for the issues arose after this period.

On October 4, 2000, the EPA received a petition from the Sierra Club requesting that EPA object to the issuance of the title V operating permit to Doe Run Buick Mine and Mill. The petition alleged that the final title V permit contains a number of inadequate or unclear monitoring conditions, lacks an appropriate Statement of Basis, and does not assure compliance with all applicable requirements as mandated by 40 CFR 70.1(b) and 40 CFR 70.6(a)(1) because many individual permit conditions are not practically enforceable and lack adequate periodic monitoring. EPA agrees with the petitioner that the permit must be revised to incorporate additional monitoring and other necessary procedures to assure compliance. The other issues raised by the petitioner are found to be without merit.

On July 31, 2002, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the MDNR must reopen the permit to incorporate additional monitoring and other necessary procedures to assure compliance with the PM₁₀ emission limitation. The order also explains the reasons for denying the Sierra Club's remaining claims.

In accordance with section 505(b)(2) of the Act, denial of a petition is subject to judicial review under section 307 of the Act. Pursuant to section 307(b)(1), any petition for review shall be filed by November 4, 2002, in the United States Court of Appeals for the appropriate circuit.

Dated: August 22, 2002.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 02-22365 Filed 8-30-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-7271-7]

Air Pollution Control; Motor Vehicle Emission Factors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop.

SUMMARY: The Environmental Protection Agency is now in the process of developing revisions and improvements to its mobile source emissions models

(the MOBILE and NONROAD models) as well as planning a new generation of models (the MOVES model). The current version of the highway (on-road) model, MOBILE6, was released for use in January 2002. Draft extensions of this model (MOBILE6.1 adding particulate emissions and MOBILE6.2 adding toxic emissions) were released several months later. The extension of the model, MOBILE6.3 adding CO₂ emissions, is planned for release in the fall of 2002. Revisions are also being made to the current draft NONROAD model. Finally, work is progressing on the MOVES model, with its first component (a greenhouse gas model) scheduled for completion in the fall of 2003. This notice announces a public workshop for the purpose of discussing issues raised by these present and future models.

At this three-day workshop, Mobile Source Present and Future Models, EPA will devote the entire first day to the NONROAD model, the entire second day to the MOVES model, and the entire third day to the MOBILE6 model. This will allow individuals to attend only the sessions in which they are interested.

On the first day (November 5), EPA will cover the NONROAD model. While a formal agenda has not been completed, EPA will cover recent revisions to the draft NONROAD model, (including geographic allocation), data collection by EPA and the states, and nonroad categories not included in the model (*i.e.* aircraft, locomotives, and commercial marine). We will also cover our pilot project and hold a user forum.

On the second day (November 6), EPA will cover the MOVES Model. Tentative topics include the comprehensive plan for the Model, the Greenhouse Gas emission analysis plan and shootout follow up. Other topics include the Portable Emission Measurement System (PEMS) and the Portable Activity Monitoring System (PAMS) master plan, as well as the NATIONAL MOBILE INVENTORY MODEL (NMIM).

On the third day (November 7), the proposed agenda will cover the MOBILE6 Model including the MOBILE6 validation work and related sensitivity analysis that has been done. A discussion of the MOBILE6.1, MOBILE6.2, and MOBILE6.3 extensions will be held, with plans for the next release. We also tentatively plan to have a forum on MOBILE6 experiences, including questions and answers.

DATES: The workshop will be held Tuesday, November 5 through Thursday, November 7, 2002. Sessions are expected to run from 8:30 a.m. to 4 p.m., Eastern Daylight Time (EDT) each day. Please note that the first day of this

workshop (November 5) is election day. Therefore, attendees may wish to make arrangements to vote via absentee ballots.

ADDRESSES: The workshop will be held at the Sheraton Inn, 3200 Boardwalk, Ann Arbor, MI 48108. Directions to the workshop can be obtained at <http://www.sheratonannarbor.com>. A block of 50 rooms is being held at the Sheraton for attendees of this workshop under Code MSMW11 until October 4, 2002. The phone number is (734) 996-0600.

FOR FURTHER INFORMATION CONTACT: (734) 214-4636 or send an e-mail to mobile@epa.gov.

SUPPLEMENTARY INFORMATION: Under Section 130 of the Clean Air Act Amendments of 1990, EPA is required to review, and to revise as necessary, the emission factors used to estimate emissions of volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NO_x) from area and mobile sources. In the case of highway vehicles, emission factors for these pollutants are estimated using the highway vehicle emission factor model, commonly referred to as MOBILE. This model, first developed in the late 1970s, has been revised, updated, and improved periodically since that time to account for improved data and analyses concerning in-use emissions performance of highway vehicles, changes in vehicle and emission control technology, changes in fuel composition, strengthening of applicable emission standards, refinements to applicable test procedures, and other items that affect in-use emission levels.

Section 130 of the Act requires that this emission factor review, and revision as needed, be performed at least every three years. As noted above, the current official version of the model, MOBILE6, was released January 2002. Since that time, two draft extensions to the model have been developed, MOBILE6.1 and MOBILE6.2. While not involving revision and update to the entire model, these versions were developed to address specific needs on the part of emission factor users. MOBILE6.1 added the calculation of particulate matter (PM) to the emissions calculated by MOBILE6. MOBILE6.2 added the calculation of toxic compounds to the emissions calculated by MOBILE6 or MOBILE6.1.

Dated: August 27, 2002.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 02-22366 Filed 8-30-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7271-2]

Health Assessment Document for Diesel Engine Exhaust**AGENCY:** Environmental Protection Agency.**ACTION:** Notice of availability of a final report.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of the final Health Assessment Document for Diesel Engine Exhaust (EPA/600/8-90/057F, May 2002). The document was prepared by the Office of Research and Development's National Center for Environmental Assessment (NCEA). The assessment evaluates the health effects literature to identify the most important exposure hazards to humans. Secondly, the assessment evaluates the exposure-response characteristics of the key health effects so that information is available for understanding the possible impact on an exposed population.

DATES: The final document is available electronically on NCEA's Web site today.

ADDRESSES: The document is available electronically on NCEA's Web site (<http://www.epa.gov/ncea>) under the What's New and Publications menus. A limited number of CDs and paper copies will be available from EPA's National Service Center for Environmental Publications (NSCEP). To obtain copies, please contact NSCEP by telephone (1-800-490-9198 or 513-489-8190), by facsimile (513-489-8695), or by mail (PO Box 42419, Cincinnati, OH 45242-0419). Please provide your name and mailing address and the title and EPA number of the Health Assessment Document for Diesel Engine Exhaust (EPA/600/8-90/057F, May 2002).

FOR FURTHER INFORMATION CONTACT: The Technical Information Staff, NCEA-Washington Office (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 202-564-3261; facsimile: 202-565-0050.

SUPPLEMENTARY INFORMATION: The diesel engine has been a vital workhorse in the United States, powering many of its large trucks, buses, farm, railroad, marine and construction equipment. Expectations are that the use of diesel engines will increase due to the superior performance characteristics of the engine. Diesel engine exhaust, however, contains large quantities of harmful pollutants in a complex mixture of gases and particulates. Human exposure to

this exhaust comes from both highway uses (on-road) as well as from the nonroad uses of the diesel engine.

EPA started regulating the gaseous emissions from the heavy duty highway uses of diesel engines in the 1970s and particles in the 1980s. The reduction of harmful exhaust emissions has taken a large step forward because of standards issued in 2000 which will bring about very large reductions in exhaust emissions for model year 2007 heavy duty engines used in trucks, buses and other on-road uses. EPA anticipates developing similarly stringent regulations for other diesel engine uses, including those used in nonroad applications.

Until these regulations take effect, EPA is partnering with state and local agencies to retrofit older, dirtier, engines to make them run cleaner and to develop model programs to reduce emissions from idling engines. In addition, EPA and local authorities are working to ensure early introduction of effective technologies for particulate matter control and low sulfur fuel where possible in advance of the 2007 requirements. Today, at least one engine manufacturer is producing new engines with particulate traps that when coupled with low-sulfur fuel meet 2007 particulate emission levels. The Agency expects significant environmental and public health benefits as the environmental performance of diesel engines and diesel fuels improve.

A draft of this assessment, along with the peer review comments of the Clean Air Scientific Advisory Committee, was part of the scientific basis for EPA's regulation of heavy-duty highway engines completed in December 2000. The information provided by this assessment was useful in developing EPA's understanding of the public health implications of exposure to diesel engine exhaust and the public health benefits of taking regulatory action to control diesel emissions.

The health assessment concludes that long-term (*i.e.*, chronic) exposure to diesel exhaust is likely to pose a lung cancer hazard, as well as damage the lung in other ways depending on exposure. The health assessment's conclusions are based on exposure to exhaust from diesel engines built prior to the mid-1990s. Short-term (*i.e.*, acute) exposures can cause transient irritation and inflammatory symptoms, although the nature and extent of these symptoms are highly variable across the population. The assessment also states that evidence is emerging that diesel exhaust exacerbates existing allergies and asthma symptoms. The assessment recognizes that diesel engine exhaust

emissions, as a mixture of many constituents, also contribute to ambient concentrations of several criteria air pollutants including nitrogen oxides, sulfur oxides, fine particles, as well as other hazardous air pollutants.

The particulate fraction of diesel exhaust and its composition is a key element in EPA's present understanding of the health issues and formulation of the conclusions in the health assessment. The amount of exhaust particulate from on-road engines has been decreasing in recent years and is expected to decrease 90% from today's levels with the engines designed to meet the 2007 regulations. The composition of the exhaust particulate matter and the gases also will change. While EPA believes that the assessment's conclusions apply to the general use of diesels today, as cleaner diesel engines replace a substantial number of existing engines, the general applicability of the conclusions in this Health Assessment Document will need to be reevaluated.

Dated: July 1, 2002.

Paul Gilman,

Assistant Administrator for Research and Development.

[FR Doc. 02-22368 Filed 8-30-02; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION**Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission**

August 23, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the

information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 3, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202-418-0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0370.

Title: Part 32—Uniform Systems of Accounts for Telecommunications Companies.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 239.

Estimated Time Per Response: 6,123.41 hours (average).

Frequency of Response: On occasion reporting requirement, recordkeeping requirement.

Total Annual Burden: 1,463,496 hours.

Total Annual Cost: N/A.

Needs and Uses: On March 6, 2002, the Commission adopted an Order on Reconsideration in CC Docket No. 00-199, FCC 02-68, which reinstated Account 2400, Accumulated Amortization—tangible, a Class B account, as the request of the United States Telecom Association (USTA). The information contained in the various reports submitted to this Commission by the carriers provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 02-22325 Filed 8-30-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons of the sixth meeting of the Technological Advisory Council ("Council") under its new charter.

DATES: Wednesday, September 18, 2002 beginning at 10 a.m. and concluding at 3 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW-C305 Washington, DC 20554.

SUPPLEMENTARY INFORMATION:

Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from different areas such as manufacturing, academia, communications services providers, the research community, etc., can provide advice to the FCC on innovation in the communications industry. The purpose of, and agenda for, the sixth meeting under the Council's new charter will be to review the progress that has been made and further direct the Council's efforts to fulfill its responsibilities under its charter. The Council will also consider such questions as the Commission may put before it. Members of the public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is jgoldtho@fcc.gov. His United States mail delivery address is Jeffery Goldthorp, Chief, Network Technology Division, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 02-22324 Filed 8-30-02; 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 September 17, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Ross David Levin*, Evanston, Illinois; Louis Jonathon Kolom, Lincolnwood, Illinois, Shabsa Abraham Lis, Skokie, Illinois; Aaron L. Kolom, Los Angeles, California; Sherwin Greenberg, Chicago, Illinois, and Arthur Myer Goldrich, Skokie, Illinois; to retain control of First Equity Corp., Skokie, Illinois, and thereby indirectly retain control of 1st Equity Bank, Skokie, Illinois.

Board of Governors of the Federal Reserve System, August 28, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-22334 Filed 8-30-02; 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 September 27, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *Sun Financial Corporation*, Saint Peters, Missouri; to acquire at least 88 percent of the voting shares of The Quad County State Bank, Viburnum, Missouri.

Board of Governors of the Federal Reserve System, August 28, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-22335 Filed 8-30-02; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of June 25-26, 2002

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 25-26, 2002.¹

¹ Copies of the Minutes of the Federal Open Market Committee meeting on June 25-26, 2002, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System,

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1¾ percent.

By order of the Federal Open Market Committee, August 26, 2002.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 02-22333 Filed 8-30-02; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., appendix 2 and U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

Date: September 26-27, 2002 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

2. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: October 3-4, 2002 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

3. *Name of Subcommittee:* Health Research Dissemination and Implementation.

Date: October 3-4, 2002 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

4. *Name of Subcommittee:* Health Care and Effectiveness Research.

Date: October 24-25, 2002 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

5. *Name of Subcommittee:* Health Systems Research.

Date: October 24-25, 2002 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594-1846.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: August 27, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02-22330 Filed 8-30-02; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guideline for Prevention of Healthcare-associated Pneumonia, 2003

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice is a request for review of and comment on the Draft Guideline for Prevention of Healthcare-associated Pneumonia, 2003, available on the CDC Web site at www.cdc.gov/ncidod/hip/pnguide.htm. The guideline has been developed for practitioners who provide care for patients and who are responsible for monitoring and

preventing infections in healthcare settings. The guideline replaces the Guideline for Prevention of Nosocomial Pneumonia, published in 1994.

DATES: Comments on the Draft Guideline for Prevention of Healthcare-associated Pneumonia, 2003, must be received in writing on or before October 18, 2002.

FOR FURTHER INFORMATION CONTACT:

Requests for copies of the Draft Guideline for Prevention of Healthcare-associated Pneumonia, 2003, should be submitted to the Resource Center, Attention: PNGuide, Division of Healthcare Quality Promotion, CDC, Mailstop E-68, 1600 Clifton Rd., NE, Atlanta, Georgia 30333; fax 404 498-1244; e-mail: pnrequests@cdc.gov; or Internet: www.cdc.gov/ncidod/hip/pnguide.htm.

ADDRESSES: Comments on the Draft Guideline for Prevention of Healthcare-associated Pneumonia, 2003, should be submitted to the Resource Center, Attention: PNGuide, Division of Healthcare Quality Promotion, CDC, Mailstop E-68, 1600 Clifton Road, NE, Atlanta, Georgia 30333; fax 404 498-1244; e-mail: pncomments@cdc.gov; or Internet: www.cdc.gov/ncidod/hip/pnguide.htm.

SUPPLEMENTARY INFORMATION: The Draft Guideline for Prevention of Healthcare-associated Pneumonia, 2003, addresses the prevention and control of healthcare-associated bacterial pneumonia, especially ventilator-associated pneumonia; Legionnaire's disease; pertussis; invasive pulmonary aspergillosis; viral pneumonia; respiratory syncytial virus infection; parainfluenza; adenovirus infection; and influenza. Part I discusses the epidemiology, diagnosis, pathogenesis, modes of transmission, and prevention and control of the diseases listed above. Part II contains the consensus recommendations of the Healthcare Infection Control Practices Advisory Committee (HICPAC) and addresses such issues as education of healthcare personnel regarding the prevention and control of healthcare-associated pneumonia and other lower respiratory tract diseases and measures to prevent person-to-person transmission of each disease.

HICPAC was established in 1991 to provide advice and guidance to the Secretary and the Assistant Secretary for Health, DHHS; the Director, CDC; and the Director, National Center for Infectious Diseases, regarding the practice of infection control and strategies for surveillance, prevention, and control of healthcare-associated

infections in U.S. healthcare facilities. The committee advises CDC on guidelines and other policy statements regarding prevention of healthcare-associated infections and related adverse events.

Dated: August 27, 2002.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 02-22309 Filed 8-30-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Notice of Meeting

AGENCY: President's Committee on Mental Retardation (PCMR).

ACTION: Notice of meeting.

DATES: Monday, September 23, 2002, from 8 a.m. to 5 p.m., and Tuesday, September 24, 2002, from 8 a.m. to 11 a.m. The entire meeting of the President's Committee on Mental Retardation will be open to the public.

ADDRESSES: The meeting will be held at the Indian Treaty Room, Old Executive Office Building, 17th Street and Pennsylvania Avenue, Washington, DC 20500. Enter the building at the Pennsylvania Avenue entrance and be prepared to show a photo ID. Please allow extra time for security procedures. It will be necessary for all persons planning to enter the Old Executive Office Building to provide their name, date of birth and social security number no later than September 13, 2002, to the Executive Director, President's Committee on Mental Retardation (*see* below for contact information). A barrier free entrance is available to the Old Executive Office Building at its 17th and G Streets, NW., entrance. The same security requirements apply for that entrance.

Agenda: The Committee plans to discuss critical issues concerning President George W. Bush's New Freedom Initiative, inter-agency collaboration and cooperation, and removal of barriers to full community integration and improved quality of life for individuals with mental retardation. An interpreter for the deaf will be available upon request.

FOR FURTHER INFORMATION CONTACT: Sally Atwater, President's Committee on Mental Retardation, Room 701, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC

20447, telephone—(202) 619-0634, fax—(202) 205-9519, e-mail—satwater@acf.hhs.gov.

SUPPLEMENTARY INFORMATION: The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services and support for persons with mental retardation. The Committee is responsible for evaluating the adequacy of current practices in programs and support for person with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families. The Committee submits an annual report to the President.

Dated: August 26, 2002.

Sally Atwater,

Executive Director, President's Committee on Mental Retardation.

[FR Doc. 02-22318 Filed 8-30-02; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following websites: <http://workplace.samhsa.gov> and <http://www.drugfreeworkplace.gov>.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl,

Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443-6014, Fax: (301) 443-3031.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories
8901 W. Lincoln Ave.
West Allis, WI 53227
414-328-7840/800-877-7016
(Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc.
160 Elmgrove Park
Rochester, NY 14624
716-429-2264

Advanced Toxicology Network
3560 Air Center Cove, Suite 101
Memphis, TN 38118
901-794-5770/888-290-1150

Aegis Analytical Laboratories, Inc.
345 Hill Ave.
Nashville, TN 37210
615-255-2400

Alliance Laboratory Services
3200 Burnet Ave.
Cincinnati, OH 45229
513-585-9000
(Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc.
14225 Newbrook Dr.
Chantilly, VA 20151
703-802-6900

Associated Pathologists Laboratories, Inc.
4230 South Burnham Ave., Suite 250
Las Vegas, NV 89119-5412
702-733-7866/800-433-2750

Baptist Medical Center—Toxicology Laboratory

9601 I-630, Exit 7
Little Rock, AR 72205-7299
501-202-2783
(Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Laboratory Partners, LLC
129 East Cedar St.
Newington, CT 06111
860-696-8115
(Formerly: Hartford Hospital Toxicology Laboratory)

Clinical Reference Lab
8433 Quivira Rd.
Lenexa, KS 66215-2802
800-445-6917

Cox Health Systems, Department of Toxicology
1423 North Jefferson Ave.
Springfield, MO 65802
800-876-3652/417-269-3093
(Formerly: Cox Medical Centers)

Diagnostic Services Inc., dba DSI
12700 Westlinks Drive
Fort Myers, FL 33913
941-561-8200/800-735-5416

Doctors Laboratory, Inc.
P.O. Box 2658, 2906 Julia Dr.
Valdosta, GA 31602
912-244-4468

DrugProof, Division of Dynacare
543 South Hull St.
Montgomery, AL 36103
888-777-9497/334-241-0522
(Formerly: Alabama Reference Laboratories, Inc.)

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC
1229 Madison St., Suite 500, Nordstrom Medical Tower
Seattle, WA 98104
206-386-2672/800-898-0180
(Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc.
P.O. Box 2969, 1119 Mearns Rd.
Warminster, PA 18974
215-674-9310

Dynacare Kasper Medical Laboratories *
14940-123 Ave.,
Edmonton, Alberta
Canada T5V 1B4
780-451-3702/800-661-9876

ElSohly Laboratories, Inc.
5 Industrial Park Dr.
Oxford, MS 38655
662-236-2609

Express Analytical Labs
3405 7th Avenue, Suite 106
Marion, IA 52302
319-377-0500

Gamma-Dynacare Medical Laboratories *
A Division of the Gamma-Dynacare Laboratory Partnership
245 Pall Mall St.
London, ONT
Canada N6A 1P4
519-679-1630

General Medical Laboratories
36 South Brooks St.
Madison, WI 53715
608-267-6267

Kroll Laboratory Specialists, Inc.

1111 Newton St.
Gretna, LA 70053
504-361-8989/800-433-3823
(Formerly: Laboratory Specialists, Inc.)

LabOne, Inc.
10101 Renner Blvd.
Lenexa, KS 66219
913-888-3927/800-728-4064
(Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings
7207 N. Gessner Road
Houston, TX 77040
713-856-8288/800-800-2387

Laboratory Corporation of America Holdings
69 First Ave.
Raritan, NJ 08869
908-526-2400/800-437-4986
(Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings
1904 Alexander Drive
Research Triangle Park, NC 27709
919-572-6900/800-833-3984
(Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings
10788 Roselle Street
San Diego, CA 92121
800-882-7272
(Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings
1120 Stateline Road West
Southaven, MS 38671
866-827-8042/800-233-6339
(Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Marshfield Laboratories
Forensic Toxicology Laboratory
1000 North Oak Ave.
Marshfield, WI 54449
715-389-3734/800-331-3734

MAXXAM Analytics Inc. *
5540 McAdam Rd.
Mississauga, ON
Canada L4Z 1P1
905-890-2555
(Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology
3000 Arlington Ave.
Toledo, OH 43699
419-383-5213

MedTox Laboratories, Inc.
402 W. County Rd. D
St. Paul, MN 55112
651-636-7466/800-832-3244

MetroLab-Legacy Laboratory Services
1225 NE 2nd Ave.
Portland, OR 97232
503-413-5295/800-950-5295

Minneapolis Veterans Affairs Medical Center
Forensic Toxicology Laboratory
1 Veterans Drive
Minneapolis, Minnesota 55417
612-725-2088

National Toxicology Laboratories, Inc.

1100 California Ave.
Bakersfield, CA 93304
661-322-4250/800-350-3515

Northwest Drug Testing, a division of NWT Inc.
1141 E. 3900 South
Salt Lake City, UT 84124
801-293-2300/800-322-3361
(Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc.
1705 Center Street
Deer Park, TX 77536
713-920-2559
(Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB)

Pathology-Toxicology Laboratory)
Oregon Medical Laboratories
P.O. Box 972, 722 East 11th Ave.
Eugene, OR 97440-0972
541-687-2134

Pacific Toxicology Laboratories
6160 Variel Ave.
Woodland Hills, CA 91367
818-598-3110/800-328-6942
(Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories
110 West Cliff Drive
Spokane, WA 99204
509-755-8991/800-541-7891x8991

PharmChem Laboratories, Inc.
4600 N. Beach
Haltom City, TX 76137
817-605-5300
(Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)

Physicians Reference Laboratory
7800 West 110th St.
Overland Park, KS 66210
913-339-0372/800-821-3627

Quest Diagnostics Incorporated
3175 Presidential Dr.
Atlanta, GA 30340
770-452-1590
(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
4770 Regent Blvd.
Irving, TX 75063
800-842-6152
(Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
400 Egypt Rd.
Norristown, PA 19403
610-631-4600/877-642-2216
(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
506 E. State Pkwy.
Schaumburg, IL 60173
800-669-6995/847-885-2010
(Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)

Quest Diagnostics Incorporated
7600 Tyrone Ave.
Van Nuys, CA 91405

818-989-2520/800-877-2520
(Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc.
463 Southlake Blvd.
Richmond, VA 23236
804-378-9130

S.E.D. Medical Laboratories
5601 Office Blvd.
Albuquerque, NM 87109
505-727-6300/800-999-5227

South Bend Medical Foundation, Inc.
530 N. Lafayette Blvd.
South Bend, IN 46601
219-234-4176

Southwest Laboratories
2727 W. Baseline Rd.
Tempe, AZ 85283
602-438-8507/800-279-0027

Sparrow Health System
Toxicology Testing Center, St. Lawrence Campus
1210 W. Saginaw
Lansing, MI 48915
517-377-0520
(Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory
1000 N. Lee St.
Oklahoma City, OK 73101
405-272-7052

Sure-test Laboratories, Inc.
2900 Broad Avenue
Memphis, Tennessee 38112
901-474-6028

Toxicology & Drug Monitoring Laboratory
University of Missouri Hospital & Clinics
2703 Clark Lane, Suite B, Lower Level
Columbia, MO 65202
573-882-1273

Toxicology Testing Service, Inc.
5426 N.W. 79th Ave.
Miami, FL 33166
305-593-2260

US Army Forensic Toxicology Drug Testing Laboratory
Fort Meade, Building 2490
Wilson Street
Fort George G. Meade, MD 20755-5235
301-677-7085

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908-29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02-22304 Filed 8-30-02; 8:45 am]

BILLING CODE 4160-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4739-N-41]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Inventory of Housing Units Designated for Elderly/Disabled Persons; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 10, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number (2502—pending) and should be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Fax number (202) 395-6974; E-mail Lauren_Wittenberg@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708-2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package to obtain current data from owners of multifamily housing projects regarding preferences for occupancy by the elderly persons and persons with disabilities, unit distribution, and units with accessible features. This information is necessary for Departmental compliance with the 2000 House Committee on Appropriations Report #106-286. The information obtained through this inventory will be published on HUD's Web site for public access and will assist prospective applicants with locating units for which they are eligible.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Inventory of Housing Units Designated for Elderly/Disabled Persons.

Description of Proposed Information Collection: The information obtained through this survey will be published on HUD's Web site for public access and will assist prospective elderly/disabled applicants to locate housing units for which they are eligible.

OMB Control Number: To be assigned.

Agency Form Numbers: HUD-90059.

Members of Affected Public:

Individuals or households/owners of multifamily housing projects.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response. The estimated number of annual hours required for this information collection is 1,500; the estimated number of respondents is 3,000; the frequency of responses is 1;

and the estimated time to gather the necessary documents and complete the form is about 30 minutes per submission.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 27, 2002.

Wayne Eddins,

*Departmental Reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-22329 Filed 8-30-02; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Endangered Species Recovery Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We, the Fish and Wildlife Service, solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before October 3, 2002 to receive consideration by us.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232-4181 (fax: 503-231-6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: 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 20 days of the date of publication of this notice to the address above (telephone: 503-231-2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No.: TE-058629.

Applicant: Peggy Cheatham, Roseburg, Oregon.

The applicant requests a permit to take (harass, hold, and release) the Columbian white-tailed deer (*Odocoileus virginianus leucurus*) in conjunction with rehabilitation efforts in Douglas County, Oregon for the purpose of enhancing its survival.

Permit No.: TE-042064.

Applicant: Cecilia Meyer, San Diego, California.

The permittee requests an amendment to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus wootoni*) in conjunction with surveys in southern California for the purpose of enhancing their survival.

Permit No.: TE-778195.

Applicant: Helix Environmental Planning, Inc., La Mesa, California.

The permittee requests an amendment to take (collect, translocate, and retain) the Riverside fairy shrimp (*Streptocephalus wootoni*) and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with habitat restoration activities throughout the range of each species in California for the purpose of enhancing their survival.

Permit No.: TE-060175.

Applicant: Teresa Newkirk, La Quinta, California.

The applicant requests a permit to take (harass by survey and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), and (*monitor nests*) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys in San Diego, Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties, California for the purpose of enhancing their survival.

Permit No.: TE-056222.

Applicant: Paul Severns, Springfield, Oregon.

The applicant requests a permit to take (survey by pursuit) the Fender's blue butterfly (*Icaricia icarioides fenderi*) in conjunction with removing/reducing to possession the *Lupinus sulphureus kincaidii* (Kincaid's lupine) in Polk and Lane Counties, Oregon for the purpose of enhancing their survival.

Permit No.: TE-045994.

Applicant: Geological Survey, Biological Research Division, Western Ecological Research Center, San Diego, California.

The permittee requests an amendment to take (harass by survey, tag, mark, and collect) the mountain yellow-legged frog (*Rana muscosa*), and take (harass by survey and collect) the tidewater goby

(*Eucyclogobius newberryi*) in conjunction with research throughout the range of each species for the purpose of enhancing their survival.

Permit No.: TE-009018.

Applicant: Rancho Santa Ana Botanic Garden, Claremont, California.

The permittee requests an amendment to remove/reduce to possession the *Ambrosia pumila* (San Diego Ambrosia), *Arabis hoffmannii* (Hoffman's rockcress), *Arctostaphylos confertiflora* (Santa Rosa island manzanita), *Astragalus jaegerianus* (Lane mountain milk-vetch), *Astragalus pycnostachyus* var. *lanosissimus* (Ventura Marsh milk-vetch), *Berberis pinnata* ssp. *insularis* (Island barberry), *Castilleja mollis* (Soft-leaved paintbrush), *Caulanthus californicus* (California jewelflower), *Chorizanthe pungens* var. *hartwegiana* (Ben Lomond spineflower), *Chorizanthe robusta* vars. *robusta* and *hartwegii* (Robust spineflower), *Cirsium fontinale* var. *obispoense* (Chorro Creek bog thistle), *Cirsium loncholepis* (La Graciosa thistle), *Clarkia speciosa* spp. *immaculata* (Pismo clarkia), *Cupressus abramsiana* (Santa Cruz cypress), *Eriastrum hooveri* (Hoover's woolly-star), *Eriodictyon altissimum* (Indian Knob mountain balm), *Eriodictyon capitatum* (Lompoc yerba santa), *Erysimum menziesii* vars. *menziesii* and *yadoni* (Menzies' wallflower), *Erysimum teretifolium* (Ben Lomond wallflower), *Galium buxifolium* (Island bedstraw), *Gilia tenuiflora* spp. *arenaria* (Monterey gilia), *Gilia tenuiflora* spp. *hoffmannii* (Hoffmann's slender-flowered gilia), *Hemizonia incresens* spp. *villosa* (Gaviota tarplant), *Lasthenia conjugens* (Contra Costa goldfields), *Layia carnosa* (Beach layia), *Lembertia congdonii* (San Joaquin wooly-threads), *Lupinus nipomensis* (Nipomo Mesa lupine), *Lupinus tidestromii* (Clover lupine), *Malacothamnus fasciculatus* var. *nesioticus* (Santa Cruz Island bushmallow), *Malacothrix indecora* (Santa Cruz Island malacothrix), *Malacothrix squalida* (Island malacothrix), *Nitrophila mohavensis* (Amargosa niterwort), *Oenothera avita* ssp. *eurekaensis* (Eureka Valley evening-primrose), *Phacelia insularis* ssp. *insularis* (Island phacelia), *Piperia yadonii* (Yadon's piperia), *Potentilla hickmanii* (Hickman's potentilla), *Rorippa gambellii* (Gambel's watercress), *Suaeda californica* (California seablite), *Thysanocarpus conchuliferus* (Santa Cruz Island fringe-pod), and *Trifolium trichocalyx* (Monterey clover) in conjunction with restoration efforts throughout the range of each species in California for the purpose of enhancing their survival.

Permit No.: TE-816187.

Applicant: David Cook, Santa Rosa, California.

The permittee requests an amendment to take (harass by survey, mark, collect tissue samples, release, and recapture) the Sonoma distinct population segment of the California tiger salamander (*Ambystoma californiense*) in conjunction with ecology, distribution, and genetics research in Sonoma County, California for the purpose of enhancing its survival.

Permit No.: TE-768251.

Applicant: Biosearch Wildlife Surveys, Santa Cruz, California.

The permittee requests an amendment to take (harass by survey, capture, handle, mark, collect tissue samples or small individuals, release, and collect voucher specimens) the Sonoma distinct population segment of the California tiger salamander (*Ambystoma californiense*) in conjunction with ecology, distribution, and genetics research in Sonoma County, California for the purpose of enhancing its survival.

Permit No.: TE-795938.

Applicant: EIP Associates, Sacramento, California.

The permittee requests an amendment to take (harass by survey, capture, handle, collect tissue samples or small individuals, release, and collect voucher specimens) the Sonoma distinct population segment of the California tiger salamander (*Ambystoma californiense*) in conjunction with ecology, distribution, and genetics research in Sonoma County, California for the purpose of enhancing its survival.

Permit No.: TE-702631.

Applicant: Regional Director, Region 1, Fish and Wildlife Service, Portland, Oregon.

The permittee requests an amendment to take the southern California distinct population segment of the mountain yellow-legged frog (*Rana muscosa*) and the Sonoma County distinct population segment of the California tiger salamander (*Ambystoma californiense*), and remove/reduce to possession *Ambrosia pumila* (San Diego ambrosia) in conjunction with recovery efforts throughout the range of each species for the purpose of enhancing their propagation and survival.

Permit No.: TE-060179.

Applicant: The Zoological Society of San Diego, San Diego, California.

The applicant request a permit to take (collect eggs, chicks, and adults; and band and radio-tag) the alala (*Corvus hawaiiensis*), Oahu elepaio (*Chasiempis sandwichensis gayi*), small Kauai thrush (*Myadestes palmeri*), ou (*Psittirostra psittacea*), palila (*Loxooides bailleui*),

Hawaii akepa (*Loxops coccineus*), nukupuu (*Hemignathus lucidus*), akiapolaau (*Hemignathus munroi*), Hawaii creeper (*Oreomystis mana*), Maui parrotbill (*Pseudonestor xanthophrys*), poouli (*Melamprosops phaesosoma*), akohekohe (*Palmeria dolei*), Kauai oo (*Moho braccatus*), and the nene (*Nesochen sandvicensis*) in conjunction with captive propagation and release in the State of Hawaii for the purpose of enhancing their survival.

Permit No.: TE-793644.

Applicant: Camm C. Swift, Arcadia, California.

The permittee requests an amendment to take (harass by survey, capture, handle, release, and collect voucher specimens) the Owens pupfish (*Cyprinodon radiosus*) and the Owens tui chub (*Giula bicolor mohavensis*) in conjunction with surveys in Inyo County, California for the purpose of enhancing their survival.

Permit No.: TE-023496.

Applicant: Endangered Species Recovery Program, Fresno, California.

The permittee requests an amendment to take (capture, mark, and collect biological samples) the Buena Vista Lake shrew (*Sorex ornatus relictus*) in conjunction with scientific research throughout the range of the species for the purpose of enhancing its survival.

Dated: August 8, 2002.

Rowan W. Gould,

Regional Director, Region 1, Portland, Oregon.
[FR Doc. 02-22171 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for renewal of the collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below.

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 within 30 days in order to assure their maximum consideration. Comments and suggestions on the

requirement should be made directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to the Bureau Clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648-7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. the quality, utility, and clarity of the information to be collected; and
4. 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 forms of information technology.

Title: Frogwatch USA.

Current OMB Approval Number: 1028-0072.

Summary: The collection of information referred herein applies to a World-Wide Web site that permits individuals to submit records of the number of calling amphibians at wetlands. The Web site is termed Frogwatch USA. Information will be used by scientists and federal, state, and local agencies to identify wetlands showing significant declines in populations of amphibians.

Estimated Annual Number of Respondents: 1,500.

Estimated Annual Burden Hours: 2,250 hours.

Affected Public: Primarily U.S. residents.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648-7313, or see the website at www.mp2-pwrc.usgs.gov/frogwatch/.

Dated: June 27, 2002.

Dennis B. Fenn,

Associate Director for Biology.

[FR Doc. 02-22312 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-Y7-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NM-930-1310-01); (TXNM 90928)]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease TXNM 90928

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease TXNM 90928 for lands in Zapata County, Texas, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 2002, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof and 16 2/3 percent, respectively. The lessee has paid the required \$500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 USC 188), and the Bureau of Land Management is proposing to reinstate the lease effective June 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

For further information contact: Gloria S. Baca, BLM, New Mexico State Office, (505) 438-7566.

Dated: July 24, 2002.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 02-22400 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NV-920-1330-GEOT-FI)]

Classification; Salt Wells Known Geothermal Resources Area, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification of the Salt Wells Known Geothermal Resources Area, Nevada.

SUMMARY: This notice alerts the public that the Bureau of Land Management has expanded the size of the Salt Wells Known Geothermal Resources Area by 1,280 acres.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Hoops, BLM Nevada State Office, P.O.

Box 12000, Reno, Nevada 89520-0006, 775-861-6568.

SUPPLEMENTARY INFORMATION: Under the Secretary of the Interior's authority contained in Sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020) we are expanding the boundaries of the Salt Wells Known Geothermal Resources Area by 1,280 acres to include:

Mt. Diablo Meridian, Nevada

T. 17 N., R. 30 E.

Secs. 35, 36

The description of the entire Salt Wells Known Geothermal Area is now as shown below:

Nevada

Salt Wells Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 17 N., R. 30 E.

Secs. 23-26, 35, 36.

The above area aggregates 3,840.00 acres, more or less.

Dated: July 31, 2002.

Gail Acheson,

Acting State Director, Nevada.

[FR Doc. 02-22390 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(ID-084-1060-AE)]

Notice of Road Restriction Order and Temporary Closure of Road and Challis Wild Horse Corrals Area, Custer County, ID, Order No. ID-084-33

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is given that the road to the Challis BLM Wild Horse Corrals, from where it leaves the county road (Upper Hot Springs Road) to the corrals, and the horse corrals and area immediately adjacent to the corrals, will be closed to the general public during the hours from 10 p.m. to 6 a.m. (MDST) daily beginning on August 19, 2002, and continuing through midnight on September 22, 2002. Members of the public may only travel on this road and enter the wild horse corral area during the closure hours with the written permission of and when accompanied by an authorized Bureau of Land Management employee. Persons with authorization to utilize the area by BLM regulations, contracts, leases or permits, may use the area described in accordance with those authorizations. Nothing in this closure affects the

exercise of valid existing rights created by a contract, right of way, lease, permit or mining claim that is carried out in accordance with the regulations under which the rights were established.

FOR FURTHER INFORMATION CONTACT:

Stephanie Snook at BLM UCSC District, 1808 N. Third St., Coeur d'Alene, ID, 83814 or call (208) 769-5004.

SUPPLEMENTARY INFORMATION: The one mile road closure and horse corrals are located in section 6, T. 13N., R. 20E., Boise Meridian, Idaho. A map depicting the closure area and road is available for public inspection at the Bureau of Land Management, Challis Field Office, located on Highway 93, Challis, Idaho.

The authority for establishing this restriction is contained in Title 43, Code of Federal Regulations, Subpart 8364, Section 1 (43 CFR 8364.1). This restriction does not apply to:

(1) Any federal, state or local government officer or member of an organized rescue or fire fighting force while in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, contractor, or cooperater while in the performance of an official duty.

This temporary road restriction and closure is necessary to protect members of the public, the wild horses and burros, and the facility. Wild horses are, by definition, not yet gentled and may pose a danger to members of the public.

Violation of this order is punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed one year.

Dated: July 31, 2002.

Stephanie Snook,

Acting District Manager.

[FR Doc. 02-22392 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-099-1150-MQ]

Notice Rescinding the October 18, 1999, Shooting Area Closure in South Phillips County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Rescinding Notice of Closure.

SUMMARY: The Bureau of Land Management (BLM) on October 18, 1999, closed about 26,500 acres of public land to the discharge or use of firearms. The areas closed are described as the 40-Complex between Dry Fork and Beauchamp Creek, and an area south of Pea Ridge in south Phillips

County, Montana. The purpose of the closure was to protect habitat for the reintroduction of the endangered black-footed ferret (*Mustela nigripes*). That habitat is black-tailed prairie dog (*Cynomys ludovicianus*) colonies.

House Bill 492 (HB 492) was passed by the Montana Legislature to allow the Montana Fish, Wildlife, and Parks (FWP) to manage black and white-tailed prairie dogs on Bureau of Land Management lands. Further action by FWP consisted of amending Administrative Rules of Montana (ARM) 12.2.501, to include black-tailed and white-tailed prairie dogs in the definition of non-game wildlife in need of management. The FWP Commission approved the adoption of the proposed ARM rule on January 24, 2002, and FWP filed the ARM adoption notice on February 20, 2002. Part of this rule making was to place a seasonal shooting closure on all BLM lands in Montana for black-tailed prairie dogs and a year-round shooting closure on black-footed ferret reintroduction sites. Since FWP has placed a year-round shooting closure on black-footed reintroduction sites, BLM's 1999 shooting closure is no longer required to protect the habitat for the black-footed ferret.

The BLM lands in the 40-Complex include:

T. 24 N., R. 27 E., sec. 20, all; sec. 21, all; sec. 25, all; sec. 26, all; sec. 27, all; sec. 28, all; sec. 29, N $\frac{1}{2}$ and SE $\frac{1}{4}$; sec. 34, all; sec. 35, all.

T. 24 N., R. 28 E., sec. 31, lots 1-4, E $\frac{1}{2}$ W $\frac{1}{2}$ and E $\frac{1}{2}$; Sec. 32, all.

T. 23 N., R. 27 E., sec. 1, lots 1-4, S $\frac{1}{2}$ N $\frac{1}{2}$ and S $\frac{1}{2}$; sec. 2, lots 1-4, S $\frac{1}{2}$ N $\frac{1}{2}$ and S $\frac{1}{2}$; sec. 3, lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$; sec. 10, E $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$; sec. 11, all; sec. 12, all; sec. 13, all.

T. 23 N., R. 28 E., sec. 5, lots 1-4, S $\frac{1}{2}$ N $\frac{1}{2}$ and S $\frac{1}{2}$; sec. 6, lots 1-7, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, and E $\frac{1}{2}$ SW $\frac{1}{4}$; sec. 7, lots 1-4; E $\frac{1}{2}$ W $\frac{1}{2}$ and E $\frac{1}{2}$; sec. 8, all; sec. 17, all; sec. 18, lots 1-4, E $\frac{1}{2}$ W $\frac{1}{2}$, and E $\frac{1}{2}$.

This includes the following prairie dog towns: B040, B041, B042, B043, B045, B047, B069, B072, and B148.

The BLM lands in the area south of Pea Ridge include:

T. 22 N., R. 29 E., sec. 9, all; sec. 10, all; sec. 11, all; sec. 13, all; sec. 14, all; sec. 15, all; sec. 17 E $\frac{1}{2}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$; sec. 20, N $\frac{1}{2}$ and SE $\frac{1}{4}$; sec. 21, all; sec. 22, all; sec. 23, all; sec. 24, all; sec. 25, all; sec. 26, all; sec. 27, all; sec. 28, all; sec. 29, all.

T. 22 N., R. 30 E., sec. 18, lots 1-4, E $\frac{1}{2}$ W $\frac{1}{2}$ and E $\frac{1}{2}$; sec. 19, lots 1-4, E $\frac{1}{2}$ W $\frac{1}{2}$ and E $\frac{1}{2}$; sec. 30, lots 1-4, E $\frac{1}{2}$ W $\frac{1}{2}$ and E $\frac{1}{2}$.

This includes the following prairie dog towns: B095, B096, B111, B163, and B164.

BLM would consider appropriate actions if FWP decides to rescind or significantly modify the Annual Rule Regulating Prairie Dog Shooting on Public Lands. This could include implementing a Land Use Closure on the 40-Complex and/or any other black-footed ferret reintroduction site under BLM administration to protect black-footed ferrets and the associated habitat in accordance with 43 CFR 8364.1.

The effective date of rescinding this closure is the date the notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Bruce Reed at 406-654-5100.

Authority: 43 CFR 8364.1

Dated: June 17, 2002.

Bruce W. Reed,

Field Manager, Bureau of Land Management.

[FR Doc. 02-22404 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-DN-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU-80041]

Notice of Invitation to Participate In Coal Exploration Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation to participate in Coal Exploration program Canyon Fuel Company, LLC, Flat Canyon Tract, Boulger Canyon Area. Canyon Fuel Company is inviting all qualified parties to participate in its proposed exploration of certain Federal Coal deposits in Sanpete County, Utah.

SUPPLEMENTARY INFORMATION: This notice of invitation to participate in Coal Exploration program Canyon Fuel Company LLC, Flat Canyon Tract, Boulger Canyon Area. Canyon Fuel Company is inviting all qualified parties to participate in its proposed exploration of certain Federal Coal deposits in Sanpete County, Utah:

T. 13 S., R. 6 E., SLM, UT

Sec. 28, lots 4-8, SW; Sec. 33, E2.

Containing 667.93 acres.

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145, and to Mark Bunnell, Mine Geologist, Canyon Fuel Company, LLC, Skyline Mine, HC 35 Box 380, Helper, Utah 84526. Such written notice must

be received within thirty days after publication of this notice in the **Federal Register**.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. An exploration plan submitted by Canyon Fuel Company, LLC, detailing the scope and timing of this exploration program is available for public review during normal business hours in the public room of the BLM State Office, 324 South State Street, Salt Lake City, Utah, under the serial number UTU-80041.

FOR FURTHER INFORMATION CONTACT:

Chris Merritt, Salt Lake City, Bureau of Land Management, (801) 539-4109.

Dated: June 3, 2002.

Kent Hoffman,

Deputy State Director, Lands and Minerals.

[FR Doc. 02-22389 Filed 8-30-02; 8:45 am]

BILLING CODE 4310--\$-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-650-02-1610-JP-064B]

Notice of Extension of Scoping Phase Public Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of the scoping phase public comment period for an Amendment to the California Desert Conservation Area Plan and Environmental Impact Statement regarding vehicle route designation in the Surprise Canyon Area of Critical Environmental Concern.

SUMMARY: The Notice of Intent for the Amendment to the California Desert Conservation Area Plan and Environmental Impact Statement regarding vehicle route designation in the Surprise Canyon Area of Critical Environmental Concern, Inyo County, California was published in the **Federal Register** on May 30, 2002 (Volume 67, Number 104, Pages 37859-37860).

DATES: The time period for accepting written comments on the scope of the proposed plan amendment and Environmental Impact Statement has been extended to October 3, 2002.

ADDRESSES: Comments should be sent to Hector Villalobos, Field Manager, Bureau of Land Management, Ridgecrest Field Office, 300 S. Richmond Rd., Ridgecrest, CA 93555. Comments, including names and addresses of respondents, will be available for public review at the Ridgecrest Field Office

during normal working hours (7:30 a.m. to 4 p.m., Monday through Friday, except holidays), and may be published as part of the Environmental Impact Statement or other related documents. Individuals 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 at the beginning of your comment letter. 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:

Jeffrey B. Aardahl, Bureau of Land Management, Ridgecrest Field Office, 300 S. Richmond Rd., Ridgecrest, CA 93555, telephone number (760) 384-5420, or e-mail at jaardahl@ca.blm.gov.

Dated: June 12, 2002.

Hector Villalobos,

Field Manager.

[FR Doc. 02-22388 Filed 8-30-02; 8:45 am]

BILLING CODE 4310--\$-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-020-1320-EL]

Notice of Intent to Prepare a Land Use Analysis/Environmental Assessment

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent to prepare a Land Use Analysis/Environmental Assessment.

SUMMARY: A Land Use Analysis/Environmental Assessment (LUA/EA) is being prepared to consider leasing Federal coal in response to lease application KYES-51088. The 64.51-acre application area in Whitley and McCreary Counties, Kentucky is managed by the Daniel Boone National Forest. The LUA/EA will be a cooperative effort among the Bureau of Land Management, the Forest Service and the Office of Surface Mining. This notice is issued pursuant to 40 CFR 1501.7 and 43 CFFR 1610.2(c).

The planning effort will follow the procedures set forth in 43 CFR part 1600. As provided at 43 CFR 3420, information and data pertaining to the coal deposits or other resources, which potentially may be affected by development of the coal, are requested. Additionally, the public is invited to participate in this planning process, beginning with the identification of planning issues and criteria.

DATES: Input will be accepted for 30 days from the date of this publication. 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 comments. Such requests will be honored to the extent allowed by the law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in their entirety.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS 39206-3039.

FOR FURTHER INFORMATION CONTACT: John A. Lewis, Lead for the LUA/EA, Jackson Field Office at 601-955-5437.

SUPPLEMENTARY INFORMATION: The coal lease application was filed by Southfork Coal Company to supplement their existing private and other federal reserves currently under lease. The reserves would be mined by underground methods from a portal area on private surface and mineral estates. A permit has been issued by the State of Kentucky for this 14.47-acre portal area located 0.8 miles from the intersection of County Highway 92 and the Whitley/McCreary County line.

The BLM has responsibility to address coal lease applications on federal mineral estate. The Forest Service has the responsibility to consider consenting to lease Federal coal underlying Forest Service managed surface lands. The Office of Surface Mining provides recommendations to the Secretary of the Interior regarding approval of mining plans. An interdisciplinary team from these three agencies will be used in the preparation of the LUA/EA. Preliminary issues, subject to change as a result of public input, are (1) potential impacts of coal exploration and development on the surface and subsurface resources and (2) consideration of restrictions on lease rights to protect surface resources and uses by the Forest Service.

Due to the limited scope of this LUA/EA process, a public meeting is not scheduled during this scoping stage; however, a public hearing will be conducted, in accordance with 43 CFR 3420 and 1600, upon the completion of the LUA/EA.

Dated: July 23, 2002.

Duane Winters,

Acting Field Manager.

[FR Doc. 02-22399 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-AG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-020-02-7122-DS-64GG]

New Mexico; Notice of Intent To Prepare a Plan Amendment to the Taos Resource Management Plan With an Associated National Environmental Policy Act (NEPA) Documentation

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent to amend the Taos Field Office's Resource Management Plan (RMP) and preparation of an associated NEPA document.

SUMMARY: Pursuant to 43 CFR 1600, the Bureau of Land Management (BLM), Taos Field Office is considering an amendment to the Taos Resource Management Plan (RMP) to provide for the possible disposal of approximately 640 acres, more or less, of public land in Rio Arriba County, New Mexico, and to provide improvements associated with access.

This amendment will be addressed through an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The level of NEPA documentation will be determined following public scoping.

As a part of the public participation process, the public is invited to submit comments on this proposal for consideration in the RMP Amendment/NEPA documentation. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

ADDRESSES: Written comments should be sent to: Lora Yonemoto, Taos BLM Field Office, 226 Cruz Alta Rd., Taos, NM 87571. If you are not currently on our mailing list and wish to receive meeting notices and copies of planning documents, please send your name and address to the address listed above.

FOR FURTHER INFORMATION CONTACT: Lora Yonemoto at the address above, or call 505-758-8851.

SUPPLEMENTARY INFORMATION: The following described public land in Rio Arriba County, New Mexico, will be examined for possible disposal under sections 209 and 212 of the Federal Land Policy and Management Act of 1976, 43 U.S.C 1713 and 1719 and the Recreation and Public Purposes Act of 1926, as amended by the Recreation and Public Purpose Amendment Act of 1988.

T. 23 N., R. 9 E.,
Sec. 6.

The land described above contains 640 acres, more or less.

An amendment to the RMP and associated environmental documentation (EA or EIS) will be completed for this action. If the land is found suitable for disposal, the United States would offer it to the North Central Solid Waste Authority (NCSWA) at \$10.00 per acre, and a right-of-way grant for the associated access. This action would provide the member organizations within the NCSWA with a site for solid waste disposal. The public is invited to provide scoping comments on the issues that should be addressed in the plan amendment and EA or EIS. The following resources will be considered in the preparation of the plan amendment: lands, wildlife, range, minerals, cultural resources, watershed/soils, threatened/endangered species, visual, and hazardous materials. Staff specialists representing these resources will make up the planning team. Several public meetings are planned. Public meetings will be announced in the Rio Grande Sun newspaper and at the Taos BLM web page (www.nm.blm.gov/www/tafo/tafo_home.html). At least 15 days prior notice will be given before a meeting is held. Written comments will be accepted for at least 15 days after the last scoping meeting is held. Comments on the scope of the proposed plan amendment and environmental document should be sent to Lora Yonemoto at the address above no later than 45 days after publication of this notice in the **Federal Register**. Current land use planning information is available at the Taos Field Office. Office hours are 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Dated: May 16, 2002.

Carsten F. Goff,

New Mexico Acting State Director.

[FR Doc. 02-22391 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-172-02-5440-EQ-C028]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Amendment to the San Juan/San Miguel Resource Management Plan (RMP) for a Proposed Ski Area Near Silverton, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent. This notice will initiate a public scoping period.

SUMMARY: Pursuant to Section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA) and Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM) will prepare, by a third-party contractor, an EIS on a proposed ski area in southwestern Colorado CoreMountain Enterprises, LLC, proposes to use approximately 1,300 acres of BLM managed public land, combined with about 400 acres of their private lands, for a downhill ski area located about 5 miles north of Silverton, Colorado. The proposed action may be modified, as a result of comments received during scoping or during the preparation of the draft EIS.

The proposed action will require a plan amendment if it results in a change in the scope of resource uses or decisions in the San Juan/San Miguel RMP.

DATES: Written comments will be accepted until October 3, 2002. If the agency determines that public scoping meetings are needed, all parties on the project's mailing list will be notified through written correspondence. Additionally, public notices for these scoping meetings will be placed in local newspapers two weeks prior to the meetings.

ADDRESSES: Comments should be sent to Bureau of Land Management, San Juan Public Lands Center, Columbine Field Office, 15 Burnett Court, Durango, Colorado 81301.

FOR FURTHER INFORMATION CONTACT: Richard Speegle, Team Leader, Columbine Field Office, at (970) 375-3310.

SUPPLEMENTARY INFORMATION: On August 9, 2001, Core Mountain Enterprises, LLC (Silverton Outdoor Learning and Recreation Center) submitted a proposal for a ski area and recreation/learning facility, titled the "Silverton Outdoor Learning and Recreation Center"

(SOLRC) on public lands north of Silverton, Colorado. The scope of the proposal includes lift-accessed skiing, snow boarding, and winter related educational courses; and hiking, mountain biking and lift-accessed scenic chairlift rides during the summer months. Seasonal foot bridges would be installed across Cement Creek for skier access. In addition, a toilet facility and two summer use trails (one would be a mountaineering trail, the other a hiking/biking trail) would be constructed. The proposed project area encompasses about 400 acres of private land, owned by Core Mountain Enterprises, LLC, and about 1,300 acres of Federal lands managed by the BLM, located within sections 20–21, 27–34 of protracted Township 42 N., R.7 W., and, also within sections 3–9 of protracted Township 41 N., R. 7 W., New Mexico Principal Meridian.

During the fall of 2001, while this proposal was being evaluated through the Environmental Assessment (EA) process, potentially significant impacts were identified that necessitate preparation of an EIS. Potential issues to be addressed in the EIS include, but are not limited to, avalanche safety, Canada lynx habitat, impacts on the local winter economy, impacts to neighboring private lands, and the need for temporary public access closures due to safety reasons related to avalanche control. As part of the earlier EA process, public meetings were held in Durango and Silverton to discuss the proposal and obtain public input. Written comments received during the previous public meetings held in Durango and Silverton, Colorado, in August of 2001, are being carried forward as part of the scoping for this EIS. It is not necessary to comment again if comments are the same as during the original EA scoping process. This notice initiates an additional formal 30-day public scoping period during which public comments related to the issues to be addressed, viable alternatives that should be considered, and potential impacts that may occur are requested. The San Juan County Commissioners and the Silverton City Council have been consulted concerning this proposal and are supportive. Consultation will continue as new issues or alternatives develop through the EIS process.

Detailed and supplementary information is available for review at the office of the Bureau of Land Management, San Juan Field Office, 15

Burnett Court, Durango, Colorado 81301.

Thurman H. Wilson,

Acting Center Manager, San Juan Public Lands Center.

[FR Doc. 02–22403 Filed 8–30–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

Notice of Public Meeting, Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Arizona Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held October 3, 2002 at the BLM National Training Center, 9828 North 31st Avenue in Phoenix, Arizona, beginning at 8 a.m. The public comment period will begin at approximately 11:30 a.m., and the meeting will adjourn at approximately 1 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Arizona. At this meeting, topics to be discuss include: review of the August 1, 2002 meeting minutes; BLM State Director's Update on Statewide Issues; Presentations on Land Tenure Strategy and Land & Water Conservation Fund Acquisitions, and Noxious Weeds, Planning Updates; Update Proposed Field Office Rangeland Resource Teams; RAC Questions on Written Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro, and Planning Working Groups; Reports from RAC members; and Discussion of future meetings.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to

attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, AZ, Telephone (602) 417–9215.

Dated: August 27, 2002.

Carl Rountree,

Arizona Associate State Director.

[FR Doc. 02–22310 Filed 8–30–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–1010–01]

Notice of Seasonal Closure for All Motorized Vehicles on Public Land in the Silver Creek Ridge Area, Sublette County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of seasonal vehicular closure.

SUMMARY: In response to a request from the Wyoming Game & Fish Department (WYG&F), a closure to all motorized vehicles, including over-the-snow vehicles will be in effect starting November 15th through January 31st of each year for the Silver Creek Ridge. A sign at the second irrigation ditch crossing 1.6 miles east of State Route 353 establishes the point beyond which the seasonal closure is in effect. The purpose of this closure is to allow elk to migrate free of motorized disturbance through this area. This will assist the WYG&F in decreasing elk depredation on stored agricultural crops and meet WYG&F management objectives.

EFFECTIVE DATES: This closure will be effective each year between November 15th through January 31st inclusive. This closure will remain in effect unless modified or rescinded by the Authorized Officer, (BLM Pinedale Field Manager).

FOR FURTHER INFORMATION CONTACT: Bill Wadsworth, Realty Specialist or Priscilla Mecham, Field Manager, Pinedale Field Office, P.O. Box 768, Pinedale, Wyoming 82941. Telephone (307) 367–5300.

SUPPLEMENTARY INFORMATION: The objective for closure of the Silver Creek Ridge area is to improve the elk management objectives in the area and reduce depredation of stored agricultural crops on adjoining ranches. The WYG&F have been working with

adjoining land owners to allow controlled access onto private lands. The adjoining land owners have agreed to allow access onto their private land to hunters only if the seasonal closure is placed on the BLM lands. The seasonal closure will close most of the Silver Creek Ridge area to all motorized use, including over-the-snow vehicles from November 15th through January 31st each year. The WYG&F feels that motorized vehicle use can disrupt the daily activity patterns of the elk thus limiting the harvest. By restricting motorized vehicle use, the elk will move more freely in the Silver Creek Ridge area, and remain undisturbed by motorized vehicles. This closure will also help by reducing resource damage that is caused by motorized vehicle use off-road.

This seasonal use closure applies to public lands in Sublette County, Wyoming, located approximately 8 miles east of Boulder, Wyoming. The designation affects all public lands starting at T. 32 N., R. 107 W., Section 24, E¹/₂, Sixth Principle Meridian on the Silver Creek Ridge area. Motorized vehicle use designations apply to all motorized vehicles with the exceptions of: (1) Any fire, military, emergency, or law enforcement vehicle when used for emergency purposes or any combat support vehicle when used for national defense purposes; (2) any vehicle whose use is expressly authorized by the BLM under permit, lease, license, or contract; and (3) any government vehicle on official business.

Authority for closure orders is provided under 43 CFR subpart 8364.1. Violations of this closure are punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months.

Dated: June 27, 2002.

Priscilla Mecham,

Pinedale Field Manager.

[FR Doc. 02-22395 Filed 8-30-02; 8:45 am]

BILLING CODE 1430-ER-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-930-1310-02; NNMN 102020]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease NNMN 102020

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease NNMN 102020 for lands in Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing

from March 1, 2002, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof and 16²/₃ percent, respectively. The lessee has paid the required \$500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective March 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT:

Gloria S. Baca, BLM, New Mexico State Office, (505) 438-7566.

Dated: July 24, 2002.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 02-22397 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-1430-EU, WYW149160, WYW155131]

Opening of National Forest System Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the temporary segregative effect as to 1902.02 acres of Nations Forest System lands which were originally included in the applications for exchanges in the Shoshone and Medicine Bow National Forests.

EFFECTIVE DATE: September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Jimi Metzger, BLM Wyoming State Office, 5353 Yellowstone Rd., P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6250.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2091.3-2(b), at 9 a.m. on September 3, 2002, the following described lands will be relieved of the temporary segregative effect of exchange in applications WYW 149160 and WYW 155131.

WYW 149160

T. 46 N., R. 103 W., 6th Principal Meridian, Wyoming Sec. 21, NW¹/₄SE¹/₄, W¹/₂NE¹/₄SE¹/₄.

The area described contains 60.00 acres in Park County, Wyoming.

WYW 155131

T. 28 N., R. 75 W., 6th Principal Meridian, Wyoming

Sec. 1, lots 5, 6, 7, 8;

Sec. 2, lots, 5, 6, 7, 8, NW¹/₄SE¹/₄;

Sec. 3, NW¹/₄SW¹/₄;

Sec. 4, NW¹/₄SE¹/₄;

Sec. 10, W¹/₂NW¹/₄, N¹/₂SE¹/₄;

Sec. 11, S¹/₂NE¹/₄, NW¹/₄NW¹/₄, SE¹/₄NW¹/₄, N¹/₂SW¹/₄;

Sec. 12, S¹/₂N¹/₂, SW¹/₄;

Sec. 20, SW¹/₄NE¹/₄, W¹/₂, W¹/₂SE¹/₄;

Sec. 25, W¹/₂NW¹/₄;

Sec. 27, SW¹/₄SW¹/₄;

Sec. 28, S¹/₂NE¹/₄, NW¹/₄SW¹/₄.

The area described contains 1842.020 acres in Albany County, Wyoming.

At 9 a.m. on September 3, 2002, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession, under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The BLM will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: May 31, 2002.

Mel Schlagel,

Realty Officer.

[FR Doc. 02-22401 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CAAZRI06106]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification for Conveyance

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice serves to amend the description of lands contained in a Notice of Realty Action published in the **Federal Register** March 6, 1998 (Volume 63, Number 44, Page 11307–11308). The following lands, located adjacent to the Palo Verde Solid Waste Landfill in Imperial County, California, have been examined and found suitable for conveyance to the County of Imperial under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*): SBBM, T.9S., R.21E., sec. 15, S¹/₂SW¹/₄SW¹/₄NE¹/₄SW¹/₄, SE¹/₄SE¹/₄SE¹/₄NW¹/₄SW¹/₄, E¹/₂E¹/₂NE¹/₄SW¹/₄SW¹/₄ (4.38 acres, more or less).

Background: The Palo Verde Solid Waste Landfill has been operated by the County of Imperial, Department of Public Works on a 40-acre site leased from the Bureau of Land Management since 1966. Prior to fencing the boundary of the leased land, a portion of a pesticide container cell was inadvertently placed outside the perimeter of the landfill on the lands described above. Subsequent to the 1988 amendment of the R&PP Act of 1926, authorizing the issuance of patents to lands devoted to solid waste disposal, BLM notified the County that public lands would no longer be leased for solid waste disposal. Consequently, the Imperial County Board of Supervisors adopted Resolution No. 97–078, initiating the purchase/patent process for those public lands previously leased for this purpose. Because the County has converted the Palo Verde Landfill to a transfer station, the acreage has been reduced from the originally leased 40 acres, to approximately 31.25 acres so that only those lands impacted by previous landfill activities will be patented.

The described lands are not needed for Federal purposes, and conveyance without reversionary interest is consistent with current BLM land use planning. A landfill transfer audit and environmental assessment have been conducted in compliance with the National Environmental Policy Act of 1969, as well as other Federal and State laws applicable to the disposal of solid waste and hazardous substances. The patent will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. Those rights granted to North Baja Pipeline, L.L.C. for a natural gas pipeline and related facilities, together with approved ingress and egress thereto, as described in the approved North Baja Pipeline Plan of Development, dated March 2002, by way of right-of-way CACA–42662.

4. All minerals shall be reserved to the United States together with the right to prospect for, mine and remove same under applicable law and regulations as prescribed by the Secretary of the Interior.

5. The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances.

6. The patentee shall indemnify and hold harmless the United States against any legal liability or future costs that may arise out of any violation of such laws.

7. No portion of the land covered by such patent shall under any circumstance revert to the United States.

DATES: For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments regarding this suitability determination to the Field Manager, Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior 60 days from the date of publication of this Notice.

FOR FURTHER INFORMATION, CONTACT: Linda Self, Realty Specialist, at the above address, telephone (760) 337–4426, or e-mail lsself@ca.blm.gov.

SUPPLEMENTARY INFORMATION: Publication of this Notice in the **Federal Register** segregates the public land to the extent that it will not be subject to appropriation under the public land laws, including locations under the mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

Dated: July 25, 2002.

Greg Thomsen,
Field Manager.

[FR Doc. 02–22402 Filed 8–30–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–EU; NMMN 96514]

Notice of Realty Action (NORA); Notice of Termination of Recreation and Public Purposes (R&PP) Classification, Opening Order

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes (R&PP) Classification NMMN 96514 in its entirety and opens the surface and mineral estate to entry pursuant to sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1713, 1719).

DATES: Termination of the Classification is effective upon publication of this notice. The land will be open to entry at 8 a.m. on October 3, 2002.

ADDRESSES: BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Lorraine Salas, Realty Specialist at the address above or by calling (505) 525–4388.

SUPPLEMENTARY INFORMATION: The original R&PP lease was issued on February 7, 1997 for a term of 25 years to Las Cruces Public Schools. The lease was terminated on October 10, 2001. The NORA was published in the **Federal Register** on December 2, 1996 (61 FR 63857–63858) announcing the suitability of the land for classification for lease or conveyance to the Las Cruces Public School District under the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). The Las Cruces Public School District proposed to use the land for a Regional Park and Sports Complex. The land is described as follows:

T. 22 S., R. 2 E., NMPM
Sec. 11, lot 2, S¹/₂S¹/₂NE¹/₄, portion of
S¹/₂S¹/₂NW¹/₄, E¹/₂SW¹/₄, NW¹/₄SW¹/₄,
SE¹/₄.

Containing 326.8 acres, more or less.

Amy L. Lueders,
Field Manager, Las Cruces.

[FR Doc. 02–22393 Filed 8–30–02; 8:45 am]

BILLING CODE 1430–VC–P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[CO-913-1630-PD]

Notice of Proposed Supplementary Rules for Public Land Administered by the Bureau of Land Management in Colorado Relating to the Unlawful Use of Alcohol by Underage Persons, Driving Under the Influence of Alcohol and/or Drugs, and Drug Paraphernalia Use and Possession on Public Land**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Proposed supplementary rules for public land within the State of Colorado.**SUMMARY:** The Bureau of Land Management (BLM) is proposing supplementary rules to apply to the public lands within the State of Colorado. The rules relate to the illegal use of alcohol and drugs on the public lands. The BLM needs the supplementary rules to protect natural resources and the health and safety of public land users. These supplementary rules will allow BLM Law Enforcement Officers to enforce on public lands regulations pertaining to Alcohol and Drug laws in a manner consistent with current State of Colorado laws as contained in the Colorado Revised Statutes.**DATES:** Comments on the proposed supplementary rules must be received or postmarked by October 3, 2002 to be assured consideration. In developing final supplementary rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.**ADDRESSES:** *Mail:* Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.*Personal or messenger delivery:* 2850 Youngfield Street, Lakewood, Colorado 80215.*Internet email:*
*John_Silence@co.blm.gov.***FOR FURTHER INFORMATION CONTACT:** Special Agent in Charge, John Silence at (303) 239-3803.*Public Comment Procedures:* Please submit your comments on issues related to the proposed supplementary rules, in writing, according to the **ADDRESSES** section above. Comments on the proposed supplementary rules should be specific, should be confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. When possible,

your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period or comments delivered to an address other than those listed above.

BLM will make your comments, including your name and address, available for public review at the Colorado State Office address listed in **ADDRESSES**, above, during regular business hours (9 a.m. to 4 p.m., Monday through Friday, except Federal holidays). Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. You may include reasons for your request. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.**SUPPLEMENTARY INFORMATION:****I. Discussion of the Supplementary Rules**

These supplementary rules will apply to all the public lands within the State of Colorado. In keeping with the BLM's performance goal to reduce threats to public health, safety, and property, these supplementary rules are necessary to protect the natural resources and to provide for safe public recreation and public health; to reduce the potential for damage to the environment; and to enhance the safety of visitors and neighboring residents. Alcohol-related offenses are a growing problem on the public lands. Unlawful consumption of alcohol and drugs, and abuses of alcohol and drugs, such as driving while under the influence, pose a significant health and safety hazard to all users and uses of the public lands and can result in the destruction of natural resources and property, and/or cause physical injury/death. In addition, drug-related offenses, including the possession of drug paraphernalia, result in the legitimization and encouragement of the illegal use of controlled substances by making the drug culture more visible and enticing. Further, the ready availability of drug paraphernalia tends to promote, suggest, or increase the public acceptability of the illegal use of controlled substances. In keeping with BLM's policy regarding the reduction of

illegal use of controlled substances on public lands, and due to undesirable impacts on the public lands, the greatest of which is the threat to visitor safety and the safety of BLM employees, the BLM Colorado Law Enforcement Program will continue aggressive pursuit of ways to eliminate the possession, use, manufacturing, and trafficking of controlled substances, as well as the use and availability of drug paraphernalia on public lands, and will seek prosecution of those persons responsible for such activity. These supplementary rules will allow BLM Law Enforcement Officers to enforce on public lands regulations pertaining to Alcohol and Drug laws in a manner patterning current State of Colorado laws as contained in the Colorado Revised Statutes in an effort to further the working relationship and partnerships formed with numerous Sheriff's Departments throughout Colorado and the Colorado State Patrol.

II. Procedural Information*Executive Order 12866, Regulatory Planning and Review*

These supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of \$100 million or more on the economy. They are directed at preventing unlawful personal behavior on public lands, for purposes of protecting public health and safety. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These interim final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. The supplementary rules merely enable BLM law enforcement personnel to enforce regulations pertaining to unlawful possession/use of alcohol and drugs in a manner patterning current State of Colorado laws, as contained in the Colorado Revised Statutes, where appropriate on public lands.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We

invite your comments on how to make these interim final supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the proposed supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the interim final supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the interim final supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the interim final supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The proposed supplementary rules will enable BLM law enforcement personnel to cite persons for unlawful possession/use of alcohol or drugs on public lands for the purpose of protecting public health and safety. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Written Comments section, above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial,

on a substantial number of small entities. The proposed supplementary rules do not pertain specifically to commercial or governmental entities of any size, but contain rules to protect the health and safety of individuals, property, and resources on the public lands. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a “major rule” as defined at 5 U.S.C. 804(2). Again, the supplementary rules pertain only to individuals who may wish to use alcohol or drugs on the public lands. In this respect, the regulation of such use is necessary to protect the public lands and facilities and those, including small business concessioners and outfitters, who use them. The supplementary rules have no effect on business, commercial or industrial use of the public lands.

Unfunded Mandates Reform Act

These proposed supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year; nor do these interim final supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. The supplementary rules do not require anything of state, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anyone’s property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules will 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. The supplementary rules apply in only one state, Colorado, and do not address jurisdictional issues involving the Colorado State government. Therefore, in accordance with Executive Order 13132, BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, Colorado State Office of BLM has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of this supplementary rules is Special Agent David Moore of the Colorado State Office, BLM, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

For the reasons stated in the Preamble, and under the authority of 43 CFR 8365.1–6, the Colorado State Director, Bureau of Land Management, issues supplementary rules for public lands in Colorado, to read as follows:

Dated: July 1, 2002.

Ann Morgan,
State Director, Colorado.

Supplementary Rules on Possession and Use of Drugs and Alcohol on Public Lands

The Colorado State Office issues these supplementary rules under the Federal Land Policy and Management Act (FLPMA) 43 U.S.C. 1740 and 43 CFR 8365.1–6. Enforcement authority for these supplementary rules is found in FLPMA, 43 U.S.C. 1733.

A. Unlawful Possession, and/or Consumption of an Ethyl Alcohol Beverage

1. Definitions

a. As defined in Colorado Revised Statutes Title 18, Article 13, Section 122 (1)(b); “Ethyl alcohol” means any

substance which is or contains ethyl alcohol.

b. "Possession of ethyl alcohol" means that a person has or holds any amount of ethyl alcohol anywhere on his person, or that a person owns or has custody of ethyl alcohol, or has ethyl alcohol within his immediate presence or control.

3. Prohibited Acts

a. If you are under 21 years of age, you must not purchase, possess, or consume any ethyl alcohol beverages or products on public lands.

b. You must not misrepresent your age or the age of any other person for the purpose of purchasing or otherwise obtaining any ethyl alcohol beverages or products on public lands.

c. You must not sell, offer to sell, or otherwise furnish or supply any ethyl alcohol beverages or products to any person under the age of 21 years on public lands.

B. Driving Under the Influence of Alcohol and/or a Narcotic or Dangerous Drug

1. Definitions

a. As defined in the Colorado Revised Statutes Title 42, Article 4, Section 1301 (1)(f): "Driving under the influence" means driving a vehicle when a person has consumed alcohol or one or more drugs, or a combination of alcohol and one or more drugs, which alcohol alone, or one or more drugs alone, or alcohol combined with one or more drugs affects the person to a degree that the person is substantially incapable, either mentally or physically, or both mentally and physically, to exercise clear judgement, sufficient physical control, or due care in the safe operation of a vehicle.

b. As defined in the Colorado Revised Statutes Title 42, Article 4, Section 1301 (5)(c): If there was at such time 0.10 or more grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or if there was at such time 0.10 or more grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath, it shall be presumed that the defendant was under the influence of alcohol.

c. As defined in the Colorado Revised Statutes Title 42, Article 4, Section 1301 (1)(g): "Driving while ability impaired" means driving a vehicle when a person has consumed alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, which alcohol alone, or one or more drugs alone, or alcohol combined with one or more drugs, affects the person to the slightest

degree so that the person is less able than the person ordinarily would have been, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.

d. As defined in the Colorado Revised Statutes Title 42, Article 4, Section 1301 (5)(b): If there was at such time in excess of 0.05 but less than 0.10 grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or if there was at such time in excess of 0.05 but less than 0.10 grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath, such fact shall give rise to the presumption that the defendant's ability to operate a vehicle was impaired by the consumption of alcohol, and such fact may also be considered with other competent evidence in determining whether or not the defendant was under the influence of alcohol.

2. Prohibited Act

You must not operate a motor vehicle on public lands while under the influence, or while your abilities are impaired as described and defined above in items B.1.a-d.

C. Drug Paraphernalia

You must not possess any drug paraphernalia, as described by Colorado Revised Statutes Title 18, Article 18, Section 426, on public lands.

D. Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), if you violate or fail to comply with any of the provisions in sections A., B., and C. of these supplementary rules, you may be subject to a fine under 18 U.S.C. 3571 or other penalties under 43 U.S.C. 1733.

[FR Doc. 02-22398 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-020-1430-ET; NMNM 103817]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to withdraw 430.015 acres, more or less, of

public land in Taos County, New Mexico, to protect the riparian, scenic, and recreational values of the Rio Grande Wild and Scenic River. This notice closes the public land for up to 2 years from location under the United States mining laws. The public land will remain open to mineral leasing.

DATES: Comments must be received by December 2, 2002.

ADDRESSES: Comments should be sent to the Taos Field Office Manager, BLM, 226 Cruz Alta Road, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Lora Yonemoto, BLM, Taos Field Office, 505-751-4709.

SUPPLEMENTARY INFORMATION: On May 13, 2002, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from location under the United States mining laws, subject to valid existing rights:

Parcel 2B

New Mexico Principal Meridian

A certain tract of land south of Ranchos de Taos, Taos County, New Mexico; within the Gijosa Grant; located within projected Sections 2, 11, 12, and 13, T. 24 N., R. 11 E., NMPM; described as part of Blocks 14, 24, 25, and 29 as shown on a survey for the Ranchos Orchard and Land Company; also described as part of Tract 1, Map 73, part of Tract 1, Map 78, part of Tract 1, Map 74, part of Tract 1, Map 77, and part of Tract 2, Map 75, all within Survey 2 of the 1941 Taos County Reassessment Survey; and more particularly described by metes and bounds as follows:

Beginning at the East corner of this tract, a 1/2 in. rebar set on the northwesterly right-of-way of State Road 68, from whence triangulation station "Gijosa 2", a 1958 USC & GS brass cap monument found, bears N 67°14'35" E, 8721.55 ft. distant, thence along said right-of-way; S 65°21'58" W, 1293.07 ft. to the South corner, a 1/2 in. rebar set, thence leaving said right-of-way; N 34°07'38" W, 8245.79 ft. to the West corner, a 1/2 in. rebar set on the easterly bank of the Rio Grande (the true boundary of the Gijosa Grant and of this tract is the medial line of the Rio Grande), thence along said bank the following meander courses; S 71°24'03" E, 35.79 ft. to a 1/2 in. rebar set, thence; S 78°45'26" E, 83.38 ft. to a 1/2 in. rebar set, thence; N 79°45'29" E, 77.51 ft. to a 1/2 in. rebar set, thence; S 85°06'12" E, 53.09 ft. to a 1/2 in. rebar set, thence; S 69°16'53" E, 126.66 ft. to a 1/2 in. rebar

set, thence; N 87°33'01" E, 134.99 ft. to a ½ in. rebar set, thence; N 77°12'38" E, 52.24 ft. to a ½ in. rebar set, thence; N 82°31'49" E, 96.48 ft. to an "x" scribed on a rock, thence; N 65°57'15" E, 233.82 ft. to a ½ in. rebar set, thence; N 75°10'58" E, 128.43 ft. to a ½ in. rebar set, thence; N 63°17'33" E, 73.53 ft. to a ½ in. rebar set, thence; N 42°29'02" E, 25.43 ft. to a ½ in. rebar set, thence; N 60°32'08" E, 62.12 ft. to a ½ in. rebar set, thence; N 12°35'07" E, 26.88 ft. to a ½ in. rebar set, thence; N 12°59'35" W, 31.27 ft. to a ½ in. rebar set, thence; N 10°37'22" E, 47.87 ft. to a ½ in. rebar set, thence; N 28°47'19" E, 119.72 ft. to a ½ in. rebar set, thence; N 41°18'35" E, 54.39 ft. to a ½ in. rebar set, thence; N 23°32'06" E, 226.52 ft. to a ½ in. rebar set, thence; N 15°46'43" E, 74.89 ft. to a ½ in. rebar set, thence; N 27°38'37" E, 106.43 ft. to a ½ in. rebar set, thence; N 40°34'12" E, 49.19 ft. to the North corner, a ½ in. rebar set, thence leaving said bank; S 31°37'54" E, 8368.06 ft. to the point and place of beginning.

This tract contains 268.75 acres, more or less; all as shown on a survey plat entitled "Klauer Manufacturing Co. to the Trust for Public Land", RGSS survey no. L4510-1, by Scott B. Crowl, NMLS no. 12441, dated 06/09/2001.

Parcel 3A

New Mexico Principal Meridian, New Mexico

A certain tract of land south of Ranchos de Taos, Taos County, New Mexico; within the Gijosa Grant; located within projected Sections 1 and 12, T. 24 N., R. 11 E, NMPM and within projected Section 7, T. 24 N., R. 12 E., NMPM; described as part of Blocks 15, 23, and 24 as shown on a survey for the Ranchos Orchard and Land Company; also described as part of Tract 2, Map 68 part of Tract 2, Map 69, part of Tracts 1 and 2, Map 70, all within Survey 2 of the 1941 Taos County Reassessment Survey; and more particularly described by metes and bounds as follows:

Beginning at the East corner of this tract, a ½ in. rebar set on the northwesterly right-of-way of State Road 68, from whence triangulation station "Gijosa 2," a 1958 USC & GS brass cap monument found, bears N 68°52'41" E, 4654.06 ft. distant, thence along said right-of-way; S 65°22'44" W, 676.40 ft. to the South corner, an NMSHC steel rail right-of-way monument found, thence leaving said right-of-way; N 28°20'18" W, 9094.22 ft. to the West corner, a point at the centerline of the Rio Pueblo de Taos, from whence a ½ in. rebar set previously as a reference monument, bears; S 79°03'11" E, 17.84 ft. distant, thence along said Rio

centerline the following meander courses; N 28°32'04" E, 208.72 ft. to a point, from whence a ½ in. rebar set as a reference monument, bears S 85°00'00" E, 70.00 ft. distant, thence; N 37°31'16" E, 217.35 ft. to a point, from whence a ½ in. rebar set as a reference monument, bears; N 80°00'00" E, 20.00 ft. distant, thence; N 22°23'03" E, 119.34 ft. to a point, from whence a ½ in. rebar set as a reference monument, bears S 65°00'00" E, 20.00 ft. distant, thence; N 04°20'57" E, 122.90 ft. to a point, from whence a ½ in. rebar set as a reference monument, bears; S 55°00'00" E, 20.00 ft. distant, thence; N 39°54'36" E, 93.22 ft. to a point, from whence a ½ in. rebar set as a reference monument, bears S 55°00'00" E, 20.00 ft. distant, thence; N 15°47'12" E, 145.98 ft. to a point, from whence a ½ in. rebar set as a reference monument, bears; N 70°00'00" E, 20.00 ft. distant, thence; N 36°32'02" E, 116.77 ft. to the North corner, a point from whence a ½ in. rebar set as a witness corner, bears; S 27°26'53" E, 20.00 ft. distant, thence leaving said centerline; S 27°26'53" E, 9710.11 ft. to the point and place of beginning.

This tract contains 161.270 acres, more or less; all as shown on a survey plat entitled "Klauer Manufacturing Co. to the Trust for Public Land", RGSS survey no. L4510-4, by Scott B. Crowl, NMLS no. 12441, dated 2/25/2002.

The area described contains 430.015 acres in Taos County.

The purpose of the proposed withdrawal is to protect the riparian, scenic, and recreational integrity, maintain open space, and prevent rural residential development of the lands adjacent to the Rio Grande National Wild and Scenic River.

For a period of 90 days from the date of publication of the 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 Taos Field Office Manager of the BLM at the above address.

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 Taos Field Office Manager 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 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the public land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, and discretionary land use authorizations of a temporary nature with the approval of the authorized officer.

Dated: May 24, 2002.

Sam DesGeorges,

Assistant Taos Field Office Manager.

[FR Doc. 02-22394 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement for Santa Cruz Island Primary Restoration Plan Channel Islands National Park Santa Barbara County, CA; Notice of Availability

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 81-190 as amended), the National Park Service, Department of the Interior, has prepared a Final Environmental Impact Statement (EIS) assessing the potential impacts of restoring Santa Cruz Island by eradicating feral pigs from the island and controlling fennel (both are non-native species). This Final EIS analyzes the effects of implementing proposed actions that accomplish the following objectives: (1) Restore native plant communities; (2) protect plant species that have been listed as endangered or threatened under the Endangered Species Act; (3) reduce the spread of noxious weeds; (4) protect the native Island fox; (5) protect archeological sites; and (6) conserve soil resources on the island. The proposed action was developed in coordination with The Nature Conservancy, owners of 75% of Santa Cruz Island. The actions proposed in this Final EIS are necessary because of the adverse ecological impacts these non-native species are having on Santa Cruz Island.

Proposal

The proposal for eradicating pigs from Santa Cruz Island is to divide the island into six fenced zones and to sequentially eradicate pigs zone by zone. Approximately 45 miles of fence

would be constructed along existing fence lines, thereby creating six distinct management units of about 12,000 acres each. Complete eradication would be achieved in each of the zones in a coordinated effort lasting approximately one year using trained, professional hunters. Techniques and tools for achieving eradication goals would be similar to other pig eradication efforts such as neighboring Santa Rosa Island and Santa Catalina Island. A helicopter may occasionally be used to transport hunters or serve as a hunting platform.

The eradication campaign would occur in four distinct phases. Phase I (Administration, Infrastructure, and Acquisition) includes putting in place the necessary staff to oversee, manage, direct, and carry out the project including fencing and hunting contractors. It also includes bolstering current housing structures and establishing adequate communications on the island. Necessary equipment and supplies would also be secured at this time. Phase II (Fencing) involves constructing six distinct zones of pig-proof fence across the island. Hunting and trapping in a zone may begin as soon as the zone fence is completed, and prior to the next sequential zone fence being completed. Phase III (Hunting) involves eradicating pigs within a zone, then moving to the next zone in sequential order. Contracted professional hunters would use American Veterinarian Medical Association (AVMA) approved techniques for euthanasia. Eradication techniques that would be used include walk-in traps, baiting, ground hunting with dogs, and aerial shooting. Once hunting commences, it is estimated that a complete island-wide eradication could be achieved within six years. Phase IV (Final Hunting and Monitoring) is perhaps the most important, as the intention is to exhaustively search the island for remnant pigs and pig sign. A systematic protocol of monitoring for remnant feral pigs would be developed for the island. Monitoring of the island would continue for five years after elimination of the "last pig" in order to insure success. Long term ecological monitoring to assess ecosystem changes due to pig eradication would continue into the foreseeable future.

It has been determined that in order to successfully eradicate pigs from Santa Cruz Island that fennel will have to be manipulated in areas where it has formed large dense thickets. These dense thickets of fennel create a safe harbor for pigs to escape from being hunted, and thus potential failure of the project. Fennel will also be controlled in

this area by using a technique developed by The Nature Conservancy (TNC) that consists of a fall prescribed burn with a follow-up treatment of herbicide (Garlon 3A) at 1 lb. AI/acre in the two springs following the burn. Herbicide application would use ground and aerial application techniques. TNC developed this protocol in an extensive 600-acre test program in the Central Valley of Santa Cruz Island. Approximately 1,800 acres of fennel infestation would be treated.

Alternatives

After identifying the significant environmental issues associated with the proposed action, the Park began developing alternatives to the proposed action. Modifying the eradication strategies to address the environmental issue concerns was the basis the Park used to develop alternatives. In all, three alternatives were developed, including "No Action" (Alternative One). The alternatives are as follows: Alternative Two, "Simultaneous Island-wide Eradication of Pigs", involves eradicating pigs island-wide without the use of fenced zones. A simultaneous island-wide operation would require several teams of hunters and dogs repeatedly working sections of the island. This is considered to be a high intensity effort for a short period of time (approximately 2–3 years) in order to complete island-wide eradication. Alternative Three would eradicate pigs from eastern Santa Cruz Island but only exclude pigs from selected sensitive resources on central and western Santa Cruz Island. To keep pigs from impacting sensitive resources, pig-proof fence would be constructed that would enclose selected resources such as archeological sites, and threatened and endangered plant species. Alternative Two was determined to be the "environmentally preferred alternative" because it accomplishes eradication in a shorter period of time and does not require the construction of fence *i.e.* less physical disturbance. Alternative Four is the "agency preferred" alternative because this deliberate longer term strategy can be implemented more easily given the logistical and financial challenges of supporting a complex program on an offshore island.

SUPPLEMENTARY INFORMATION: The Final EIS is now available for public review. CD copies are available at park headquarters. Paper copies will be made available at Ventura's Foster Library, and Santa Barbara's Central Library. A digital version will also be available online at the Park's Web site (<http://www.nps.gov/chis/restoringsci/>

[island.html](#)). Distribution of the Final EIS to interested publics will be on digital compact disk (CD) in Adobe Acrobat pdf format. Inquiries regarding the Final EIS should be directed to: Superintendent, Channel Islands National Park, 1901 Spinnaker Dr, Ventura, California 93001. The telephone number for the park is (805) 658-5700.

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision

No sooner than 30 (thirty) days after the Environmental Protection Agency has published its notice of filing of Final EIS in the **Federal Register**, a Record of Decision (ROD) will be executed. As a delegated EIS, the Regional Director, Pacific West Region, is responsible for the final decision; subsequently the Superintendent, Channel Islands National Park, would be responsible for plan implementation and monitoring activities.

Dated: June 24, 2002.

James R. Shevock,

Acting Regional Director, Pacific West Region.

[FR Doc. 02-22372 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Record of Decision on the Final Environmental Impact Statement/General Management Plan

AGENCY: National Park Service, Interior.
ACTION: Notice of availability of a record of decision on the Final Environmental Impact Statement/General Management Plan, Devils Tower National Monument, Wyoming.

SUMMARY: On June 26, 2002, the Director, Intermountain Region approved the Record of Decision for the project. As soon as practical, the National Park Service will begin to

implement the General Management Plan described as the Preferred Alternative (Alternative 3) contained in the FEIS issued on March 21, 2002. In the Preferred Alternative a shuttle system would be established, a staging area would be constructed north of the entrance station, the paved parking area at the base of the Tower would be converted to a landscaped pedestrian plaza, and the campground and other facilities in the Belle Fourche River floodplain would be eliminated and the area restored to natural conditions. This alternative was deemed to be the environmentally preferred alternative, and it was determined that implementation of the selected actions will not constitute an impairment of park resources and values. This course of action and four alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences were assessed, and appropriate mitigating measures identified.

The full Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, a listing of measures to minimize environmental harm, an overview of public involvement in the decision-making process, and a Statement of Findings for Wetlands.

Basis for Decision

In reaching its decision to select the preferred alternative, the National Park Service considered the purposes for which Devils Tower National Monument was established, and other laws and policies that apply to lands in the monument, including the Organic Act, National Environmental Policy Act, and the *NPS Management Policies*. The National Park Service also carefully considered public comments received during the planning process.

To develop a preliminary preferred alternative, the planning team evaluated the five draft alternatives that had been reviewed by the public. To minimize the influence of individual biases and opinions, the team used an objective analysis process called "Choosing by Advantages." This process has been used extensively by government agencies and the private sector. The following conclusions were reached:

- Alternative 3 represented a significant improvement in visitor experience at the base of the Tower over existing conditions, despite the potential for noise from shuttle vehicles

and continued high concentrations of visitors in the Tower area.

- In "Ease of access to the monument" which includes the ability to visit the monument on one's own schedule and seldom encountering waiting lines at the entrance station, Alternative 3 was rated highest of the alternatives because waiting lines at the entrance station would be reduced and visitors could enter the monument before being required to ride a shuttle.

- "Visitor understanding of the monument's significance" includes offering high quality interpretive services for visitors. Alternatives 3 and 4 rated highest for interpretive opportunities because of the inclusion of a staging area, interpretive opportunities on the shuttle, and the ability to keep more facilities open in the winter.

- The viewshed to be preserved comprises views within the park from the Tower and from the Tower and Red Beds trails. Though Alternative 3 did not score highest, the developments called for in Alternative 3 probably could be screened from many areas, giving it and another alternative a score of second.

Overall, Alternative 3 received the highest score and was adopted as the preferred alternative.

FOR FURTHER INFORMATION CONTACT:

Superintendent Lisa Ekert, Devils Tower National Monument, P.O. Box 10, Devils Tower, Wyoming 82714; telephone 307/467-5283, or e-mail deto_planning@nps.gov.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the Record of Decision may be obtained from the Superintendent listed above.

Dated: June 26, 2002.

Karen P. Wade,

Regional Director, Intermountain Region.

[FR Doc. 02-22374 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision Final General Management Plan/Environmental Impact Statement for the Mary McLeod Bethune Council House National Historic Site, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service has prepared a Final General Management Plan Environmental Impact Statement (GMP/EIS) for Mary McLeod Bethune

Council House National Historic Site. Four alternatives were evaluated for guiding the management of the site over the next 15-to-20 years. The alternatives incorporate various management provisions to ensure resource protection and quality visitor experience conditions. The environmental consequences anticipated from implementation of the various alternatives are addressed in the document. Impact topics include cultural resources, visitor use/experience, socioeconomic environment, and site administration and operations.

The purpose of this Record of Decision (ROD) is to document the National Park Service (NPS) selection of the proposed action for the final GMP/EIS. The ROD contains a statement of the decision made, other alternatives considered, the basis for the decision, the environmentally preferable alternative, measures to minimize environmental harm, finding of no impairment of park resources and values, and public involvement.

The NPS will implement the proposed action as described under Alternative 2 in the final GMP/EIS. The primary intent of this alternative is to place a dual emphasis on the Council House, which would be used as a museum, and on the archival collection of African-American women's history. Both the museum and the archives would be expanded and linked by using the archival materials in changing interpretive exhibits and programs. Interpretation would provide a broad and balanced program and in-depth treatment of Dr. Mary McLeod Bethune's role as a public figure and organizer.

In March 2002, NPS distributed the final GMP/EIS to agencies, organizations and individuals on the park's mailing list. Copies of the document were also made available at Mary McLeod Bethune Council House National Historic Site and other NPS sites in addition to the Council House website. The Department of the Interior, National Park Service's notice of availability of the final GMP/EIS was published in the **Federal Register** on March 22, 2002. The 30-day no-action period has ended permitting the issuance of this record of decision.

FOR FURTHER INFORMATION CONTACT: The final Record of Decision can be obtained in the following ways:

- An electronic version can be found at the following Web site: www.nps.gov/mamc/ or
- By writing: Mary McLeod Bethune Council House Site Manager, 1318

Vermont Avenue, NW., Washington, DC 20005.

Dated: June 27, 2002.

Terry Carlstrom,

Regional Director, National Capital Region, National Park Service.

[FR Doc. 02-22375 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning National Park Service Policies and Procedures for Resources Damage Assessment and Restoration

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared a Director's Order setting forth its policies and procedures governing the conduct of resource damage assessment and restoration activities under the civil damage provisions of the Park System Resources Protection Act (PSRPA), 16 U.S.C. 19jj, and other related laws. The Director's Order has a companion Handbook that specifies in more detail, implementing procedures. When adopted, the policies and procedures will apply to all units of the national park system.

DATES: Written comments will be accepted on or before 30 days from the date of publication in the **Federal Register**.

ADDRESSES: Draft Director's Order #14 is available on the Internet at <http://www.nps.gov/refdesk/DOrders/index.htm>. The Draft Damage Assessment Handbook is available on the Internet at <http://www.nature.nps.gov/do14handbook>. Requests for copies and written comments should be sent to Daniel Hamson, Chief, Environmental Response, Damage Assessment and Restoration Branch, Environmental Quality Division, 1849 C Street, NW., Washington, DC 20240, or to his Internet address: daniel_hamson@nps.gov.

FOR FURTHER INFORMATION CONTACT: Daniel Hamson at (202) 208-7504.

SUPPLEMENTARY INFORMATION: The National Park Service (NPS) is requesting comments from agencies and the public concerning new policy and internal procedural requirements for implementing the National Park System Resources Protection Act (PSRPA), and the civil natural resource damage provisions of the Oil Pollution Act

(OPA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the National Pollution Control Act or Clean Water Act (CWA), as amended. There are no previous policies or procedures in place governing the NPS activities under the PSRPA. Once final, these policies and procedures would apply to the activities of the National Park Service in administering units of the National Park System. The policies available for review consist of a draft Director's Order which broadly describes the authorizations, delegations, and responsibilities for the development of the policies and conducting actions under these statutes, and a draft procedures manual or handbook that describes how the NPS will carry out its responsibilities under PSRPA and related laws.

Dated: June 25, 2002.

Michael Soukup,

Associate Director, Natural Resource Stewardship and Science.

[FR Doc. 02-22373 Filed 8-30-02; 8:45 am]

BILLING CODE 4310-70-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-753-756 (Review)]

Carbon Steel Plate From China, Russia, South Africa, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the suspended investigations on cut-to-length (CTL) carbon steel plate from China, Russia, South Africa, and Ukraine.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether termination of the suspended investigations on CTL carbon steel plate from China, Russia, South Africa, and Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;¹ to be assured

¹No response to this request for information is required if currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 02-5-073, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade

of consideration, the deadline for responses is October 23, 2002. Comments on the adequacy of responses may be filed with the Commission by November 18, 2002. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 3, 2002.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://dockets.usitc.gov/eol/public>.

SUPPLEMENTARY INFORMATION:

Background.—On October 24, 1997, the Department of Commerce suspended antidumping duty investigations on imports of carbon steel plate from China, Russia, South Africa, and Ukraine (62 FR 61751, 61766, 61773, and 61780, November 19, 1997). The Commission is conducting reviews to determine whether termination of the suspended investigations would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

Commission, 500 E. Street, SW., Washington, DC 20436.

(2) The Subject Countries in these reviews are China, Russia, South Africa, and Ukraine.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as all CTL carbon steel plate, whether produced in a mill by an integrated producer or in a service center.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major preparation of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as all producers of CTL carbon steel plate, whether toll producers, integrated producers, or processors.

(5) The Order Date is the date that the investigations were suspended. In these reviews, the Order Date is October 24, 1997.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former

employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 23, 2002. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is November 18, 2002. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and

any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which

your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the termination of the suspended investigations on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1996.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operation on that product during calendar year 2001 (request quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2001 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on

an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2001 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different

national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: August 26, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02-22356 Filed 8-30-02; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D-10786]

Amendment to Prohibited Transaction Exemption 92-6 (PTE 92-6) Involving the Transfer of Individual Life Insurance Contracts and Annuities from Employee Benefit Plans to Plan Participants, Certain Beneficiaries of Plan Participants, Personal Trusts, Employers and Other Employee Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Adoption of Amendment to PTE 92-6.

SUMMARY: This document amends PTE 92-6, a class exemption that enables an employee benefit plan to sell individual life insurance contracts and annuities to: (1) A plan participant insured under such policies; (2) a relative of such insured participant who is the beneficiary under the contract; (3) an employer any of whose employees are covered by the plan; or (4) another employee benefit plan, for the cash surrender value of the contract, provided certain conditions are met. The amendment affects, among others, certain participants, beneficiaries and

fiduciaries of plans engaged in the described transactions.

DATES: The amendment is effective February 12, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693-8540. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On May 10, 2002, notice was published in the **Federal Register** (67 FR 31835) of the pendency before the Department of a proposed amendment to PTE 92-6 (57 FR 5189, February 12, 1992), which amended Prohibited Transaction Exemption 77-8 (PTE 77-8)(42 FR 31574, June 21, 1977). PTE 92-6 provides an exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(A) through (E) of the Code.

The amendment to PTE 92-6 adopted by this notice was requested in an exemption application filed by the Chicago, Illinois law firm of Sonnenschein, Nath & Rosenthal on behalf of the General American Life Group (the Applicant). The Department is adopting the amendment pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).¹

For the sake of convenience, the entire text of PTE 92-6, as amended, has been reprinted with this notice.

A. Description of the Exemption

Section I of PTE 92-6 permits the sale of an individual life insurance or annuity contract by an employee benefit plan to: (1) A plan participant; (2) a relative of such insured participant who is the beneficiary under the contract; (3) an employer any of whose employees are covered by the plan; or (4) another employee benefit plan, if: (a) such participant is the insured under the contract; (b) such relative is a "relative" as defined in section 3(15) of the Act (or a "member of the family" as defined in section 4975(e)(6) of the Code), or is a brother or sister of the insured (or a spouse of such brother or sister), and the beneficiary under the contract; (c) the

contract would, but for the sale, be surrendered by the plan; (d) with respect to sales of the policy to the employer, a relative of the insured or another plan, the participant insured under the policy is first informed of the proposed sale and is given the opportunity to purchase such contract from the plan, and delivers a written document to the plan stating that he or she elects not to purchase the policy and consents to the sale by the plan of such policy to such employer, relative or other plan; (e) the amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been had it retained the contract, surrendered it, and made any distribution owing to the participant on his vested interest under the plan; and (f) with regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders or highly compensated employees. Section II of PTE 92-6 amended PTE 77-8 to provide that the relief for transactions described in part I would be available, effective October 22, 1986, for plan participants who are owner-employees (as defined in section 401(c)(3) of the Code) or shareholder-employees (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of enactment of the Subchapter S Revision Act of 1982), if the conditions set forth in part I are met.

The Department, at the request of the Applicant, has amended PTE 92-6 in order to expand the coverage of the exemption to include the sale by an employee benefit plan (the Plan) of an individual life insurance or annuity contract to a personal or private trust (the Trust) established by or for the benefit of an individual who is a participant in the Plan and the insured under the policy, or by or for the benefit of one or more relatives (as defined in Section I(2) of PTE 92-6) of the participant.² The amendment is effective February 12, 1992.

² Section 406(a)(1)(A) of the Act prohibits a direct or indirect sale or exchange of any property between a Plan and a party in interest. Section 406(a)(1)(D) of the Act prohibits a transfer to, or use by or for the benefit of, a party in interest, of any assets of the Plan. In most cases, the participant will be a party in interest with respect to the Plan under section 3(14)(H) of the Act, as an employee of an employer any of whose employees are covered by the Plan. In some cases, the participant or relative will also be a party in interest under section 3(14)(A) or (E) as a fiduciary of the Plan, or as an owner of 50% or more of the employer maintaining the Plan. The Trust would be a party in interest under section 3(14)(G) of the Act if 50% or more of the beneficial interest of such Trust is owned or

B. Written Comments and Hearing Requests

The notice of pendency gave interested persons an opportunity to comment or to request a hearing on the proposed amendment. No requests for a hearing were received.

The Department received one comment letter with respect to the notice of proposed amendment. The comment letter strongly supported the Department's amendment to PTE 92-6, but also requested that the Department clarify two points with respect to PTE 92-6.

The comment letter first requested that the Department confirm the commentator's interpretation that, in a participant directed defined contribution plan, when a life insurance policy is sold at the participant's direction, the requirement of condition I(3) has been satisfied that "the contract would, but for the sale, be surrendered by the plan." The Department agrees that, in the case of a participant in a defined contribution plan that provides for participant direction, if the participant has discretion and control of his/her account in the plan, and has exercised that authority, without being subject to any undue influence, in accordance with plan provisions for individually-directed investment of participant accounts, to sell a life insurance contract in compliance with the conditions of PTE 92-6, the requirement of condition I(3) of the exemption would be satisfied.

The comment letter also requested that the Department confirm its interpretation set out in Advisory Opinion 98-07A (issued September 24, 1998) to the effect that PTE 92-6 applies to a policy that insures both the participant's life and the life of another individual in whom the participant has an insurable interest. In Advisory Opinion 98-07A, the Department concluded that, to the extent state law and pertinent plan provisions permit the acquisition and holding of an individual life insurance contract covering the life of the participant and the participant's spouse, that such a contract would constitute "an individual life insurance contract" for purposes of PTE 92-6. The Department confirms that PTE 92-6 applies to life insurance contracts that cover the life of the participant and the participant's spouse. However, since the Department does not have sufficient information concerning contracts covering the life of the participant and the life of another individual in whom the participant has

held by persons described in section 3(14)(A) or (E) of the Act.

¹ Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996]) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

an insurable interest, other than the participant's spouse, it is unable to conclude that PTE 92-6 would apply to such contracts.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary, or other party in interest or disqualified person with respect to a plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act or section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of ERISA and 4975(c)(2) of the Code, the Department makes the following determinations:

(i) The amendment set forth herein is administratively feasible;

(ii) The amendment set forth herein is in the interests of plans and of their participants and beneficiaries; and

(iii) The amendment set forth herein is protective of the rights of participants and beneficiaries of plans;

(4) The amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) The amendment is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Accordingly, PTE 92-6 is amended under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990), as set forth below:

I(a). Effective January 1, 1975, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of an individual life insurance or annuity contract by an employee benefit plan to: (1) A participant under such plan; (2) a relative of a participant under such plan; (3) an employer any of whose employees are covered by the plan; or (4) another employee benefit plan, provided that the conditions in section II are met.

I(b). Effective February 12, 1992, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of an individual life insurance or annuity contract by an employee benefit plan to a trust established by or for the benefit of one or more of the persons described in (1) or (2) of section I(a) above, provided that the conditions in section II are met.

II. (a) Such participant is the insured under the contract;

(b) such relative is a "relative" as defined in section 3(15) of the Act (or a "member of the family" as defined in section 4975(e)(6) of the Code), or is a brother or sister of the insured (or a spouse of such brother or sister), and such relative or trust is the beneficiary under the contract;

(c) the contract would, but for the sale, be surrendered by the plan;

(d) with respect to sales of the policy to the employer, a relative of the insured, a trust, or another plan, the participant insured under the policy is first informed of the proposed sale and is given the opportunity to purchase such contract from the plan, and delivers a written document to the plan stating that he or she elects not to purchase the policy and consents to the sale by the plan of such policy to such employer, relative, trust or other plan;

(e) the amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been had it retained the contract, surrendered it, and made any distribution owing to the participant on his vested interest under the plan; and

(f) with regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders or highly compensated employees.

III. Effective October 22, 1986, the exemption provided for transactions described in part I is available for plan participants who are owner-employees (as defined in section 401(c)(3) of the Code) or shareholder-employees as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of enactment of the Subchapter S Revision Act of 1982) if the conditions set forth in part II are met.

Signed at Washington, DC, this 28th day of August, 2002.

Ivan L. Strasfeld,

*Director, Office of Exemption Determinations,
Pension and Welfare Benefits Administration,
Department of Labor.*

[FR Doc. 02-22376 Filed 8-30-02; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by November 4, 2002 to be assured of consideration.

Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR

COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292-7556; or send e-mail to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Grantee Reporting Requirements for Science and

Technology Centers (STC): Integrative Partnerships.

OMB Number: 3145-NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection.

Abstract:

Proposed Project: The Science and Technology Centers (STC): Integrative Partnerships Program supports innovation in the integrative conduct of research, education and knowledge transfer. Science and Technology Centers build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. STCs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

STCs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. STCs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Centers selected will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, STCs will be required to develop a set of management and performance indicators for submission annually to NSF via an NSF evaluation technical assistance contractor. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the STC effort. Part of this reporting will take the form of a database which will be owned by the institution and eventually made available to an evaluation contractor. This database will capture specific information to demonstrate progress

towards achieving the goals of the program. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) diversity, (6) management and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

Use of the Information: NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

Estimate of Burden: In the first year, for the anticipated six centers' awards time estimate is total of 600 hours. In the subsequent years time estimate is 300 hours.

Respondents: Non-profit institutions; federal government.

Estimated Number of Responses per Report: One from each of the six centers.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: August 27, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02-22308 Filed 8-30-02; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Proposal Review for Environmental Biology; Notice of Meeting

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92-463, as amended). The Chemistry Division will

be holding panel meetings to review and evaluate research proposals. The dates and types of proposals being reviewed are:

Name: Proposal Review for Environmental Biology (#10744).

Date and Time: September 25, 2002—8 a.m.–12 noon (Open), 1 pm–5 p.m. (Closed); September 26, 2002—8 am–5 p.m. (Closed).

Place: University of California, Santa Barbara.

Type of Meeting: Part-Open.

Contract Person: Mark W. Courtney, Program Director, Division of Environmental Biology, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, telephone (703) 292-7187.

Purpose of Meetings: To provide advice and recommendations regarding the effectiveness and the center and its value to the scientific community.

Agenda: The Center for Ecological Analysis and Syntheses (CEAS) will be making general presentations during the open session. During the closed session the committee will review and evaluate the progress of the CEAS.

Reason for Closing: This review will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(b)(4) and (6) of the Government in the Sunshine Act.

Dated: August 27, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02-22311 Filed 8-30-02; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-395]

South Carolina Electric & Gas Company, Virgil C. Summer Nuclear Station; Notice of Receipt of Application for Renewal of Facility Operating License No. NPF-12 for an Additional 20-Year Period

On August 6, 2002, the U.S. Nuclear Regulatory Commission (NRC) received, by letter dated August 6, 2002, an application from the South Carolina Electric & Gas Company, filed pursuant to section 104b of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, which would authorize the applicant to operate the Virgil C. Summer Nuclear Station for an additional 20-year period. The current operating license for the Virgil C.

Summer Nuclear Station expires on August 6, 2022. The Virgil C. Summer Nuclear Station is a pressurized water reactor designed by Westinghouse Electric Corporation and is located in Fairfield County, South Carolina. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of a subsequent **Federal Register** notice.

Copies of the application are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. In addition, the application is available on the NRC web page at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>, while the application is under review. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

The license renewal application for the Virgil C. Summer Nuclear Station is also available to local residents at the Fairfield County Library, in Winnsboro, South Carolina, and at the Thomas Cooper Library, at the University of South Carolina in Columbia, South Carolina.

Dated at Rockville, Maryland, this 26th day of August, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02-22331 Filed 8-30-02; 8:45 am]

BILLING CODE 7590-01-P

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, August 9, 2002, through August 22, 2002. The last biweekly notice was published on August 20, 2002 (67 FR 53983).

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 October 3, 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

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 2.714(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."

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 requested 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.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: June 11, 2002.

Description of amendments request: The proposed amendments revise the Unit 1 and 2 Technical Specification (TS) Administrative Controls Section to incorporate seven changes previously approved for the Improved Standard Technical Specifications (ISTS). These changes are reflected in Revision 2 of NUREG-1432 (Reference a). In addition, a change is also being requested to correct an inconsistency introduced in a prior TS amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The majority of changes proposed are editorial in nature, that is, they do not change the fundamental requirement of the Technical Specification. They generally clarify the existing requirement. The remaining changes are changes to the Technical Specification requirements. The deletion of the pressurizer safety and relief valve challenges and failures report does not impact the operation of the pressurizer safety and relief valves and still permits reporting of significant failures under the provisions of 10 CFR 50.72 and 50.73. Removal of pipe supports from the Inservice Testing Program description corrects the description of the program. It does not change the manner or timing of any evaluations of pipe supports or snubbers. Removal of the discussion of the Nuclear Regulatory Commission environmental monitoring program with the state reflects the cancellation of that program with the state. It does not alter any other environmental monitoring requirements.

As described above, these proposed changes are generally editorial in nature or have no impact on plant operation. None of the proposed changes impact the operation of any equipment needed for the mitigation of an accident or any known accident initiators.

Therefore, the probability or consequences of an accident previously evaluated have not significantly increased.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

As noted above, these changes are generally editorial in nature. That is, they do not change the fundamental requirement of the Technical Specification. They generally clarify the existing requirement. The remaining changes do not impact plant operation. None of the proposed changes would result in new or different plant operation or the addition of new equipment.

Therefore, the possibility of a new or different [kind] of accident from any previously evaluated is not created.

3. Would not involve a significant reduction in a margin of safety.

Since the majority of the proposed changes are editorial in nature, they do not change the fundamental Technical Specification requirement. Therefore, they do not impact the margin of safety represented by these Technical Specifications. The remaining changes do not impact plant operation and generally align these Technical Specification requirements with the criteria given in 10 CFR 50.36(c)(2)(ii). The deletion of the pressurizer safety and the relief valve challenges and failures report does not impact the operation of the pressurizer safety and relief valves and still permits reporting of significant failures under the provision of 10 CFR 50.72 and 50.73. Removal of pipe supports from the Inservice Testing Program description corrects the description of the program. It does not change the manner or timing of any evaluations of pipe supports or snubbers. Removal of the discussion of the Nuclear Regulatory Commission environmental monitoring program with the state reflects the cancellation of that program with the state. It does not alter any other environmental monitoring requirements. These changes do not impact the margin of safety.

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. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer.

Carolina Power & Light Company (CP&L), Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2), Darlington County, South Carolina

Date of amendment request: May 10, 2002, as supplemented August 12, 2002.

Description of amendment request: The proposed amendment would allow an increase in the authorized reactor power level for HBRSEP2.

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:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change * * * does not involve a significant increase in the probability of an accident previously evaluated based on the results of comprehensive analytical efforts that were performed to demonstrate the acceptability of the proposed power uprate changes.

An evaluation has been performed that identified the systems and components that could be affected by these proposed changes. The evaluation determined that these systems and components will function as designed and that performance requirements remain acceptable.

The primary loop components (reactor vessel, reactor internals, control rod drive mechanisms (CRDMs), loop piping and supports, reactor coolant pumps, steam generators and pressurizer) will continue to comply with their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components leading to an accident.

The Leak-Before-Break analysis conclusions remain valid and the breaks

previously exempted from structural considerations remain unchanged.

Systems included within the scope of the Nuclear Steam Supply System (NSSS) will continue to perform their intended design functions during normal and accident conditions. Additionally, NSSS components will continue to comply with applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components.

The NSSS/Balance of Plant interface systems will continue to perform their intended design functions. The MSSVs [main steam safety valves] will provide adequate relief capacity to maintain the Main Steam System within design limits. The maximum feedwater flow rate and the isolation time for the MFRVs [main feedwater regulating valves] and Bypass Valves will continue to ensure that the analyzed containment pressure during postulated accidents remains below the allowable limit.

The current loss-of-coolant [accident] (LOCA) hydraulic analyses remain bounding.

The reduction in power measurement uncertainty achieved through the use of the Caldon Leading Edge Flow Meter (LEFM) Check-Plus™ system allows for certain safety analyses to continue to be used, without modification, at the 2346 MWt [megawatt thermal] power level (102 percent of 2300 MWt). Other safety analyses performed at a nominal power level of 2300 MWt have been either re-performed or re-evaluated to support the 2339 MWt power level, and continue to meet their applicable acceptance criteria. Some existing safety analyses had been previously performed at a power level greater than or equal to 2346 MWt, and thus continue to bound the 2339 MWt power level.

The proposed changes to the RCS [reactor coolant system] pressure-temperature limit curves impose a conservative projection of the increase in neutron fluence associated with the power uprate. This projection will ensure that the requirements of 10 CFR 50, Appendix G, "Fracture Toughness Requirements," will continue to be met following the proposed power uprate. The design basis events that were protected against by these limits have not changed, therefore, the probability of an accident previously evaluated is not increased.

Based on the foregoing, it is concluded that 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 previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed power uprate changes. Systems, structures, and components previously required for the mitigation of an event remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component, and do not challenge the

performance or integrity of any safety-related system.

3. The proposed change does not involve a significant reduction in the margin of safety.

Extensive analyses of the primary fission product barriers conducted in support of the proposed power uprate have concluded that relevant design criteria remain satisfied, both from the standpoint of the integrity of the primary fission product barrier and compliance with regulatory acceptance criteria. As appropriate, evaluations have been performed using methods that have either been reviewed and approved by the Nuclear Regulatory Commission (NRC), or that are in compliance with applicable regulatory review guidance and standards.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based on the above discussion, CP&L has determined that the requested change does not involve a 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 amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Kahtan N. Jabbour, Acting.

Detroit Edison Company, Docket No. 50-341, Fermi 2, Monroe County, Michigan

Date of amendment request: August 8, 2002.

Description of amendment request: The proposed amendment allows a revision of the current reactor pressure vessel (RPV) material surveillance program description in the Updated Final Safety Analysis Report for Fermi 2 to reference the Integrated Surveillance Program (ISP) that was developed by the Boiling Water Reactor Owners Group's Vessel and Internals Project (BWRVIP). The proposed amendment is consistent with the NRC's Regulatory Issue Summary 2002-05, "NRC Approval of Boiling Water Reactor Pressure Vessel Integrated Surveillance Program," dated April 8, 2002 (ADAMS Accession No. ML020660522).

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 change in the program of RPV material surveillance for monitoring the effects of neutron embrittlement and thermal environment as required by Appendix H of 10 CFR 50. Instead of the Fermi 2 plant-specific program, the BWRVIP ISP is proposed for use in complying with the requirements of Appendix H [to 10 CFR Part 50]. Paragraph III.C of Appendix H provides the requirements for an ISP. The BWRVIP ISP has been reviewed and approved by the NRC staff as an acceptable program for use by all BWRs. There are many advantages for participating in the ISP over utilizing a plant-specific program. The advantages include improved compliance with the NRC requirements, better matching of the plant limiting material to the representative capsule material, additional data points for irradiated and unirradiated specimens, and better quality and consistency of the data and methodology. Additionally, future calculations of neutron fluence will be completed in accordance with the approved NRC methodologies in Regulatory Guide (RG) 1.190 ["Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence"].

The data obtained from testing the RPV surveillance capsules is used to define the pressure-temperature limits for the RPV and to ensure that fracture toughness requirements for ferritic materials of pressure retaining components of the reactor coolant boundary are met. Using the ISP for RPV material surveillance program enhances the RPV integrity evaluations and results in using data from better-matching specimens. The ISP also results in better compliance with the NRC requirements and consistency among the BWR plants.

The proposed change results in better compliance with the regulatory requirements for RPV material surveillance; therefore, it does not increase the likelihood of a malfunction of plant structures, systems and components.

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 accident previously evaluated.

The purpose of the RPV material surveillance program is to monitor neutron embrittlement and thermal environment effects in order to predict the behavioral characteristics of ferritic material of pressure retaining components of the reactor coolant pressure boundary and to ensure RPV fracture toughness and integrity requirements are not violated. The BWRVIP ISP was approved for use by all BWRs as an alternate to plant-specific programs. The change does not affect the design function or operation of any plant structure, system or component. The ISP is an approved alternate monitoring program that meets the regulatory requirements in Appendix H to 10 CFR 50.

As an alternate monitoring program, the ISP cannot create a new failure mode involving the possibility of a new or different kind of accident. Therefore, the proposed change does 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 RPV material surveillance program requirements in Appendix H to 10 CFR 50 are designed to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the reactor coolant pressure boundary may be subjected over its service lifetime. The material surveillance data for the Fermi 2 RPV obtained through the ISP is equal or better to that from plant-specific programs. Paragraph III.C of Appendix H to 10 CFR 50 delineates the regulatory requirements for an ISP. The BWRVIP ISP meets these requirements and has been approved by the NRC. 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.

Duke Energy Corporation, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: July 29, 2002.

Description of amendment request: The proposed amendments would revise Technical Specification Surveillance Requirement 3.7.2.2 to decrease the allowable closure time for the turbine stop valves from 15 seconds to 1 second.

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:

Pursuant to 10 CFR 50.91, Duke Power Company (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by the NRC regulations in 10 CFR 50.92. This ensures 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:

No. The request is for a decrease in the Turbine Stop Valve (TSV) closure time acceptance criteria of Technical Specification (TS) Surveillance Requirement (SR) 3.7.2.2, from a value of ≤ 15 seconds to a value of ≤ 1 second. This decrease in the closure time for the Channel B closure circuitry is more conservative and is being made to match the existing 1 second or less acceptance criteria of the closure time of the Channel A closure circuitry. The new Chapter 15 Transient Analysis Methodology assumes that the TSVs will be closed in 1 second or less by either the Channel A or Channel B closure circuitry. The new design has already been installed and tested, and is more conservative than the previous design. Therefore, the request for a more restrictive TS SR does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

No. The 1 second or less closure time was and is acceptable under the existing TS SR for the Channel B circuitry since the existing acceptance is 15 seconds or less. This request is to change the TS SR and its Bases to a more restrictive requirement (1 second or less). This more restrictive requirement is being requested to ensure that the installed equipment will continue to meet the conditions and assumptions that are currently in the analysis model described in the Topical Report DPC-NE-3005-P, "UFSAR Chapter 15 Transient Analysis Methodology". Therefore, this request does not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

(3) Involve a significant reduction in a margin of safety:

No. The proposed change does not adversely affect any plant safety limits, setpoints, or design parameters. The change also does not adversely affect the fuel, fuel cladding, Reactor Coolant System, or containment integrity. Therefore, the proposed change 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 three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottingham, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.
Energy Northwest, Docket No. 50-397, Columbia Generating Station, Benton County, Washington

Date of amendment request: July 18, 2002.

Description of amendment request: A change is proposed to Surveillance Requirement (SR) 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated July 18, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in the margin of safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to 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 Nuclear Operations, Inc., Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: July 5, 2002.

Description of amendment request: The proposed amendment would increase the licensed power level by 1.5% from 1,998 megawatts thermal (MWT) to 2,028 MWT based on the installation of ultrasonic flow measurement instrumentation resulting in improved feedwater flow measurement accuracy. The proposed amendment would change the Operating License and Technical Specifications to reflect the increase in licensed power level.

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 NRC staff's review 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 increase in power level is achieved by improving the accuracy of the feedwater flow measurement instrumentation resulting in a more accurate feedwater flow used in the heat balance calculation. The increased flow accuracy improves the uncertainty in the core power level from the existing 2% margin to $\leq 0.5\%$. The probability of an accident previously evaluated is not increased by the proposed change because the flow measurement instrumentation is not an initiator of design-basis accidents (DBAs) evaluated in the updated final safety analysis report (UFSAR). The consequences due to postulated DBA events previously evaluated are based on analyses using a 2% margin above the current licensed power level which bounds the proposed 1.5% power level increase. Therefore, the proposed 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 increase in power level is achieved by improving the accuracy of the feedwater flow measurement instrumentation. Using the more accurate flow measurement in the heat balance calculation improves the core power level uncertainty. The proposed increase in power level will not create a change in the operation or function of the flow measurement instrumentation. Changes to the feedwater flow measurement accuracy does not create accident initiators not considered in the DBAs. Therefore, the proposed 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 calculated loads on all affected structures, systems, and components have been shown to remain within design criteria at the increased power level for all design-basis event categories. The current design margins, operational margins, and margins of safety are not exceeded by the increased power level. Therefore, the proposed change does not involve a significant 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: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360-5599.

NRC Section Chief: Jacob I. Zimmerman, Acting.

Nuclear Management Company, LLC, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: July 26, 2002.

Description of amendment request: The proposed amendment would allow relocation of the Kewaunee Nuclear Power Plant (KNPP) cycle dependent variables from the Technical Specifications (TS) to a formal report, Core Operating Limits Report (COLR).

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 Kewaunee Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes relocate certain cycle specific parameters from the Technical Specifications to a Core Operating Limits Report (COLR) or are administrative in nature. Appropriate design and safety limits are retained or added to the Specifications thereby meeting the requirements of 10 CFR 50.36. Specific, approved methodologies used to determine and evaluate the parameter requirements are added to the Specifications and a reporting requirement is added to ensure the NRC is apprised of all changes. Approved methodologies are required to be used to evaluate and change parameters, and appropriate safety and design limits are maintained in the Technical Specifications. Thus, operation of KNPP will continue to meet all design and safety analysis requirements. Therefore, neither the

probability nor consequences of an accident previously evaluated can be increased.

2. Operation of the Kewaunee Nuclear Plant in accordance with the proposed amendment does not create a new or different kind of accident from any accident previously evaluated.

Operation of KNPP, in accordance with the proposed changes, will continue to meet all design and safety limits. Appropriate design and safety limits continue to be controlled within the Technical Specifications. These changes will not result in a change to the design and safety limits under which KNPP operation has been determined to be acceptable. Therefore, these changes cannot result in a new or different kind of accident from any accident previously evaluated.

3. Operation of the Kewaunee Nuclear Plant in accordance with the proposed amendment does not result in a significant reduction in a margin of safety.

Appropriate safety limits continue to be controlled by the Technical Specifications. Changes to cycle specific parameters related to these limits will be accomplished using NRC approved methodologies, thereby ensuring operation will continue within the bounds of the existing safety analyses including all applicable margins of safety. Therefore, operation in accordance with the proposed changes cannot result in 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: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701-1497.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, (NMC) Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: July 26, 2002.

Description of amendment request: The proposed license amendment would implement changes to the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) to accommodate Westinghouse 422 VANTAGE + nuclear fuel with PERFORMANCE + features.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The [Nuclear Regulatory Commission] NRC generically approved Westinghouse 422V+

[Westinghouse 422 VANTAGE + nuclear fuel with PERFORMANCE + features] fuel assemblies for use in reactors substantially similar to KNPP. NMC used 422V+ fuel in the Lead-Test-Assembly Program during cycle 25, as permitted by existing TS. Empirical data acquired during Cycle 25 confirms that this fuel is both compatible with KNPP reactor design and with the Framatome/ANP fuel currently in use. Reanalysis of postulated KNPP design basis accidents shows that reactor operation with 422V+ fuel remains within design basis limitations and safety margins. All design basis accidents and transients affected by the fuel upgrade were analyzed, and the results documented in the Westinghouse Report provided with this request. These analyses and evaluations show that use of 422V+ fuel is acceptable. The margin to safety is not exceeded in any instance. Pending approval of Addendum 2 to [Westinghouse Commercial Atomic Power "Revision to Design Criteria"] WCAP 12488 revising the current transient stress strain criteria, all design basis acceptance criteria will be satisfied. Changes to the technical specification that remain within the limits of the bounding accident analyses cannot change the probability or consequence of an accident previously evaluated. Thus, nothing in this proposal will cause an increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Use of the 422V+ fuel is consistent with current plant design bases and does not adversely affect any fission product barrier, nor does it alter the safety function of safety significant systems, structures and components or their roles in accident prevention or mitigation. The operational characteristics of 422V+ fuel are bounded by the safety analyses (Attachment 4 [of the submittal]). The 422V+ fuel design performs within existing fuel design limits. Thus, this proposal does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed change does not alter the manner in which Safety Limits, Limiting Safety System Setpoints, or Limiting Conditions for Operation are determined. Licensed safety margins are maintained. It conforms to plant design bases, is consistent with current safety analyses, and limits actual plant operation within analyzed and licensed boundaries. Analyses of design basis accidents and transients were performed using power level greater than that currently licensed, thus rendering more conservative results than required. All safety analysis acceptance criteria are satisfied at this value and all KNPP safety requirements continue to be met. Use of 422V+ fuel as proposed by this amendment request is bounded by these analyses. Thus, changes proposed by this request 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. 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.

Nuclear Management Company, LLC, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: April 22, 2002.

Description of amendment request: The proposed amendment would revise the reactor vessel pressure and temperature (P/T) limit curves in the Monticello Technical Specifications (TSs). The revised P/T limits will allow required hydrostatic and leak tests to be performed at a significantly lower temperature. This is expected to reduce challenges to plant operators associated with maintaining the reactor coolant system within a narrow temperature band during testing.

The Nuclear Management Company, LLC, is also requesting an exemption from the requirements of 10 CFR Part 50, Appendix G, to allow the use of American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) Case N-640 as the basis for these revised curves. The proposed P/T curves were developed in accordance with the 1989 edition of the ASME Code, Section XI, Appendix G; 10 CFR Part 50, Appendix G; and ASME Code Case N-640. The use of this Code Case as the basis for the proposed P/T curves constitutes an alternative to the requirements of 10 CFR Part 50, Appendix G. The regulation at 10 CFR 50.60(b) provides that the NRC may grant alternatives to the requirements in Appendix G by using the procedures for exemption specified in 10 CFR 50.12.

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 amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The P/T limits are not derived from Design Basis Accident (DBA) analyses. They are prescribed by the ASME Code and 10 CFR 50 Appendix G and H as restrictions on operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause non-ductile failure of the reactor coolant pressure boundary.

The changes to the calculation methodology for the P/T limits are based upon ASME Code Case N-640, "Alternative Reference Fracture Toughness for Development of P-T Limit Curves for ASME Section XI, division 1," and provide adequate margin in the prevention of a non-ductile type fracture of the reactor pressure vessel (RPV). The code case was developed based upon the knowledge gained through years of industry experience. The P/T limits developed using the allowances of ASME Code Case N-640 provide more operating margin. However, experience gained in the areas of fracture toughness of materials and pre-existing undetected defects shows that some of the existing assumptions used for the calculation of P/T limits are unnecessarily conservative and unrealistic. Therefore, use of the allowances of ASME Code Case N-640 in developing the P/T limits will provide adequate protection against nonductile-type fractures of the RPV.

Development of the revised Monticello P/T limits was performed using the approved methodologies of 10 CFR 50, Appendix G, and using the allowances of ASME Code Case N-640. The P/T limit curves generated using these methods ensure the P/T limits will not be exceeded during any phase of reactor operation. Therefore, the probability of occurrence and the consequences of a previously analyzed event are not significantly increased. Finally, the proposed change will not affect any other system or piece of equipment designed for the prevention or mitigation of previously analyzed events.

Thus, the probability of occurrence and the consequences of any previously analyzed event are not significantly increased as the result of the proposed changes.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes provide more operating margin in the P/T limit curves for inservice leakage and hydrostatic pressure testing, non-nuclear heatup and cooldown, and criticality, with benefits being primarily realized during the pressure tests. Operation in the "new" regions of the newly developed P/T curves has been analyzed in accordance with the provisions of ASME Code, Section XI, Appendix G; 10 CFR 50 Appendix G, and ASME Code Case N-640, thus providing adequate protection against a nonductile-type fracture of the RPV.

The proposed changes do not alter any existing system relationships. The proposed changes do not result in any new or unanalyzed operation of any system or piece of equipment important to safety, and as a result, the possibility of a new type [of] event is not created.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

As mentioned previously, the revised P/T limit curves provide more operating margin and thus, more operational flexibility than

the current P/T limit curves. With the increased operational margin, a reduction in the safety margin results with respect to the existing curves. However, industry experience since the inception of the P/T limits in 1974 confirms that some of the existing methodologies used to develop P/T limit curves are unrealistic and unnecessarily conservative. Accordingly, ASME Code Case N-640 takes into account the acquired knowledge and establishes more realistic methodologies for the development of P/T limit curves.

Use of ASME Code Case N-640 to develop the revised P/T curves utilized the K_{IC} fracture toughness curve in lieu of the K_{IA} curve as the lower bound for fracture toughness. Use of the K_{IC} curve to determine lower bound fracture toughness is more technically correct than using the K_{IA} curve. P/T curves based on the K_{IC} fracture toughness limits enhance overall plant safety by expanding the P/T window in the low-temperature operating region. The benefits which occur are a reduction in the duration of the pressure test and personnel safety while conducting inspections in primary containment with no decrease to the margin of safety. Therefore, operational flexibility is gained and an acceptable margin of safety to RPV non-ductile type fracture is maintained.

Therefore, the proposed amendment will 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: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N. Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: April 22, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to permit a one-time 5-year extension, to no later than March 2008, of the 10-year performance-based Type A test interval established in NEI 94-01, "Nuclear Energy Institute Industry Guideline for Implementing Performance-Based Option of 10 CFR Part 50, Appendix J," Revision 0, dated July 26, 1995.

This TS change has been prepared in accordance with the guidance provided in Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant Specific Changes to the Licensing Basis."

A plant-specific, risk-based evaluation has been performed in support of this one-time exception to extend the Type A test interval. This evaluation uses the latest Monticello probabilistic safety assessment (PSA) models to estimate the changes in risk associated with increasing the Type A testing interval. This risk assessment is consistent with current PSA best practices.

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 amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS 4.7.A.2.b provides a one-time exception to the testing frequency for the Type A containment integrated leakage rate test. The current ten-year interval is based on past performance and the proposed change will only extend the Type A test frequency to fifteen years. The proposed change to the Technical Specifications does not involve a physical change to the plant 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 the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the primary containment does not involve the prevention or identification of any precursors of an accident and therefore does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of the evaluated accidents are the amount of radioactivity that is released to secondary containment and subsequently to the public. The proposed change involves a one-time change to the interval between Type A containment leakage tests. Type B and C containment leakage tests will continue to be performed at the frequency specified in the Monticello Technical Specifications. As documented in NUREG-1493, "Performance-Based Containment Leakage-Test Program," industry experience has shown that Type B and C containment leakage tests have identified a very large percentage of containment leakage paths and that the percentage of containment paths that are detected only by Type A tests is very small. An analysis of 144 integrated leak rate tests, including 23 failures, found that no failures were due to containment liner breach. NUREG-1493 also concluded, in part, that reducing the frequency of Type A containment leakage rate tests to once per twenty years was found to lead to an imperceptible increase in risk. The Monticello risk-based evaluation of the proposed one-time extension to the Type A test frequency supports this conclusion. The integrity of the reactor containment is subject to two types of failure mechanisms which can be categorized as (1) activity based and

(2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as design change control and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the primary containment, combined with the containment inspections performed in accordance with the American Society of Mechanical Engineers (ASME) Code, Section XI and 10 CFR 50.65, Maintenance Rule, provide a high degree of assurance that the primary containment will not degrade in a manner that is detectable only by Type A tests and therefore does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed change to Technical Specification 4.7.A.2.b involves a one-time exception to the current test interval for Type A containment leakage rate tests. The primary containment and the test requirements invoked to periodically demonstrate the integrity of the primary containment exist to ensure the ability to mitigate the consequences of an accident. Additionally, the reactor containment and its associated test requirements do not involve the prevention or identification of any precursors of an accident. The proposed change to the leakage rate test frequency does not involve any physical changes being made to the facility. In addition, the proposed extension of the Type A leakage rate test frequency does not change the operation of the plant such that a new failure mode involving the possibility of a new or different kind of accident from any accident previously evaluated is created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The proposed change involves only the extension of the interval between Type A containment leakage tests. The current interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test. Type B and C containment leakage tests will continue to be performed at the frequency currently required by the plant Technical Specifications.

The NUREG-1493 generic study of the effects of extending containment leakage test intervals found that a twenty-year extension

for Type A leakage tests resulted in an imperceptible increase in risk to the public. This study also found that, generically, the containment leakage paths are mainly detected by Type B and C tests. The proposed change involves a one-time extension of the frequency for Type A containment leakage tests; the overall primary containment leakage rate limit, specified by the Monticello Technical Specifications, is being maintained. The regular containment inspections being performed in accordance with the ASME Code, Section XI, and 10 CFR 50.65, Maintenance Rule, provide a high degree of assurance that the containment will not degrade in a manner that is only detectable by Type A tests. In addition, the containment monitoring capability that is inherent to boiling water reactors using an inert containment atmosphere allows for the detection of gross containment leakage that may develop during power operation. The cumulative effect of these inspections, tests and operating methods ensures that the margin of safety is maintained.

Therefore, the proposed changes do 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: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: April 25, 2002.

Description of amendment request: The proposed amendment would revise the Monticello Technical Specifications (TSs) to allow the use of 10 CFR Part 50, Appendix J, Option B, for Types B and C containment leak rate testing. The proposed amendment would also revise the surveillance requirements (SRs) in TS 3.7/4.7 and provide a new TS Section 6.8.M, "Primary Containment Leakage Rate Testing Program," in the "Programs and Manuals" section of the Monticello TSs. This proposed new TS program is formatted to be consistent with the NRC-approved guidance provided in Option B of the Primary Containment Leakage Rate Testing Program included in NUREG-1433, "Standard Technical Specifications General Electric Plants, BWR/4," Revision 2, dated April 2001.

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 amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes deal exclusively with testing of features related to containment isolation. The changes only affect testing frequency and methodology. Containment leakage is not considered as an initiator of any accident previously evaluated.

Additionally, the proposed changes do not impact current plant operations or the design function of any system or component. The proposed changes do not change any accidents previously evaluated in the updated safety analysis report.

The proposed changes only affect the frequency of testing the containment penetrations and containment isolation valves. The proposed changes will allow test intervals to be extended in accordance with program requirements and 10 CFR Part 50, Appendix J, Option B, with reference to Regulatory Guide 1.163, and NEI 94-01, Rev. 0. The change in risk resulting from the proposed change, was evaluated by the NRC in the rule making process for implementing the Option B requirements, and are characterized in NUREG-1493. For Type B and C tests, the NRC concluded that the extension of test intervals as allowed by Option B would lead to only minor increases in potential offsite dose consequences.

The performance of the leakage tests themselves is not an input or consideration in any accident previously evaluated, thus the proposed change will not increase the probability of any such accident occurring. The same operability requirements remain in place for the primary containment, therefore, the consequences of an accident are not significantly increased. The proposed revision does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor does it affect any assumptions or conditions in the accident analysis.

Therefore, operation of the facility in accordance with the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes deal exclusively with testing of features related to containment isolation. The changes only affect testing frequency and methodology. The proposed changes to the TS will not result in any physical alterations to the plant configuration, no new equipment is added, no equipment interfaces are modified, and no changes to any equipment's function or the method of operating the equipment are being made. Since the proposed changes would not change the design, configuration or operation

of the plant, they would not cause the containment leak rate testing to become an accident initiator. No new or different kinds of accident modes are created.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

The proposed changes deal exclusively with testing of features of [sic] related to containment isolation. The changes only affect testing frequency and methodology. Containment leakage is not considered as an initiator of any accident previously evaluated.

The proposed changes do not exceed or alter a design basis or safety limit. The proposed changes only affect the methodology and frequency of Type B and C testing. The proposed performance based approach, provided by using Option B to 10 CFR Part 50, Appendix J, would continue to ensure that the containment leakage rates would not exceed the maximum allowable leakage rates defined in the Technical Specifications and assumed in the accident analysis.

Therefore, the proposed changes do 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: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N. Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: June 11, 2002.

Description of amendment request: The proposed amendment would revise TS 3.1.8, "Physics Test Exceptions," to correct a typographical error in the numbering of a function. The existing typographical error inappropriately makes the TS more restrictive than intended.

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 Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant

increase in the probability or consequences of any accident previously evaluated.

The primary purpose of the Mode 2 Physics Tests exceptions is to permit relaxations of existing LCOs [limiting conditions for operation] to allow certain Physics Tests to be performed. The proposed change will permit the number of required channels specified in LCO 3.3.1, "RPS [Reactor Protection System] Instrumentation," for Power Range Neutron Flux, P-10 interlock, to be reduced to "3" required channels for Physics Tests, as originally analyzed and approved by NRC. LCO 3.1.8 already allows one power range neutron flux channel to be bypassed, reducing the number of required channels from "4" to "3". With this reduction in the number of required channels, the fuel design criteria are preserved as long as the power level is limited to $\leq 5\%$ RTP [rated thermal power], the reactor coolant temperature is kept $\geq 530^\circ\text{F}$, and shutdown margin (SDM) is within the limits provided in the Core Operating Limits Report (COLR). These three conditions are not affected by the proposed change. This change only restores the allowance previously analyzed as acceptable.

Therefore, the probability or consequences of an accident previously evaluated will not be significantly increased as a result of the proposed change.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any physical alteration of plant systems, structures or components, nor does it alter parameters governing normal plant operation. This change does not introduce any new or different normal operation or accident initiators. With the reduction in the number of required instrumentation channels, the fuel design criteria continue to be preserved as originally analyzed.

Equipment important to safety will continue to operate as designed. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendment will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The primary purpose of the Mode 2 Physics Tests exceptions is to permit relaxations of existing LCOs to allow certain Physics Tests to be performed. The analysis for Physics Tests is based on one power range neutron flux channel being bypassed. Therefore, reducing the requirement for an interlock associated with the bypassed channel is bounded by the original analysis. There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed amendment will not otherwise affect the

plant protective boundaries, will not cause a release of fission products to the public, nor will it degrade the performance of any other structures, systems or components important to safety. Therefore, the proposed change 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: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N. Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 22, 2002.

Description of amendment request: The proposed amendment removes the reference to a specific computer program for monitoring core radial peaking factors when a core power tilt is present. Instead, the functional requirement is specified. These changes clarify the requirements for core tilt monitoring associated with a computer system upgrade and changes in computer programs. Also, it is proposed to add clarification in the Basis section for Technical Specification (TS) 2.10.4 regarding the application of TS 2.10.4(1)(b) when the plant computer incore detector alarms for monitoring core linear heat rate become inoperable.

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 change does not result in any changes to the existing core power distribution monitoring requirements. There is no change in the analysis values used in the evaluation of the transients and accidents. All of the evaluated transients and accidents currently show acceptable results and will not be affected by this change. Incorporating this change will not affect the probability of an accident, since core power distribution monitoring is not changed. The change to the wording of the core power distribution monitoring specifications will not change the failure possibilities for reactor protective features. The effect of the proposed change is the clarification of the existing core power distribution monitoring requirements.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to the wording of the core power distribution monitoring specifications does not provide the possibility of the creation of a new or different type of accident. Changing the wording of the core power distribution monitoring specifications does not change the method of core power distribution monitoring or the expected response of reactor protective features. The reactor will operate within previously analyzed limits.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to the wording of the core power distribution monitoring specifications does not constitute a significant reduction in the margin of safety due to the core power distribution monitoring requirements are not changed and are consistent with the assumptions contained in the transient and accident analyses contained in the Updated Safety Analysis Report shown to produce acceptable results.

The acceptance criteria used in the analysis have been developed for the purpose of use in design basis accident analyses such that meeting these limits demonstrates adequate protection of public health and safety. An acceptable margin of safety is inherent in these licensing limits. Therefore, the proposed changes do 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 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: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 22, 2002.

Description of amendment request: The proposed amendment deletes technical specification (TS) requirements for missed surveillances from TS 3.0.4 and adds TS 3.0.5 for missed surveillances consistent with the Improved Standard Technical Specification (ITS) for Combustion Engineering Plants, NUREG-1432, Revision 2, and Technical Specification Task Force Change Traveler TSTF-358, Revision 6. This proposed amendment also adds a TS requirement for a Bases Control Program consistent with that presented in Section 5.5 of the ITS (NUREG-1432, Revision 2), in

accordance with the guidance published in the **Federal Register** on September 28, 2001, "Notice of Availability of Model Application Concerning Technical Specification Improvement to Modify Requirements Regarding Missed Surveillances Using the Consolidated Line Item Improvement Process," (66 FR 49714). Appropriate TS Bases changes are also provided in accordance with the Consolidated Line Item Improvement Process.

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 to incorporate Improved Standard Technical Specification (ITS) SR 3.0.3 relaxes the time allowed to perform a missed Surveillance. The time between Surveillances is not an initiator to 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. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to provide a Technical Specification (TS) Bases Control Program presents more stringent requirements than previously existed in the Technical Specifications. These more stringent requirements do not result in operation that will increase the probability of initiating an analyzed event. If anything the new requirements may decrease the probability or consequences of the more analyzed event by incorporating the more restrictive changes. The changes do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis. Therefore, the 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 change to incorporate ITS SR 3.0.3 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.

The proposed change to provide a TS Bases Control Program presents more stringent requirements than previously existed in the Technical Specifications. The changes do not alter the plant configuration (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The changes do impose different requirements. However, these changes are consistent with the assumptions in the safety analyses and licensing basis. Therefore, the changes do 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 relaxed 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 inoperable Limiting Condition for Operation LCO 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.

The proposed change to provide a TS Bases Control Program presents more stringent requirements than previously existed in the Technical Specifications. Adding more restrictive requirements either increases or has no impact on the margin of safety. The changes, by definition, provide additional restrictions to enhance plant safety. The changes maintain requirements within the safety analyses and licensing basis. As such, no question of safety is involved. Therefore, the changes do 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: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 23, 2002.

Description of amendment request: This proposed amendment will: (1) Remove the requirement to demonstrate operability of redundant auxiliary feedwater system components, and (2) provide an allowed outage time to restore operability of the emergency feedwater storage tank. Each of the revisions is modeled after the Improved Standard Technical Specifications.

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 changes to Technical Specifications Sections 2.5 establish an allowed outage time and actions required for restoring operability. The proposed Technical Specifications address the regulatory requirements for equipment required for Auxiliary Feedwater Systems per NUREG-0635 ["NRC Requirements for Auxiliary Feedwater Systems"]. The change will ensure that proper Limiting Conditions for Operation are entered for equipment or functional inoperability. There are no physical alterations being made to the Auxiliary Feedwater System or related systems. 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 will not result in any physical alterations to the Auxiliary Feedwater System, any plant configuration, systems, equipment, or operational characteristics. There will be no changes in operating modes, or safety limits, or instrument limits. With the proposed changes in place, Technical Specifications will retain requirements for the Auxiliary Feedwater System. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes clarify the regulatory requirements for the Auxiliary Feedwater System as defined by NUREG-0635 and NUREG-0737. The times established are identical to those invoked by the present Technical Specifications or to those previously reviewed and approved for use by the NRC. The proposed changes will

not alter any physical or operational characteristics of the Auxiliary Feedwater System and associated systems and equipment. Therefore, the proposed changes do 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 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: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Section Chief: Stephen Dembek.

PPL Susquehanna, LLC, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: July 25, 2002.

Description of amendment request: The proposed amendments would change the Susquehanna Steam Electric Station Final Safety Analysis Report by revising the Reactor Pressure Vessel (RPV) Material Surveillance Program. Specifically, the licensee proposes to replace the current plant-specific RPV material surveillance program with the Boiling Water Reactor (BWR) Integrated Surveillance Program.

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?

No.

The proposed change implements an integrated surveillance program that has been evaluated by the NRC staff as meeting the requirements of paragraph III.C of Appendix H to 10 CFR 50 [Title 10 of the CODE OF FEDERAL REGULATIONS, Part 50]. Consequently, the proposed change does not significantly increase the probability of any accident previously evaluated. The proposed change provides the same assurance of RPV integrity. As a result, the consequences of any accident previously evaluated are not significantly increased. 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?

No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change maintains an equivalent level of RPV material surveillance and does not introduce any new accident initiators. 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?

No.

The proposed change has been evaluated as providing an acceptable alternative to the plant-specific RPV material surveillance program that meets the requirements of the regulations for RPV material 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: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101-1179.

NRC Section Chief: Richard J. Laufer.

PSEG Nuclear LLC, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: June 28, 2002.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) by relaxing the secondary containment requirements and eliminating the Filtration, Ventilation, and Recirculation system (FRVS) charcoal filters.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No.

The definition of CORE ALTERATIONS has been revised to define that control rod movement, provided there are no fuel assemblies in the associated core cell is not a core alteration. This is consistent with Standard Technical Specifications (STS) NUREG-1433 Vol.1, Rev. 2, Standard Technical Specifications, General Electric Plants, BWR/4.

The TS presently provide[s] a period of 7 days to restore an inoperable FRVS

ventilation unit when performing activities with the potential for draining the reactor vessel or discontinue such activities. Operation of the redundant train will ensure that the remaining subsystem is operable, that no failures, which could prevent automatic actuation, have occurred and that any other failures will be readily detected. This is consistent with STS, NUREG-1433 Vol.1, Rev. 2, Standard Technical Specifications, General Electric Plants, BWR/4.

The proposed changes associated with the FHA [fuel handling accident] do not involve a change to structures, components, or systems that would affect the probability of an accident previously evaluated in the Hope Creek Updated Final Safety Analysis Report (UFSAR). The FHA for the HCGS is defined as a drop of a fuel assembly over irradiated assemblies in the reactor core 24 hours after reactor shutdown. AST [accident source term] is used to evaluate the dose consequences of a postulated accident. The FHA has been analyzed without credit for Secondary Containment, Filtration Recirculation and Ventilation System (FRVS), and Control Room Emergency Filtration (CREF) system. The resultant radiological consequences are within the acceptance criteria set forth in 10 CFR 50.67 and Regulatory Guide [(RG)] 1.183. This amendment does not alter the methodology or equipment used directly in fuel handling operations. The equipment hatch, the personnel air locks, nor any other containment penetration, nor any component thereof is an accident initiator. Actual fuel handling operations are not affected by the proposed changes. Therefore, the probability of a Fuel Handling Accident is not affected with the proposed amendment. No other accident initiator is affected by the proposed changes.

The Loss of Coolant Accident (LOCA) Dose Calculation has been revised to (1) eliminate credit for the FRVS recirculation charcoal filters, (2) reduce credited efficiency of FRVS vent charcoal filters, (3) reduce Engineered Safety Feature (ESF) leakage from 10 gpm to 1 gpm and (4) reduce control room unfiltered in-leakage to 350 cfm.

These proposed changes do not eliminate any safety system. The changes are only associated with the credit provided by the system in reducing the radiological consequences and therefore, do not affect any accident initiator. The results of that analysis show that the Exclusion Area Boundary (EAB), Low Population Zone (LPZ), and Control Room (CR) doses are of the same order of magnitude as the previous analysis and remain within the acceptance criteria in 10 CFR 50.67 and Regulatory Guide 1.183.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

2. Does the change create the possibility of a new or different kind of accident from any accident previously analyzed?

Response: No.

The proposed amendment will not create the possibility for a new or different type of accident from any accident previously evaluated. Changes to the allowable activity

in the primary and secondary systems do not result in changes to the design or operation of these systems. The evaluation of the effects of the proposed changes indicates that all design standard and applicable safety criteria limits are met.

Equipment important to safety will continue to operate as designed. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. The systems affected by the changes are used to mitigate the consequences of an accident that has already occurred. The proposed TS changes and modifications do not significantly affect the mitigative function of these systems.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Does the change involve a significant reduction in the margin of safety?

Response: No.

The proposed changes revise the TS to establish operational conditions where specific activities represent situations during which significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis and are established such that the radiological consequences are at or 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 continue[s] to ensure that the TEDE [total effective dose equivalent] for the CR, the EAB, and LPZ boundaries are below the corresponding acceptance criteria specified in 10 CFR 50.67 and RG1.183.

Therefore, these changes do not involve a significant reduction in 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: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: Jacob Zimmerman, Acting.

TXU Generation Company LP, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Somervell County, Texas

Date of amendment request: July 25, 2002.

Brief description of amendments: The proposed amendments would change the CPSES Facility Operating Licenses as follows: Section 2.C.(4)(b) would be changed to be consistent with the license conditions stated in the U.S. Nuclear Regulatory Commission (NRC)

Order and Safety Evaluation issued December 21, 2001, which approved the direct transfer of ownership interest and operating authority for CPSES to TXU Generation Company LP; Section 2.E which requires reporting any violations of the requirements contained in Section 2.C of the licenses would be deleted. Additionally, Technical Specification Table 5.5-2 "Steam Generator Tube Inspection," Table 5.5-3, "Steam Generator Repaired Tube Inspection for Unit 1 Only," and Section 5.6.10, "Steam Generator Tube Inspection Report," would be revised to delete the requirement to notify the NRC pursuant to 50.72(b)(2) of Title 10 of the Code of Federal Regulations (10 CFR) if the steam generator tube inspection results are in a C-3 classification.

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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The requested change to revise Section 2.C.(4)(b) of the Operating Licenses is consistent with NRC Order and Safety Evaluation approved December 21, 2001 for Facility Operating Licenses NPF-87 and NPR-89. The requested change to delete Section 2.E of the Operating Licenses and the changes to revise Technical Specification Table 5.5-2, Table 5.5-3 and Section 5.6.10 are consistent with the changes recently implemented in 10 CFR 50.72 and 10 CFR 50.73.

This request involves administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request involves administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.*, fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level

of radiation dose to the public. This request involves administrative changes only.

No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety systems settings, or will not relax the bases for any limiting conditions of operation. 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. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Power Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: July 26, 2002.

Brief description of amendment request: The proposed amendments would amend Operating Licenses DPR-58 and DPR-74 to add a license condition allowing a one-time 140-hour allowed outage time for the essential service water (ESW) system, to allow ESW pump replacement during plant operation.

Date of publication of individual notice in Federal Register: August 8, 2002 (67 FR 51603).

Expiration date of individual notice: September 9, 2002.

Florida Power and Light Company, Docket No. 50-251, Turkey Point Plant, Unit 4, Miami-Dade County, Florida

Date of amendment request: July 29, 2002.

Description of amendment request: Revised Technical Specifications to allow use of an alternate method of determining rod position for a control rod with an inoperable rod position indication. Effective during the current operating cycle until repair of the indication system can be completed at the next outage.

Date of publication of individual notice in the Federal Register: August 2, 2002 (67 FR 50473).

Expiration date of individual notice: August 16, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North,

11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr@nrc.gov.

Dominion Nuclear Connecticut, Inc. et al., Docket Nos. 50-245, 50-336, and 50-423 Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of amendment request: August 8, 2001.

Brief description of amendment: The amendment incorporates two changes into each operating license. The physical protection (security) related license condition is revised to indicate that the physical security program plans listed, may, rather than do, contain safeguards information; and the plant name is changed from the "Millstone Nuclear Power Station" to the "Millstone Power Station."

Date of issuance: August 8, 2002.

Effective date: August 8, 2002, to be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1,-110, Unit 2-269, and Unit 3-208.

Facility Operating License Nos. DPR-21, DPR-65 and NPF-49: The amendment revised the operating licenses.

Date of initial notice in Federal Register: October 17, 2001 (66 FR 52798). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50-423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: October 1, 2001, as supplemented by letters dated June 26, and August 5, 2002.

Brief description of amendment: The amendment will revise the Technical Specifications (TSs) limiting condition for operation and surveillance requirements associated with verification of reactor coolant system operational leakage. Conforming changes are also made to the associated TS Bases.

Date of issuance: August 21, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 209.

Facility Operating License No. NPF-49: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 14, 2001 (66 FR 57120). The supplements dated June 26 and August 5, 2002, were within the scope of the original application as published in the **Federal Register** and did not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety evaluation dated August 21, 2002.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50-397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: April 19, 2002.

Brief description of amendment: The amendment revises Technical Specification (TS) 5.5.10, "Technical Specification (TS) Bases Control Program," to provide consistency with the changes to 10 CFR 50.59 as published in the **Federal Register** (64 FR 53582) dated October 4, 1999, that became effective March 13, 2001.

Date of issuance: August 15, 2002.

Effective date: August 15, 2002.

Amendment No.: 177.

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 25, 2002 (67 FR 42821). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 15, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: November 2, 2001, as supplemented January 9 and July 10, 2002.

Brief description of amendment: The amendment changes the Current Technical Specifications and the Improved Technical Specifications Main Steam Isolation Valve Leakage Surveillance Requirement. The licensee will also make conforming changes to the associated Bases and the Primary Containment Leakage Rate Testing Program.

Date of issuance: August 13, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 275.

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 22, 2002 (67 FR 2923). The January 9 and July 10, 2002, letters provided clarifying information that was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination as published in the **Federal Register**. The January 9 supplement also corrected the original application date from November 2, 2000, to November 2, 2001.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: August 22, 2001, as supplemented on March 5, 2002.

Brief description of amendment: The amendment revises the Technical Specification (TS) Surveillance Requirement (SR) 3/4.7.B.1.a.2 for the Standby Gas Treatment (SBGT) System and the associated TS Bases 3/4.7.B.1, by increasing the SBGT inlet heaters minimum output testing requirement from 14 kW to 20 kW.

Date of issuance: August 20, 2002.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 194.

Facility Operating License No. DPR-35: Amendment revised the TSs.

Date of initial notice in Federal Register: November 14, 2001 (66 FR 57121). The supplement dated March 5, 2002, provided additional information that clarified the application, and did not expand the scope of the application or change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 20, 2001, as supplemented on February 13, 2002.

Brief description of amendment: The amendment to the Technical Specifications (TSs) revises certain requirements associated with demonstrating the operability of alternate trains when redundant equipment is made or found to be inoperable. The TSs revised include: 4.4.B, 4.5.A.2, 4.5.A.3, 4.5.A.4, 4.5.B.2, 4.5.C.2, 4.5.C.3, 4.5.D.2, 4.5.D.3, 4.5.E.2, 4.5.F.2, 4.5.H.1, 4.7.B.3.c, 4.10.B.1, 4.10.B.3.b.2. Some format and typographical errors were also corrected.

Date of Issuance: August 14, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 209.

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 19, 2001 (66 FR 48292). The February 13, 2002, supplement was within the scope of the original application and did not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 14, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 20, 2001, as supplemented on March 28, 2002.

Brief description of amendment: This amendment moves Table 4.7.2, "Primary Containment Isolation Valves" and references, to the Technical Requirements Manual; changes surveillance requirement 4.7.B.1.b to reflect that the Standby Gas Treatment system duct heater needs to meet relative humidity design-basis requirements; adds Section 3.7.E, "Reactor Building Automatic Ventilation System Isolation Valves," to the Table of Contents; removes wording in 3.5.A.4.a and b referencing a one-time 30-day Limiting Condition for Operation; and, makes administrative changes to Sections 5.3 and 6.4.

Date of Issuance: August 21, 2002.

Effective date: As of the date of issuance, and shall be implemented within 90 days.

Amendment No.: 210.

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 26, 2001 (66 FR 66474). The March 28, 2002, supplement was within the scope of the original application and did not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 21, 2002.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket No. 251, Turkey Point Plant, Unit 4, Miami-Dade County, Florida

Date of amendment request: July 29, 2002, as supplemented August 14 and August 16, 2002.

Description of amendment request: The amendment revised Technical Specifications 3/4.1.3.1, 3/4.1.3.2 and 3/4.1.3.5 to allow the use of an alternate method of determining rod position for the control rod C-9, until the end of Cycle 20 or until repairs can be conducted on the Analog Rod Indication System at the next outage of sufficient duration, whichever comes first.

Date of issuance: August 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 216.

Facility Operating License No. (DPR-41): Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. August 2, 2002 (67 FR 50473). The licensee's August 14 and August 16, 2002, submittals of supplemental information did not affect the original no significant hazards consideration determination, and did not expand the scope of the request as noticed on August 2, 2002. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by August 16, 2002, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent

circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated August 20, 2002.

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.

Nine Mile Point Nuclear Station, LLC, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: June 7, 2002.

Brief description of amendment: The amendment deletes Section 5.5.3, "Post Accident Sampling," from the Technical Specifications and thereby eliminates the requirements to have and maintain the Post Accident Sampling System.

Date of issuance: August 9, 2002.

Effective date: As of the date of issuance to be implemented within 180 days.

Amendment No.: 106.

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: July 9, 2002 (67 FR 45570). The staff's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 2002.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 2, 2002.

Brief description of amendments: These amendments revised 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: August 12, 2002.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 205 and 179.

Facility Operating License Nos. NPF-14 and NPF-22: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 28, 2002 (67 FR 36932). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 12, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: March 29, 2002.

Brief description of amendment: The amendment allows the use of the current pressure-temperature (P-T) limit curves through Cycle 12. The amendment also removes notes from the Technical Specifications that state that the curves are valid for 32 effective full power years.

Date of issuance: August 13, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 139.

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 14, 2002 (67 FR 34491). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: October 21, 2001, as supplemented by letters dated February 11 and May 27, 2002.

Brief description of amendments: The amendments revised the Technical Specifications, Table 3.3.1-1, "Reactor Trip System Instrumentation" and associated Bases B 3.3.1. A limit or "clamp" on the Overtemperature Delta Temperature reactor trip function addresses design issues related to fuel rod design under transient conditions. In addition, editorial revisions to bases B 3.3.1 are included.

Date of issuance: August 9, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 127 & 105.

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 2, 2002 (67 FR 15608). The supplements dated February 11, 2002, and May 27, 2002, provided

clarifying information that did not change the scope of the October 30, 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 August 9, 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: December 26, 2001, as supplemented by letters dated February 4 and June 12, 2002.

Brief description of amendments: The amendments revise TS 5.5.16, "Containment Leakage Rate Testing Program" to extend the 10 CFR Part 50, Appendix J, Type A, Containment Integrated Leak Rate Test date for Comanche Peak Steam Electric Station, Units 1 and 2, from the fall of 2002 to December 2008 for Unit 1, and from the fall of 2006 to December 2012 for Unit 2. The following phrase implements this change in TS 5.5.16.a: " * * * as modified by the following exception: 1. NEI 94-01-1995, Section 9.2.3: The first Type A Test performed after the December 7, 1993, Type A Test (Unit 1) and the December 1, 1997, Type A Test (Unit 2) shall be performed no later than December 15, 2008 (Unit 1) and December 9, 2012 (Unit 2)."

Date of issuance: August 15, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 98 and 98.

Facility Operating License Nos. NPF-87 and NPF-89: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 5, 2002 (67 FR 5340). The February 4 and June 12, 2002, supplemental letters 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 amendments is contained in a Safety Evaluation dated August 15, 2002.

No significant hazards consideration comments received: No.

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

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02-22197 Filed 8-30-02; 8:45 am]

BILLING CODE 7590-01-P

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 12, 2002 Board of Directors Meeting

Time and Date: Thursday, September 12, 2002, 1:30 p.m. (Open Portion), 1:45 p.m. (Closed Portion).

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Meeting open to the Public from 1:30 p.m. to 1:45 p.m., Closed portion will commence at 1:45 p.m. (approx.).

Matters to be Considered:

1. President's Report
2. Approval of May 22, 2002 Minutes (Open Portion)

Further Matters to be Considered: (Closed to the Public 1:45 p.m.)

1. Proposed FY 2004 Budget Proposal and Allocation of Retained Earnings
2. Finance Project in Russia, Azerbaijan, Uzbekistan, Kazakhstan, and Ukraine
3. Finance Project—Global
4. Approval of May 22, 2002 Minutes (Closed Portion)
5. Pending Major Projects
6. Reports

Contact Person for Information:

Information on the meeting may be obtained from Connie M. Downs at (202) 336-8438.

Dated: August 29, 2002.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 02-22524 Filed 8-29-02; 2:13 pm]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of September 2, 2002:

A Closed Meeting will be held on Tuesday, September 3, 2002, at 10 a.m.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, September 3, 2002, will be:

Formal orders of investigation; Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: August 29, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-22503 Filed 8-29-02; 11:37 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46419; File No. SR-NASD-2002-109]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq's InterMarket

August 27, 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 August 8, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

prepared by Nasdaq. 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

Nasdaq proposes to: (i) Modify the execution fees for Nasdaq InterMarket trades executed through the Intermarket Trading System ("ITS") and Nasdaq's Computer Assisted Execution System ("CAES"); and (ii) establish a credit for the liquidity provider for executions via ITS and CAES.³ Nasdaq will implement the proposed rule change as quickly as practicable following approval. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7010. System Services

(a)-(c) No change.

(d) Computer Assisted Execution Service.

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per *share* transaction charge plus equipment-related charges.

(1) Service Charges

\$100 per month for each market maker terminal receiving CAES.

(2) Transaction Charges

(A) [As of January 1, 1998, \$0.50 per execution] *\$0.003 per share executed up to a maximum of \$75 per execution* shall be paid by an order entry firm or CAES market maker that enters an order into CAES that is executed in whole or in part, *and \$0.002 per share executed up to a maximum of \$50 per execution shall be credited to the CAES market maker that executes such an order.[*]*

(B) [As of November 1, 1997, \$1.00 per commitment] *\$0.002 per share executed up to a maximum of \$75 per execution* shall be paid by any member that sends a commitment through the ITS/CAES linkage to buy or sell a listed security that is executed in whole or in part, *and \$0.001 per share executed up to a maximum of \$35 per execution shall be credited to a member that executes such an order.[**]*

³ On June 13, 2002, the NASD, through its subsidiary, Nasdaq, filed a similar proposed rule change that was effective upon filing pursuant to Section 19(b)(3)(A) of the Act. 15 U.S.C. 78s(b)(3)(A). See Securities Exchange Act Release No. 46153 (July 1, 2002), 67 FR 45164 (July 8, 2002) (SR-NASD-2002-68). The proposal was summarily abrogated by Commission order on July 2, 2002. See Securities Exchange Act Release No. 46159.

[*As of September 1, 2000, a CAES market maker that receives and executes a CAES order or any part of a CAES order will not be required to pay a CAES transaction charge.]

[**As of September 1, 2000, a member that receives a commitment through the ITS/CAES linkage to buy or sell a security that is executed in whole or in part will not be required to pay a CAES transaction charge.]

(e)-(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth below in Sections A, B, and C, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's InterMarket ("InterMarket") is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange LLC ("Amex").⁴ The InterMarket competes with regional exchanges such as the Chicago Stock Exchange, Inc. ("CHX") and the Cincinnati Stock Exchange, Inc. ("CSE") for retail order flow in stocks listed on the NYSE and the Amex. The InterMarket is comprised of (1) CAES, a system that facilitates the execution of trades in listed securities between NASD members that participate in the InterMarket, and (2) ITS, a system that facilitates the execution of trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.⁵

Nasdaq proposes to modify the fee structure of the InterMarket to encourage market participants to provide additional liquidity to support executions through the InterMarket and

thereby enhance its competitiveness. Specifically, Nasdaq will replace the current CAES execution fee of \$0.50 with a per share execution fee of \$0.003, and will credit \$0.002 per share to a member whenever it provides the liquidity to support an execution through CAES (*i.e.*, sells in response to a buy order, or buys in response to a sell order). The maximum fee will be capped at \$75 per execution, and the maximum credit will be capped at \$50 per execution.

Similarly, Nasdaq proposes that the current ITS execution fee of \$1.00 will be replaced with a per share execution fee of \$0.002, and a member that provides liquidity to support an ITS execution will receive a credit of \$0.001 per share. There will be a maximum fee of \$75 per execution, and a maximum credit of \$35 per execution.

The proposed fee structure is similar to the structure that has been in place for Nasdaq's SuperSOES system since November 2001 and that will be used for Nasdaq's SuperMontage system when it is launched in the third quarter of 2002.⁶

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with section 15A(b)(5) of the Act,⁷ which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and section 15A(b)(6) of the Act,⁸ which requires that the rules are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that the proposed transaction execution fees will be imposed equally on members that use the InterMarket to place orders, whereas the proposed credits will be available to all members that enhance the viability of the InterMarket by providing liquidity to support executions. Moreover, Nasdaq believes that the level of the fees and credits are reasonable because its revenues from a given level of transaction activity under the new fee structure will be lower than its revenues from the same level of transaction activity under the prior fee structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2002-109 in the caption above and should be submitted by September 24, 2002.

⁴ Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. See *e.g.*, Securities Exchange Act Release No. 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR-NASD-00-32).

⁵ See CAES/ITS User Guide, at www.intermarket.nasdaqtrader.com, for further details.

⁶ See Securities Exchange Act Release Nos. 44910 (October 5, 2001), 66 FR 52167 (October 12, 2001) (SR-NASD-2001-67); and 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR-NASD-2002-44).

⁷ 15 U.S.C. 78o-3(b)(5).

⁸ 15 U.S.C. 78o-3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-22343 Filed 8-30-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46407; File No. SR-Phlx-2002-17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Participation Rights in Trades Involving Crossing, Facilitation, and Solicited Orders

August 23, 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 March 18, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Phlx. On May 2, 2002, July 24, 2002, and August 20, 2002, Phlx submitted Amendment Nos. 1, 2, and 3 to the proposed rule change, respectively.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt Commentary .02 to Phlx Rule 1064, Crossing, Facilitation and Solicited Orders, governing the crossing of equity option orders by floor brokers, to give the member firm from which an order originates a participation right in trades that are proposed to be crossed in

certain circumstances. The Exchange further proposes to adopt Commentary .03 to Phlx Rule 1064, setting forth a general requirement that a member or member organization facilitating a customer order pursuant to this rule shall disclose all securities that are components of the customer order which is subject to facilitation before requesting bids and offers for the execution of all components of the order.

The text of the proposed rule change follows. Additions are italicized.

* * * * *

Crossing, Facilitation and Solicited Orders

Rule 1064. (a)-(d) No change.

Commentary:

.01. No change.

.02. *Firm Participation Guarantees. (i) Notwithstanding the provisions of paragraphs (a) and (b) of this Rule, when a Floor Broker holds an equity option order of the eligible order size or greater ("original order"), the Floor Broker is entitled to cross a certain percentage of the original order with other orders that he is holding or in the case of a customer order, with a facilitation order of the originating firm (i.e., the firm from which the original customer order originated).*

(ii) The Options Committee may determine, on an option by option basis, the eligible size for an order that may be transacted pursuant to this Commentary, however, the eligible order size may not be less than 500 contracts. Orders for less than 500 contracts may be crossed pursuant to this rule but are not subject to subsection (iii) below pertaining to participation guarantees. In accordance with his responsibilities for due diligence, a Floor Broker representing an order of the eligible order size or greater which he wishes to cross shall request bids and offers for such option series and make all persons in the trading crowd aware of his request. In determining whether an order satisfies the eligible order size requirement, any multi-part or spread order must contain one leg alone which is for the eligible order size or greater. If the same member organization is the originating firm and also the specialist for the particular class of options to which the order relates, then the specialist is not entitled to any Enhanced Specialist Participation with respect to the particular cross transaction.

(iii) The percentage of the order which a Floor Broker is entitled to cross, after all public customer orders that were (1) on the limit order book and then (2)

represented in the trading crowd at the time the market was established have been satisfied, is determined as follows: (A) 20% of the remaining contracts in the order if the order is traded at the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market; or (B) 40% of the remaining contracts in the order if the order is traded between the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market.

(iv) When crossing an order pursuant to this Commentary, a Floor Broker must disclose on its order ticket for any order which is subject to crossing, all of the terms of such order, including any contingency involving, and all related transactions in, either options or underlying or related securities. The Floor Broker must disclose all securities that are components of the customer order which is subject to crossing before requesting bids and offers for the execution of all components of the order.

(v) Once the trading crowd has provided a quote, it will remain in effect until: (A) A reasonable amount of time has passed, or (B) there is a significant change in the price of the underlying security, or (C) the market given in response to the request has been improved. In the case of a dispute, the term "significant change" will be interpreted on a case-by-case basis by two Floor Officials based upon the extent of the recent trading in the option and in the underlying security, and any other relevant factors.

(vi) If a trade pursuant to this Commentary occurs when the specialist is on parity with one or more controlled accounts, then the Enhanced Specialist Participation which is established pursuant to Exchange Rule 1014(g)(ii)-(iv) shall apply only to the number of contracts remaining after the following orders have been satisfied: those public customer orders which trade ahead of the cross transaction, and any portion of an order being crossed against the original order being represented by the Floor Broker. The Enhanced Specialist Participation may only be 20% of the original order after customer orders have been executed for orders crossed pursuant to this paragraph unless the Floor Broker has chosen to cross less than its 20% entitlement, in which case the Enhanced Specialist Participation will be a percentage that combined with the percentage the firm crossed is no more than 40% of the original order. If the trade occurs at a price other than the specialist's disseminated bid or offer, the specialist is entitled to no guaranteed participation.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letters from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 1, 2002 (Amendment No. 1); and to Ira Brandriss, Special Counsel, Division, Commission, dated July 23, 2002, and August 19, 2002 (Amendment Nos. 2 and 3). The proposal was originally filed to be immediately effective pursuant to Section 19(b)(3)(A) of the Act. In Amendment No. 1, Phlx changed its status to a proposal filed pursuant to Section 19(b)(2) of the Act and requested accelerated effectiveness. The changes made by Amendment Nos. 2 and 3 have been incorporated into this notice.

(vii) *The members of the trading crowd who established the market will have priority over all other orders that were not represented in the trading crowd at the time that the market was established (but not over customer orders on the book) and will maintain priority over such orders except for orders that improve upon the market. A Floor Broker who is holding a customer order and either a facilitation or solicited order and who makes a request for a market will be deemed to be representing both the customer order and either the facilitation order or solicited order, so that the customer order and the facilitation order or solicited order will also have priority over all other orders that were not being represented in the trading crowd at the time the market was established.*

(viii) *Nothing in this paragraph is intended to prohibit a Floor Broker or a specialist from trading more than their percentage entitlements if the other members of the trading crowd do not choose to trade the remaining portion of the order.*

(ix) *A Floor Broker may not cross an order that he is holding with an order from a Registered Options Trader that is then in the trading crowd.*

(x) *Spread, straddle, combination or hedge orders, as defined in Exchange Rule 1066, on opposite sides of the market may be crossed, provided that the Floor Broker holding such orders proceeds in the manner described in paragraphs (a) or (b) of this Rule as appropriate. Members may not prevent a spread, straddle, stock-option, or combination cross from being completed by giving a competing bid or offer for one component of such order. In determining whether an order satisfies the eligible order size requirement, any multi-part or spread order must contain one leg which, standing alone, is for the eligible order size or greater.*

.03 *A member or member organization facilitating a customer order pursuant to this rule shall disclose all securities that are components of the customer order which is subject to facilitation before requesting bids and offers for the execution of all components of the order.*

* * * * *

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, as amended, and discussed any comments it received

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to give the member firm from which an order originates ("originating firm") a participation right in trades that are proposed to be crossed in certain circumstances, similar to existing rules on other options exchanges.⁴

Exchange Rule 1064 sets forth the procedures by which a floor broker holding a customer order ("original order") may cross it with either another customer order⁵ or orders from the same originating firm, or a contra side order provided by the originating firm from its own proprietary account ("facilitation order").⁶

Currently, under Exchange Rule 1064(a) and (b), a floor broker seeking to cross buy and sell orders for the same options series must first bring the transaction to the trading floor and request markets from the trading crowd for all components of the order. After providing the crowd with the opportunity to make such markets, the floor broker must announce that he holds an order subject to crossing or facilitation, and then must propose a price at which to cross the original order that improves upon the price provided by the crowd. However, before the floor broker can effect the cross, the market makers in the crowd are given the opportunity to take all or part of the transaction at the proposed price.

Under these rules, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to participate in part of the order, however, the crowd has priority and the floor broker may cross only that amount remaining after the crowd has taken its portion. If the crowd wants to participate in the entire order, the floor broker will not be able to cross or facilitate any part of the order.

The proposed rule change, adding new Commentary .02 to Exchange Rule 1064, would apply to transactions in

equity options, and would initially apply to customer orders of a minimum size of 500 contracts.⁷ The Options Committee may determine, on an option by option basis, the eligible size for an order that may be transacted pursuant to the proposal; however, the eligible order size may not be less than 500 contracts.⁸

The proposed rule change would entitle the floor broker, under certain conditions, to cross a specified percentage of the original order on behalf of the originating firm, before Registered Options Traders ("ROTs") in the crowd can participate in the transaction. The percentage of the floor broker's guarantee would depend upon whether the price at which the order is ultimately traded is at the crowd's best bid or offer in response to the floor broker's initial request, or at an improved price.

The proposed rule change provides that, where the floor broker proposes the cross at a price that improves the crowd's market, and the crowd then wants to take part in some or all of the order at the improved price, the floor broker would be entitled to cross 40% of the contracts before the crowd could participate in the transaction. For example, if the market provided by the crowd in response to a floor broker's request for a market in a particular option series is 1.00–1.15, and a crossing transaction for 500 contracts pursuant to the proposed rule takes place at the improved price of 1.10 (after public customer orders have been satisfied), the floor broker would be entitled to cross 200 contracts (40% of 500) at 1.10.

Under the proposal, and distinguished from current Phlx Rule 1064, the floor broker would be granted a right to cross even at a price that does not improve upon the best bid or offer provided by the crowd in response to his initial request for a market. The proposed rule change provides that where the trade takes place at the market provided by the crowd (which could include the Exchange's disseminated market determined by Auto-Quote,⁹ or specialized quote

⁷ See Amendment No. 2, clarifying that the proposal would include facilitation of all customer orders, not only public customer orders.

⁸ For instance, the Options Committee may determine, in administering this proposed rule, to limit its application to orders of 1,000 contracts or more; similarly, the Options Committee may determine to establish different minimum sizes for different options. However, a proposed rule change would be required to permit the application of this rule to orders for a size of less than 500 contracts.

⁹ Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. See Exchange Rule 1080, Commentary .01(a).

⁴ See, e.g., Chicago Board Options Exchange, Inc. Rule 6.74(d), American Stock Exchange LLC Rule 950(d), Commentary .02, and Pacific Exchange, Inc. Rule 6.47(b).

⁵ See Exchange Rule 1064(a).

⁶ See Exchange Rule 1064(b).

feed¹⁰ in the event that no crowd participant responds to the floor broker's request for a market¹¹), all public customer orders on the book and those represented in the trading crowd at the time the market was established must first be satisfied. Once these public customer orders are satisfied, the floor broker would be entitled to cross 20% of the contracts remaining in the original order. To continue with the above example, if the market provided by the crowd in response to a floor broker's request for a particular option series is 1.00–1.15, and a crossing transaction for 500 contracts pursuant to the proposed rule takes place at 1.00 (after public customer orders have been satisfied), the floor broker would be entitled to cross 100 contracts (20% of 500) at 1.00.

The proposed rule would provide that, once the trading crowd has provided a market, that market will remain in effect until a reasonable amount of time has passed, a significant change has occurred in the price of the underlying security of the option, or the market is improved. In case of a dispute, "significant change" would be determined on a case-by-case basis by two Floor Officials, based upon the extent of recent trading in the option and the underlying security and any other relevant factor. The Phlx states that the purpose of this provision is to ensure that the trading crowd is given an adequate opportunity to participate in the crossing transaction if it is not consummated immediately upon the floor broker's receipt of the crowd market.

In the case of a complex order such as a spread or straddle, the proposed rule would require that at least one leg of such an order, standing alone, would need to meet the eligible size requirement to qualify for the provisions of the proposed rule change. Thus, the aggregate size of all components of such an order would not be sufficient to qualify for the provisions of the proposed rule change unless one leg of the order is for the minimum size. The proposed rule change would provide that Members who wish to prevent a complex order from being crossed under the Commentary must bid or offer for all

components of the complex order, and may not prevent a spread, straddle, stock-option, or combination cross from being completed by giving a competing bid or offer for one component of such order. In determining whether an order satisfies the eligible order size requirement, any multi-part or spread order would be required to contain one leg which, standing alone, is for the eligible order size or greater.

The floor broker would be required to disclose on the order ticket for any order subject to crossing all terms of the order, including any contingency involving, and all related transactions in, either options or underlying or related securities. The floor broker would be required to disclose all securities that are components of the customer order which is subject to crossing before requesting bids and offers for the execution of all components of the order.¹² The Phlx states that the purpose of this provision is to eliminate any actual or perceived advantage that an originating firm may have over the trading crowd, since the originating firm (and its floor broker) would know the actual bid or offer price of the customer order it represents prior to requesting markets from the crowd under the proposal.

If the same member organization of the Exchange is both the originating firm and the specialist for the option in which the transaction takes place, and the floor broker acting on behalf of the originating firm crosses or facilitates under the proposed rule, the specialist would not be entitled to the Enhanced Specialist Participation with respect to the particular cross transaction.

However, if the specialist is not the same member organization as the originating firm, and the trade takes place at the specialist's disseminated bid or offer when the specialist is on parity with one or more controlled accounts, the specialist would be entitled to participate in a percentage of the contracts remaining after public customer orders have been executed and the originating firm's crossing rights have been exercised. The percentage that the specialist would receive is determined by reference to the Enhanced Specialist Participation established pursuant to Phlx Rule 1014(g)(ii)–(iv),¹³ subject to limitation.

If the floor broker crosses the full 20% of the originating firm's entitlement, the number of contracts guaranteed to the

specialist could not exceed 20% of the remainder of the order after the originating firm has taken its share. For example, if the crossing order is for 500 contracts, and the floor broker crosses 100 (20% of 500) on the specialist's bid or offer, the specialist would be entitled to receive a maximum of 100 contracts (20% of 500).

If the floor broker does not cross 20%, the specialist may be entitled to receive more contracts, but in no case would the specialist be guaranteed a percentage that, when combined with the percentage crossed by the floor broker, exceeds 40% of the original order (after relevant public customer orders have been satisfied). For example, if the crossing order is for 500 contracts, and the floor broker crosses 50 contracts (10% of 500) on the specialist's bid or offer, the specialist would be entitled to receive a maximum of 150 contracts (30% of 500). In this example, the specialist's participation, when combined with the floor broker's participation, does not exceed 40% of the order, or 200 contracts (50+150 = 200). Nothing in this proposal, however, would prohibit specialists from trading more than their percentage entitlements if the other members of the trading crowd do not choose to trade with the remainder of the order. If the trade takes place at a price other than that of the specialist's disseminated bid or offer, the specialist would not be entitled to any guaranteed participation.

A Floor Broker would not be able to cross an order that he is holding with an order from a ROT that is then in the trading crowd. The Phlx states that this provision is intended to prevent the situation in which such ROT would have his/her interest represented by two different crowd participants (him/herself and the Floor Broker) at the same time.¹⁴

The proposed rule change also provides that the members of the crowd who establish the market in response to the floor broker's initial request would have priority over all other orders that were not represented in the crowd at the time that market was established (but not over customer orders on the book), except for orders that improve upon those quotes. Further, a floor broker holding a customer order and either a facilitation order or a solicited order and who makes a request for a market would be deemed to be representing both the customer order and either the facilitation order or solicited order, so that the customer order, and the facilitation or solicited order would also have priority over all other orders that

¹⁰ A specialist may separately employ its own pricing models, by establishing a specialized interface with AUTOM known as a specialized quote feed, thus by-passing the Exchange's Auto-Quote System. See Exchange Rule 1080, Commentary .01(c).

¹¹ The Exchange's disseminated market (whether by Auto-Quote or specialized quote feed) is deemed to represent the quotations of all Registered Options Traders ("ROT's") in that option unless an ROT has expressly indicated otherwise in a clear and audible manner. See *id.*

¹² Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Ira Brandiss, Special Counsel, and Frank N. Genco, Attorney, Division, Commission, August 22, 2002.

¹³ See Amendment No. 3.

¹⁴ See Amendment No. 3.

were not being represented in the trading crowd at the time the market was established.¹⁵

Proposed Commentary .03 would require a member or member organization facilitating a customer order pursuant to Rule 1064 to disclose all securities that are components of the customer order which is subject to facilitation before requesting bids and offers for the execution of all components of the order. The Phlx states that the purpose of this business-related provision is to avoid the situation in which a facilitating floor broker representing a firm and customer order enters a crowd and establishes the firm's own contra-side bid (in the case of the customer selling) or offer (in the case of a customer buying) before disclosing the customer's bid or offer to the crowd. The Phlx states that otherwise the floor broker would establish priority before the crowd is made aware of the terms of the customer's order. If the customer order is disclosed first, however, the crowd may be more likely to bid or offer competitively as contra side to that customer's order, thus benefiting the customer.¹⁶ The Exchange's Options Committee determined that informing the trading crowd of the customer component of the order first is fairer overall, because the contra-side is often merely a facilitation or response to that order.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect the investors and the public interest by providing incentives for crowd participants to quote competitively, and by making the Exchange more competitive by providing incentive to order flow providers to bring order flow to the Exchange. The Exchange believes

that the proposed rule change will result in tighter spreads, and thus benefit customers whose orders are subject to the new crossing rule. The Exchange further believes that allowing order flow providers a participation guarantee should provide incentive for such order flow providers to bring their order flow to the Exchange, making the Exchange a more competitive marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) By order approve such proposed rule change, as amended; or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be

available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-Phlx-2002-17 and should be submitted by September 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-22342 Filed 8-30-02; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3438]

State of California (Corrected Copy)

San Diego County and the contiguous counties of Imperial, Orange and Riverside in the State of California constitute a disaster area as a result of a wildfire that occurred on July 29, 2002 and continued until the wildfire was contained on August 12, 2002. The wildfire occurred in the Banner Grade area of San Diego County and consumed 65,000 acres, destroying owner occupied homes, outbuildings and vehicles. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 21, 2002 and for economic injury until the close of business on May 22, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 4 Office, PO Box 13795, Sacramento, CA 95853-4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 343805 and for economic damage is 9Q9300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

¹⁹ 17 CFR 200.30-3(a)(12).

¹⁵ See Amendment No. 2.

¹⁶ See Amendment No. 3. Commentary .03 would apply to the entire facilitation cross provision of Phlx Rule 1064, and is intended to require, among other things, that the Floor Broker make the crowd aware of which side of the crossing transaction (*i.e.*, buy or sell) is the customer order. Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Ira Brandriss, Special Counsel, and Frank N. Genco, Attorney, Division, Commission, August 21, 2002.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

Dated: August 22, 2002.

Hector V. Barreto,
Administrator.

[FR Doc. 02-22348 Filed 8-30-02; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9R02]

Commonwealth of Pennsylvania

Allegheny County and the contiguous counties of Armstrong, Beaver, Butler, Washington and Westmoreland in the Commonwealth of Pennsylvania constitute an economic injury disaster loan area as a result of a severe storm (macro burst) and heavy rains that occurred on May 31, 2002. The storms produced strong winds and caused serious damages to a number of commercial buildings in the City of Pittsburgh and the surrounding communities. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on May 23, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.5 percent.

The number assigned for economic injury for this disaster is 9R0200 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: August 22, 2002.

Hector V. Barreto,
Administrator.

[FR Doc. 02-22347 Filed 8-30-02; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 4115]

Advisory Committee on Labor Diplomacy; Meeting

The Advisory Committee on Labor Diplomacy (ACLD) will hold a meeting from 9 a.m. to 12 noon on September 18, 2002, in room 1406, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. Paula Dobriansky, Under Secretary of State for Global Affairs, will make welcoming remarks. Lorne Craner, Assistant Secretary of State for Democracy, Human Rights and Labor Affairs will also attend. Committee

Chairman Thomas Donahue, former President of the AFL-CIO, will chair the meeting.

The ACLD is comprised of prominent persons with expertise in the area of international labor policy and labor diplomacy. The ACLD advises the Secretary of State and the President on the resources and policies necessary to implement labor diplomacy programs efficiently, effectively and in a manner that ensures U.S. leadership in promoting the objectives and ideals of U.S. labor policies in the 21st century. The ACLD makes recommendations on how to strengthen the Department of State's ability to respond to the many challenges facing the United States and the federal government in international labor matters. These challenges include the protection of worker rights, the elimination of exploitative child labor, and the prevention of abusive working conditions.

The agenda for the September 18 meeting includes: discussion of the interagency process on international labor policy formulation, implementation of the recommendations of the Committee's first report on U.S. labor diplomacy, reactions to the Committee's second report, and options for the Committee's agenda for the coming year.

Members of the public are welcome to attend the meeting as seating capacity allows. As access to the Department of State is controlled, persons wishing to attend the meeting must be pre-cleared by calling or faxing the following information, by opening of business September 17, to Kenneth Audroué at (202) 647-4327 or fax (202) 647-0431 or e-mail audrouekr@state.gov: name; company or organization affiliation (if any); date of birth; and social security number. Pre-cleared persons should use the C Street entrance to the State Department and have a driver's license with photo, a passport, a U.S. Government ID or other valid photo identification.

Members of the public may, if they wish, submit a brief statement to the Committee in writing. Those wishing further information should contact Mr. Audroué at the phone and fax numbers provided above.

Dated: August 28, 2002.

John S. Carpenter,

Acting Assistant Secretary, Bureau of Democracy, Human Rights and Labor, Department of State.

[FR Doc. 02-22384 Filed 8-30-02; 8:45 am]

BILLING CODE 4710-18-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Submission for OMB Review; Comment Request

AGENCY: Office of the United States Trade Representative.

Titles: Questionnaire for Exclusion Requesters; Questionnaire for Objectors.

Form Numbers: None.

Agency Approval Number: 0350-0011, 0350-0012.

Type of Request: Revision of currently approved collections.

Burden: Questionnaire for Exclusion Requesters: 4100 hours; Questionnaire for Objectors: 3387 hours.

Number of Respondents: Questionnaire for Exclusion Requesters: 250; Questionnaire for Objectors: 17.

Avg. Hours Per Response: The time needed to respond is estimated to range from 1.5 to 15 hours. Many of the respondents will be updating information with regard to an exclusion that they have previously requested, or to which they have previously objected. We estimate that their time for responding will average between 1.5 and 2 hours. Other respondents will be submitting a new request for exclusion or objecting to a new request for exclusion. We estimate that their time for responding will average between 11 and 15 hours. The time estimates include time to gather the necessary information, create the documents, and submit the completed questionnaires.

Needs and Uses: Section 203(a) of the Trade Act of 1974, as amended (19 U.S.C. 2253(a)) authorizes the President, in certain circumstances, to take appropriate and feasible action which the President determines will facilitate efforts by domestic industries to make a positive adjustment to import competition and provide greater economic and social benefits than costs. On March 5, 2002, acting pursuant to Section 203(a), the President issued Proclamation 7529, establishing temporary safeguards on imports of steel products. 67 Fed. Reg. 10553 (March 7, 2002). Proclamation 7529 states that in March of each year in which any of these safeguard measures remain in effect, the United States Trade Representative ("USTR") is authorized, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded from these safeguard measures, to modify the HTS provisions created by the Annex to Proclamation 7529 accordingly. These information requests will identify products for which exclusion is sought, identify objections to the exclusion of such products, and

provide the information needed for the USTR to make a finding as to whether a product should be excluded.

Affected Public: Businesses or other for-profit.

Frequency: Annually and as otherwise needed.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Office: David Rostker, (202) 395-3897.

Copies of the proposed requester's or objector's questionnaires can be obtained by submitting a request to the USTR Office of Industry, 600 E Street, NW., Washington, DC 20508, Attn. Questionnaire Copy, fax 202-395-9674, telephone 202-395-5656. Please indicate clearly the questionnaire sought (requester's questionnaire or objector's questionnaire).

Written comments and recommendations for the proposed collection should be sent on or before October 3, 2002, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 28, 2002.

James E. Mendenhall,

Deputy General Counsel.

[FR Doc. 02-22386 Filed 8-30-02; 8:45 am]

BILLING CODE 3190-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review under 49 U.S.C. 41720 of Delta/Northwest/Continental Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice requesting comments.

SUMMARY: Delta Air Lines, Northwest Airlines, and Continental Airlines have submitted code-sharing and frequent-flyer program reciprocity agreements to the Department for review under 49 U.S.C. 41720. That statute requires such agreements between major U.S. passenger airlines to be submitted to the Department at least thirty days before the agreements' proposed effective date but does not require Department approval for the agreements. The statute authorizes the Department to extend the waiting period for these agreements at the end of the thirty-day period. The Department is inviting interested persons to submit comments that would assist the Department in determining whether it should extend the waiting period or take other action on the agreements.

DATES: Any comments should be submitted by September 10, 2002.

ADDRESSES: Comments must be filed with Randall Bennett, Director, Office of Aviation Analysis, Room 6401, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file three copies of its comments.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366-4731.

SUPPLEMENTARY INFORMATION: On August 23, Delta, Northwest, and Continental submitted code-sharing and frequent-flyer program reciprocity agreements to us for review under 49 U.S.C. 41720. That statute requires certain kinds of joint venture agreements among major U.S. passenger airlines to be submitted to the Department at least thirty days before they can be implemented. This requirement currently covers code-sharing agreements, long-term wet leases involving a substantial number of aircraft, and agreements concerning frequent flyer programs. By publishing a notice in the **Federal Register**, we may extend the waiting period by 150 days with respect to a code-sharing agreement and by sixty days for other types of agreements. At the end of the waiting period (either the thirty-day period or any extended period established by us), the parties are free to implement their agreement. The statute does not require the parties to obtain our approval before they implement an agreement. We normally could not block two airlines from implementing an agreement unless we issued an order under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) in a formal enforcement proceeding that determined that the agreement's implementation would be an unfair or deceptive practice or unfair method of competition that would violate that section.

We have informally reviewed all agreements submitted under 49 U.S.C. 41720 in earlier years. In each case, the airline parties to the agreement filed the agreement directly with the Department staff that reviews them, and we did not establish a docketed proceeding for any such agreement. In reviewing each agreement, we focused on whether it would reduce competition. As noted, we would usually base any determination that an agreement was unlawful on a finding that the agreement was unlawful under 49 U.S.C. 41712 as an unfair method of competition, that is, that the agreement violated the antitrust laws or antitrust

principles. *See United Air Lines v. CAB*, 766 F.2d 1101 (7th Cir. 1985). Our review is analogous to the review of major mergers and acquisitions conducted by the Justice Department and the Federal Trade Commission under the Hart-Scott-Rodino Act, 15 U.S.C. 18a, since we are considering whether we should institute a formal proceeding for determining whether an agreement would violate section 41712.

In our review, we consult the Justice Department, which is responsible for enforcing the antitrust laws in the airline industry and may file suit and seek injunctive relief against the parties to an airline agreement, whether or not the agreement is subject to 49 U.S.C. 41720. We seek to avoid duplicative proceedings by this Department and the Justice Department.

Delta, Northwest, and Continental submitted their joint venture agreements one month after United and U.S. Airways submitted code-share and frequent-flyer program reciprocity agreements for review under 49 U.S.C. 41720. We have been conducting an informal review of the United/US Airways agreements. However, due to the public interest in the matter, we gave interested persons an opportunity to submit comments on the United/US Airways agreements. We thought that the views of outside parties could assist us in determining whether to extend the waiting period and whether their agreements present serious issues under section 41712. 67 FR 50745 (August 5, 2002). The comments are public. 67 FR 52770 (August 13, 2002).

We will follow the same informal review process being used for the United/US Airways agreements and provide the same opportunity for public comments. Since the statute requires us to decide within thirty days of filing whether to extend the waiting period, we request that any comments be filed by September 10. Delta, Northwest, and Continental have prepared a redacted copy of their agreements that will be available for review and copying in room PL-401 of the Nassif Building, located in the northeast corner on the Plaza level, 400 7th St. SW., Washington, DC. We are making the copy available there, even though this case is not docketed, because it is readily accessible to the public and has a copying machine for public use.

The comments will be most helpful if they focus on the key issue in our review of the agreements under 49 U.S.C. 41720: whether the three airlines' implementation of the agreements may result in a significant reduction of competition in any market and therefore constitute an unfair method of

competition that would violate 49 U.S.C. 41712. Code-sharing and frequent-flyer program reciprocity agreements between major domestic airlines do not constitute a merger and, in contrast to the immunized alliances between U.S. and foreign airlines, are not normally intended to lead to a substantial integration of the partners' operations. Such agreements, however, would likely reduce competition if their terms or the resulting relationship among the airline partners would create the potential for collusion on price and service levels in markets where the airlines compete, or if the agreements and the airlines' relationship could otherwise significantly reduce competition, for example, by unreasonably restricting each airline's ability to set its own fares and service levels.

Issued in Washington, DC, on August 28, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02-22504 Filed 8-30-02; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Pottawattamie County, IA, Douglas County, NE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing a correction to the notice to the public that a scoping meeting leading to the preparation of an environmental impact statement would be prepared for improving the freeway system for Interstate-80 (I-80), I-29, and I-480 in the City of Council Bluffs, Pottawattamie County, Iowa, and the City of Omaha, Douglas County, Nebraska.

FOR FURTHER INFORMATION CONTACT: Rebecca Hiatt, Operations Engineer, FHWA, 105 6th Street, Ames, IA 50010-6337, (515) 233-7321. James P. Rost, Director, Office of Location and Environment, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010, (515) 239-1798.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's

Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

Background

The FHWA, in cooperation with the Iowa Department of Transportation, is issuing a correction to the FR Doc. 02-21214 filed 8-20-02. It was announced that a scoping meeting, leading to the preparation of an environmental impact statement for the proposed Council Bluffs Interstate Improvement Project, would be held on September 12, 2002 from 4 to 7 p.m. at the Best Western Crossroads of the Bluffs at 2216 27th Avenue (I-80 and 24th Street), Council Bluffs, Iowa. The meeting has been postponed and will be rescheduled. Public notice of the meeting time and location will be published in local newspapers.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Dated: August 26, 2002.

Bobby W. Blackmon,

Division Administrator.

[FR Doc. 02-22326 Filed 8-30-02; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2000-7257; Notice No. 28]

Railroad Safety Advisory Committee ("RSAC"); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

SUMMARY: FRA is updating its announcement of RSAC's working group activities to reflect their current status.

FOR FURTHER INFORMATION CONTACT: Trish Butera or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493-6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont

Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493-6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports on May 17, 2002, (67 FR 35185). The nineteenth full Committee meeting was held May 29, 2002, at the Wyndham Washington, DC Hotel in Washington, DC. The twentieth meeting is scheduled for September 19, 2002.

Since its first meeting in April of 1996, the RSAC has accepted seventeen tasks. Status for each of the tasks is provided below:

Task 96-1—(Completed) Revising the Freight Power Brake Regulations. This Task was formally withdrawn from the RSAC on June 24, 1997. FRA published an NPRM on September 9, 1998, reflective of what FRA had learned through the collaborative process. Two public hearings were conducted and a technical conference was held. The date for submission of written comments was extended to March 1, 1999. The final rule was published on January 17, 2001 (66 FR 4104). An amendment extending the effective date of the final rule until May 31, 2001 was published on February 12, 2001, (66 FR 9905). Amendments to Subpart D of the final rule were published August 1, 2001 (66 FR 36983). Amendments responding to the remaining issues raised in petitions for reconsideration were published in the **Federal Register** on April 10, 2002 (67 FR 17556). Contact: Thomas Hermann (202) 493-6036.

Task 96-2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR part 213). This Task was accepted April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on July 3, 1997, (62 FR 36138). The final rule was published in the **Federal Register** on June 22, 1998 (63 FR 33991). The effective date of the rule was September 21, 1998. A task force was established to address Gage Restraint Measurement System (GRMS) technology applicability to the Track Safety Standards. A GRMS amendment to the Track Safety Standards was approved by the full RSAC in a mail ballot during August 2000. The GRMS final rule amendment was published January 10, 2001 (66 FR 1894). On January 31, 2001, FRA published a notice extending the effective date of the GRMS amendment to April 10, 2001 (66 FR 8372). On February 8, 2001, FRA published a notice delaying the effective

date until June 9, 2001 in accordance with the Regulatory Review Plan (66 FR 9676). Contact: Al MacDowell (202) 493-6236.

Task 96-3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR part 220). This Task was accepted on April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on June 26, 1997 (62 FR 34544). The final rule was published on September 4, 1998 (63 FR 47182), and was effective on January 2, 1999. Contact: Gene Cox (202) 493-6319.

Task 96-4—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulations task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. Contact: Grady Cothen (202) 493-6302.

Task 96-5—(Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR part 230). This Task was assigned to the Tourist and Historic Working Group on July 24, 1996. Consensus was reached and an NPRM was published on September 25, 1998 (63 FR 51404). A public hearing was held on February 4, 1999, and recommendations were developed in response to comments received. The final rule was published on November 17, 1999 (64 FR 62828). The final rule became effective January 18, 2000. Contact: George Scerbo (202) 493-6349.

Task 96-6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR part 240). This Task was accepted on October 31, 1996, and a Working Group was established. Consensus was reached and an NPRM was published on September 22, 1998. The Working Group met to resolve issues presented in public comments. The RSAC recommended issuance of a final rule with the Working Group modifications. The final rule was published November 8, 1999 (64 FR 60966). Contact: John Conklin (202) 493-6318.

Task 96-7—Developing Roadway Maintenance Machine (On-Track Equipment) Safety Standards. This Task

was assigned to the existing Track Standards Working Group on October 31, 1996, and a Task Force was established. The Task Force finalized a proposed rule which was approved by the full RSAC in a mail ballot in August 2000. The NPRM was published January 10, 2001 (66 FR 1930). The Task Force met to review comments on February 27-March 1, 2002, and agreed to the disposition of the comments for the final rule. A Ballot was issued to the Working Group and all responders concurred. The RSAC approved the recommendations at the full RSAC meeting on May 29, 2002. The next step is to complete and publish the final rule. Contact: Al MacDowell (202) 493-6236.

Task 96-8—(Completed) This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, Locomotive Crashworthiness & Working Conditions. This Planning Task was accepted on October 31, 1996. A Planning Group was formed and reviewed the report, grouping issues into categories, and prepared drafts of the task statements for Tasks 97-1 and 97-2.

Task 97-1—Developing crashworthiness specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. This Task was accepted on June 24, 1997. A Task Force on engineering issues was established by the Working Group on Locomotive Crashworthiness to review collision history and design options and additional research was commissioned. The Working Group reviewed results of the research and is drafting performance-based standards for freight and passenger locomotives to present to the RSAC for consideration. An accident review task force has evaluated the potential effectiveness of suggested improvements. An NPRM has been prepared and circulated, and the Working Group met to review and refine drafts on October 9-10, 2001, and January 17-18, 2002. Tentative consensus has been reached on the central issues, and the draft NPRM is being revised for Working Group review. The full RSAC will review after approval of the Working Group. Contact: Sean Mehrvazi (202) 493-6237.

Task 97-2—Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. This Task was accepted June 24, 1997.

(Sanitation). (Completed) A draft sanitation NPRM was circulated to the

Working Group on Cab Working Conditions with ballot requested by November 3, 2000. The NPRM on sanitation was discussed during the full RSAC meeting on September 14, 2000 and published January 2, 2001 (66 FR 136). A public hearing was held April 2, 2001. A meeting was held on August 21, 2001, to discuss comments in response to the NPRM on sanitation. Agreement was reached on resolution of the comments to the NPRM. The Working Group gave concurrence to send the recommendations to the full RSAC for mail ballot vote. The recommendations were approved by the full Committee in December 2001. The final rule was published on April 4, 2002, with an effective date of July 3, 2002 (67 FR 16032). One petition for reconsideration was filed and is under review by FRA.

(Noise exposure.) A Task Force has assisted in identifying options for strengthening the occupational noise exposure standard, and the Cab Working Group met in October and November 2000, and April 2001, and reached tentative agreement on most of the significant issues related to the noise NPRM. The Cab Working Group held a meeting April 3-5, 2001, to discuss noise exposure standards. Refinement and substantive changes were incorporated into the rule language. A full draft NPRM was circulated to the working group for consideration at the meeting held July 24 and 25, 2002. FRA is revising the draft NPRM based on agreements and comments made in the last meeting. The next meeting is scheduled for November 12 through 14, 2002.

The Cab Working Group has also considered issues related to cab temperature, and is expected to consider additional issues (such as vibration) in the future. No further action is planned at this time. Contact: Jeffrey Horn (202) 493-6283.

Task 97-3—Developing event recorder data survivability standards. This Task was accepted on June 24, 1997. The Event Recorder Working Group is completing preparation of an NPRM. The NPRM went to the Working Group on May 21, 2001, for comments, and FRA has reviewed the comments. A revised draft was provided on March 28, 2002. The next meeting of the Working Group was held on May 30-31, 2002 with a goal of reaching consensus on the NPRM. A revised draft is targeted for completion and submission to the Working Group by the end of September. Contact: Edward Pritchard (202) 493-6247.

Task 97-4 and Task 97-5—Defining Positive Train Control (PTC)

functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment. Task 97-6—Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems. These three tasks were accepted on September 30, 1997, and assigned to a single Working Group.

(Report to the Administrator.) A Data and Implementation Task Force, formed to address issues such as assessment of costs and benefits and technical readiness, completed a report on the future of PTC systems. The report was accepted as RSAC's Report to the Administrator at the September 8, 1999, meeting.

(Regulatory development.) The Standards Task Force, formed to develop PTC standards assisted in developing draft recommendations for performance-based standards for processor-based signal and train control systems. The NPRM was approved by consensus at the full RSAC meeting held on September 14, 2000. The NPRM was published in the **Federal Register** on August 10, 2001. A meeting of the Working Group was held December 4-6, 2001, in San Antonio, Texas to formulate recommendations for resolution of issues raised in the public comments. Agreement was reached on most issues raised in the comments. A meeting was held May 14-15, 2002, in Colorado Springs, Colorado at which the working group approved creation of a team to further explore issues related to the "base case" issue. Briefing of the full RSAC on the "base case" issue was completed on May 29, 2002, and consultations continue within the working group. Full Working Group is scheduled to meet October 22-23, 2002. After Working Group approval, will present to the full RSAC for approval.

(Other program development activities.) Task forces on Human Factors and the Axiomatic Safety-Critical Assessment Process (risk assessment) continue to work toward development of a risk assessment toolkit, and the Working Group continues to meet to monitor the implementation of PTC and related projects. Contact: Grady Cothen (202) 493-6302.

Task 97-7—(Completed) Determining damages qualifying an event as a reportable train accident. This Task was accepted on September 30, 1997, and a group was formed to address this task. The working group designed a survey

form to collect specific data about damages to railroad equipment. The survey started on August 1 and ended January 31, 2001. A statistical analysis, using the survey data, was done to see if the method could be used to calculate property damages. The report was complete by the last week of April, 2001. A meeting was held May 21-23, 2001 to review the report. The Working Group agreed to terminate action on this task after reviewing the options. The Working Group reviewed a draft close-out report which was approved by the full RSAC on February 13, 2002, terminating this task. Contact: Robert Finkelstein (202) 493-6280.

Task 00-1—Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing or inspecting rear end marking devices (Blue Signal Protection). The working group held its first meeting on October 16-18, 2000. Meetings have been held: February 27-March 1, 2001, March 19-21, 2001, May 1-3, 2001, June 19-21, 2001, October 23-25, 2001, and January 28-31, 2002. The Working Group has reached tentative consensus on several issues. FRA is preparing documents and planning a meeting in an effort to assist in moving toward resolution of several remaining issues. Contact: Doug Taylor (202) 493-6255.

Task 01-1—Developing conformity of FRA's regulations for accident/incident reporting (49 CFR part 225) to revised regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and to make appropriate revisions to the FRA Guide for Preparing Accident/Incident Reports (Reporting Guide). This task was accepted April 23, 2001, by the full RSAC and assigned to the Accident/Incident Working Group. A target of September 15, 2001, was set for reporting the recommended changes. At a meeting of the Working Group, held May 21-23, 2001, the task was discussed, and four task forces were set up to review changes and/or modifications. These task forces identified a series of modifications to the Reporting Guide/regulations for consideration. The Working Group met September 11, 2001; meeting was dismissed due to national emergency. A meeting was held November 14-15, 2001 in St. Louis Missouri. A Task Force on Remote Control met on December 11, 2001. The working group met January 23-24, 2002, in Baltimore, Maryland, and March 12-13, 2002, in New Orleans, Louisiana. The Working Group reached consensus at a final meeting held April 24-25, 2002 in

Washington, DC. A briefing was held at the full RSAC meeting held on May 29, 2002 and agreement was reached to use a ballot for approval. The full RSAC approved the Working Group recommendations on the draft NPRM on July 19, 2002 by letter ballot. The NPRM and proposed Guide will be published for comment in September 2002. Contact: Robert Finkelstein (202) 493-6280.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC, on August 27, 2002.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 02-22321 Filed 8-30-02; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2000-7257; Notice No. 29]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee ("RSAC") meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4 p.m. on Thursday, September 19, 2002.

ADDRESSES: The meeting of the RSAC will be held at the Almas Temple Club, 1315 K Street, NW., Washington, DC 20005, (202) 898-1688. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Trish Butera or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590, (202) 493-6212/6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont

Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493-6302.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee ("RSAC"). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4 p.m. on Thursday, September 19, 2002. The meeting of the RSAC will be held at the Almas Temple Club, 1315 K Street, NW., Washington, DC., 20005, (202) 898-1688. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual voting representatives and five associate representatives drawn from among 32 organizations representing various rail industry perspectives, two associate representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico and other diverse groups. Staffs of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

The RSAC meeting topics will include Railroad-Highway Grade Crossing and Trespasser Prevention Programs That Are Making a Difference, Fatigue Pilot Programs, Positive Train Control Demonstration Projects, and a Cab Working Conditions Noise Briefing. There will also be status reports on working group activities. The FRA Administrator will make remarks in the afternoon.

See the RSAC Web site for details on pending tasks at: <http://rsac.fra.dot.gov/>. Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC, on August 27, 2002.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 02-22322 Filed 8-30-02; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Granted Buy America Waiver

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of granted buy America waiver.

SUMMARY: This waiver allows North American Bus Industries to count a foreign-manufactured articulating joint

system used in its low floor bus as a domestic component for purposes of calculating the aggregate domestic content of the vehicle and was predicated on the non-availability of the item in the domestic market. The waiver was granted on July 9, 2002. This notice shall insure that the public, particularly potential manufacturers, is aware of the waiver. FTA requests that the public notify it of any relevant changes in the domestic articulating joint market.

FOR FURTHER INFORMATION CONTACT:

Meghan G. Ludtke, FTA Office of Chief Counsel, Room 9316, (202) 366-1936 (telephone) or (202) 366-3809 (fax).

SUPPLEMENTARY INFORMATION: See waiver below.

Issued: August 26, 2002.

Robert D. Jamison,

Deputy Administrator.

August 9, 2002.

Mr. Bill Coryell,

Vice President, Sales, North American Bus Industries, 20350 Ventura Blvd., Suite 205, Woodland Hills, California 91364.

Dear Mr. Coryell: This letter responds to your correspondence of April 5 and June 26, 2002, in which you request a non-availability waiver of the Buy America requirements for the procurement of the Hubner Manufacturing Corporation (Hubner) articulating joint system for use in North American Bus Industries' (NABI) low floor and standard floor articulated buses. The system is comprised of a mechanical articulating joint incorporating an electronically controlled, hydraulic damping subsystem.

The Federal Transit Administration's (FTA) requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. 5323(j). Section 5323(j)(2)(C) addresses the general requirements for the procurement of rolling stock. This section provides that all rolling stock procured with FTA funds must have a domestic content of at least 60 percent and must undergo final assembly in the U.S.

A non-availability waiver would allow NABI to count the joint as domestic for the purposes of calculating the aggregate domestic content of the vehicle. You request a waiver under 49 U.S.C. 5323(j)(2)(B), which states the Buy America requirements shall not apply if the item or items being procured are not produced in the U.S. in sufficient and reasonably available quantities or are not of a satisfactory quality. The regulation provides that non-availability waivers "may be granted for a component or subcomponent in the case of the procurement of the items governed by [49 U.S.C. 5323(j)(2)(C)] (requirements for rolling stock). If a waiver is granted for a component or subcomponent, that component or subcomponent will be considered to be of domestic origin for the purposes of section 661.11 of this part." 49 C.F.R. 661.7(f).

You state that the Hubner articulating joint system is necessary for the production of articulated buses and is not available from a

domestic source. It was also noted that FTA granted a similar waiver to New Flyer on April 24, 2001. We posted a request for comments on this matter on our website and we received no comments from domestic manufacturers of this product, though we did receive comments from another foreign manufacturer who claims that they make an equivalent product and would be disadvantaged by a waiver for the Hubner product. FTA will follow-up separately with that party.

Based on the information you have provided, I have determined that the grounds for a non-availability waiver do exist. Therefore, pursuant to the provisions of 49 U.S.C. 5323(j)(2)(B), the waiver is granted for the procurement of Hubner's articulating joint system for NABI's articulated buses. In order to insure that the public is aware of this waiver, particularly potential manufacturers, this waiver will be published in the **Federal Register**.

However, as FTA told New Flyer in a January 17, 2001, letter, we expect NABI to work with domestic suppliers to attempt to develop alternative sources for these products. For that reason, we will grant this waiver to NABI for all solicitations responded to until April 24, 2003, which is when New Flyer's waiver expires. We will then evaluate the situation with respect to all vehicle and articulating joint manufacturers.

If you have any questions, please contact Meghan G. Ludtke at 202-366-1936.

Very truly yours,

Gregory B. McBride,

Deputy Chief Counsel.

[FR Doc. 02-22265 Filed 8-30-02; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Granted Buy America Waiver

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of granted buy America waiver.

SUMMARY: This waiver, granted August 9, 2002, allows Orion Bus Industries (Orion) to count the axle used in the Orion II paratransit vehicle as a domestic component for the purposes of calculating overall domestic content and was predicated on the non-availability of the item domestically. A similar waiver was granted by FTA to Orion on February 28, 2000, for the period of two years. Because the market has not changed in the intervening two years, Orion requested that FTA grant another waiver. This notice shall insure that the public, particularly potential manufacturers, is aware of the waiver. FTA requests that the public notify it of any relevant changes in the domestic market of heavy-duty axles.

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, FTA Office of Chief Counsel, Room 9316, (202) 366-1936 (telephone) or (202) 366-3809 (fax).

SUPPLEMENTARY INFORMATION: See waiver below.

Issued: August 26, 2002.

Robert D. Jamison,
Deputy Administrator.

August 9, 2002.

Mr. Christopher Crassweller,
*Manager, Corporate and Legal Affairs, Orion
Bus Industries, 350 Hazelhurst Road,
Mississauga, Ontario L5J 4T8.*

Re: Application for Extension of Buy
America Waiver for Orion II Component

Dear Mr. Crassweller: This letter responds to your correspondence of July 17, 2002, in which you request an extension of a Buy America waiver granted for the procurement of the GNX axle for use in your Orion II paratransit vehicle.

The Federal Transit Administration's (FTA) requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. § 5323(j). Section 5323(j)(2)(C) addresses the general requirements for the procurement of rolling stock. This section provides that all rolling stock procured with FTA funds must have a domestic content of at least 60 percent and must undergo final assembly in the U.S.

This waiver would allow Orion to count the axle as domestic for the purposes of calculating overall domestic content of the vehicle. You request a waiver under 49 U.S.C. § 5323(j)(2)(B), which states those requirements shall not apply if the item or items being procured are not produced in the U.S. in sufficient and reasonably available quantities and of a satisfactory quality. The implementing regulation provides that "[these] waivers * * * may be granted for a component or subcomponent in the case of procurement of the items governed by section 165(b)(3) of the Act (requirements for rolling stock). If a waiver is granted for a component or subcomponent, that component or subcomponent will be considered to be of domestic origin for the purposes of Section 661.11 of this part." 49 C.F.R. § 661.7(f). The regulations allow a bidder or supplier to request a non-availability waiver for a component or subcomponent in the procurement of rolling stock. See 49 C.F.R. 661.7(f) and 49 C.F.R. 661.9(d).

You claim that the type of axle necessary for the production of the Orion II is not available from a domestic source. In addition to the representations in your correspondence, you have also provided me with letters from two U.S. manufacturers of heavy-duty axles, Spicer Heavy Axle and Arvin Meritor. You represent that these are the only two such manufacturers, and their correspondence confirms that they have no plans to manufacture an axle for your paratransit vehicle in the U.S. FTA also posted a request for comments on this matter on our website and we received no comments from domestic manufacturers of this product.

Based on the information you have provided, I have determined that the grounds for a "non-availability" waiver exist.

Therefore, pursuant to the provisions of 49 U.S.C. § 5323(j)(2)(B), the waiver is hereby extended for the procurement of heavy-duty axles for the Orion II for the period of two years. In order to insure that the public is aware of this waiver, particularly potential manufacturers, this waiver will be published in the **Federal Register**.

If you have any questions, please contact Meghan G. Ludtke at (202) 366-1936.

Very truly yours,

Gregory B. McBride,
Deputy Chief Counsel.

[FR Doc. 02-22264 Filed 8-30-02; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the North Eugene Bus Rapid Transit Corridor in the Eugene-Springfield Oregon Metropolitan Area

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration and Lane Transit District (LTD) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for transit improvements in the North Eugene Bus Rapid Transit Corridor of the Eugene-Springfield metropolitan region. The purpose of this Notice of Intent is to notify interested parties of the intent to prepare an EIS and invite participation in the study. The Eugene-Springfield metropolitan region has adopted a long-range transportation plan, TransPlan, which identifies Bus Rapid Transit (BRT) as the preferred transit strategy for the twenty-year plan. BRT was adopted as a comprehensive system plan, which includes full build-out of five corridors. The general alignments of the five corridors have been identified in the approved plan. Phase 1, the initial 4 mile east-west corridor alignment is the first of the corridors to be implemented, and is currently in final design. The remaining four corridors will be implemented in priority order as determined by local elected officials through a corridor selection process. The North Eugene BRT Corridor has been identified as the next priority corridor to pursue in Eugene.

The BRT project proposes to implement a major high capacity transit improvement in the North Eugene corridor that maintains livability in the

metropolitan region, supports land use goals, optimizes the transportation system, increases overall corridor capacity, is environmentally sensitive, reflects community values, and is fiscally responsive.

Meeting Dates: Agency Coordination Meeting: An agency coordination meeting will be held at 10 a.m. on Tuesday September 17, 2002 at the Lane Transit District, 3500 East 17th Avenue, Eugene, Oregon.

Public Information Meeting: A public information meeting will be held from 4-7 p.m. on Thursday September 19th, 2002 at the Lane Transit District, 1700 East 17th Avenue, Eugene, Oregon. The Lane Transit District is accessible to persons with disabilities. Any individual with a disability who requires special assistance, such as a sign language interpreter, should contact Lane Transit District at (541) 682-6100 at least 48-hours in advance of the meeting in order for LTD to make necessary arrangements.

FOR FURTHER INFORMATION CONTACT:

Agency Coordination should contact Lisa Gardner, LTD EIS Manager at (541) 682-6135 or (e-mail)

lisa.gardner@ltd.lane.or.us. Public Information contact Sue Aufort, LTD Public Involvement Coordinator at (541) 682-6144 or (e-mail)

sue.aufort@ltd.lane.or.us. Written comments should be sent to Lisa Gardner, North Springfield Corridor Project, Lane Transit District, 3500 East 17th Avenue, Eugene, OR 97403. Additional information on the North Springfield Corridor Project can also be found on the LTD Web site at: www.ltd.org. Additional information can be obtained from Rebecca Reyes-Alicea, Community Planner, Federal Transit Administration, at (206) 220-4464.

SUPPLEMENTAL INFORMATION:

I. Notice of Intent

This Notice of Intent to prepare an EIS is being published at this time to inform interested parties. The North Eugene Corridor Project is examining BRT alternatives in the North Eugene Corridor. FTA regulations and guidance will be used for the analysis and preparation of the north Eugene Corridor EIS.

II. Study Area

The North Eugene corridor encompasses a general alignment heading north from the downtown Eugene Transit Station at West 11th Avenue and Willamette Street in Eugene to the Gateway area in Springfield. The

exact alignment will be determined as part of the EIS process.

III. Alternatives

All reasonable alternatives will be evaluated in the EIS including a No-Build Alternative, which will provide the basis for comparison of the build alternatives. The No-Build Alternative includes the existing transportation system plus improvements to the fixed-route transit system included in the Regional Transportation Plan Financially Constrained Transportation Network, excluding the implementation of BRT.

IV. Probable Effects

FTA and LTD will evaluate all significant transportation, environmental, social and economic impacts of the alternatives. Primary issues include support of state, regional and local land use and transportation plans and policies, neighborhood impacts, and environmental sensitivity. The impacts will be evaluated for both the construction period and for the long-term period of operation. Measures to mitigate any significant impact will be developed.

Issued on: August 28, 2002.

R.F. Krochalis,

FTA Regional Administrator.

[FR Doc. 02-22370 Filed 8-30-02; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the North Springfield Bus Rapid Transit Corridor Extension in the Eugene-Springfield Oregon Metropolitan Area

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration and Lane Transit District (LTD) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for transit improvements in the North Springfield Bus Rapid Transit Corridor of the Eugene-Springfield metropolitan region. The purpose of this Notice of Intent is to notify interested parties of

the intent to prepare an EIS and invite participation in the study. The Eugene-Springfield metropolitan region has adopted a long-range transportation plan, TransPlan, which identifies Bus Rapid Transit (BRT) as the preferred transit strategy for the twenty-year plan. BRT was adopted as a comprehensive system plan, which includes full build-out of five corridors. The general alignments of the five corridors have been identified in the approved plan. Phase 1, the initial 4 mile east-west corridor alignment is the first of the corridors to be implemented, and is currently in final design. The remaining four corridors will be implemented in priority order as determined by local elected officials through a corridor selection process. The North Springfield BRT Corridor has been identified as the next priority corridor to pursue in Springfield.

The BRT project proposes to implement a major high capacity transit improvement in the North Springfield Corridor that maintains livability in the metropolitan region, supports land use goals, optimizes the transportation system, increases overall corridor capacity, is environmentally sensitive, reflects community values, and is fiscally responsive.

Meeting Dates: Agency Coordination Meeting: An agency coordination meeting will be held at 10 a.m. on Tuesday, September 17, 2002 at the Lane Transit District, 3500 East 17th Avenue, Eugene, Oregon.

Public Information Meeting: A public information meeting will be held from 4-7 p.m. on Thursday, September 19th, 2002 at the Lane Transit District, 1700 East 17th Avenue, Eugene, Oregon. The Lane Transit District is accessible to persons with disabilities. Any individual with a disability who requires special assistance, such as a sign language interpreter, should contact Lane Transit District at (541) 682-6100 at least 48-hours in advance of the meeting in order for LTD to make necessary arrangements.

FOR FURTHER INFORMATION CONTACT:

Agency Coordination should contact Lisa Gardner, LTD EIS Manager at (541) 682-6135 or (email) lisa.gardner@ltd.lane.or.us. Public information contact Sue Aufort, LTD Public Involvement Coordinator at (541) 682-6144 or (email) sue.aufort@ltd.lane.or.us. Written comments should be sent to Lisa Gardner, North Springfield Corridor Project, Lane Transit District, 3500 East

17th Avenue, Eugene, OR 97403. Additional information on the North Springfield Corridor Project can also be found on the LTD Web site at: <http://www.ltd.org>. Additional information can be obtained from Rebecca Reyes-Alicea, Community Planner, Federal Transit Administration, at (206) 220-4464.

SUPPLEMENTAL INFORMATION:

I. Notice of Intent

This Notice of Intent to prepare an EIS is being published at this time to inform interested parties. The North Springfield Corridor Project is examining BRT alternatives in the north Springfield corridor. FTA regulations and guidance will be used for the analysis and preparation of the North Springfield Corridor EIS.

II. Study Area

The North Springfield Corridor encompasses a general alignment heading north from South "A" Street in Springfield to the Gateway area in Springfield. The exact alignment will be determined as part of the EIS process.

III. Alternatives

All reasonable alternatives will be evaluated in the EIS including a No-Build Alternative, which will provide the basis for comparison of the build alternatives. The No-Build Alternative includes the existing transportation system plus improvements to the fixed-route transit system included in the Regional Transportation Plan Financially Constrained Transportation Network, excluding the implementation of BRT.

IV. Probable Effects

FTA and LTD will evaluate all significant transportation, environmental, social and economic impacts of the alternatives. Primary issues include support of state, regional and local land use and transportation plans and policies, neighborhood impacts, and environmental sensitivity. The impacts will be evaluated for both the construction period and for the long-term period of operation. Measures to mitigate any significant impact will be developed.

Issued On: August 28, 2002.

R.F. Krochalis,

FTA Regional Administrator.

[FR Doc. 02-22371 Filed 8-30-02; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2002-11778; Notice 2]

Bridgestone/Firestone North American Tire, LLC, Denial of Application for Decision of Inconsequential Noncompliance

Bridgestone/Firestone North American Tire, LLC (Firestone), a Delaware Limited Liability Company, has determined that approximately 754 30x9.50 R15 LT Widetrack Baja A/T tires produced in the LaVergne, Tennessee, plant are not in full compliance with 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Firestone has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. 30118(d) and 30120(h), on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on March 18, 2002, in the **Federal Register** (67 FR 12084). NHTSA received no comments.

During weeks 38, 39 and 40 of the year 2001, Firestone's LaVergne, Tennessee, plant produced a number of tires that fail to comply with the tire marking requirements of FMVSS 119 S6.5(d).

The markings on the noncompliant tires are:

Max Load 350 Kg at 1985 kPa cold
Max Load 900 Lbs at 50 PSI cold

The correct markings should have been:

Max Load 900 Kg at 350 kPa cold
Max Load 1985 Lbs at 50 PSI cold

Firestone submits that the failure of the tires to comply with FMVSS 119 S6.5 (d) should be deemed inconsequential to motor vehicle safety for the following reasons:

(1) All of the affected 30x9.50R15LT Widetrack Baja A/T tires meet all of the remaining requirements of FMVSS 119.

(2) The maximum load as stated on the tire in both English and Metric units is actually less than the actual maximum load for these tires. Therefore, it is not likely the tires would be placed in an unsafe, overload situation as a result of the marking noncompliance. In fact, if the consumer relies on the markings, the load will be significantly less than the tire is capable of carrying.

(3) While the inflation pressure is incorrect in Metric units, the English inflation units are correct. Since the English units are correct and English units are the common usage for inflation in North America, it is highly unlikely that the subject tires would be over inflated as a result of the marking noncompliance.

(4) The subject tires are correctly marked Load Range "C" and Load Index 104. By Tire and Rim Association's data, the Load Range "C" and Load Index 104 define maximum load of 1985 pounds and 900 Kgs at 50 psi and 350 kPa.

The agency believes the true measure of inconsequentiality with respect to the noncompliance with FMVSS No. 119, paragraph S6.5, is whether a consumer who relied on the incorrect information could experience a safety problem. In the case of this noncompliance, the maximum load markings are understated, making it unlikely the tires would be overloaded by consumers following the marked maximum load values. However, while the corresponding inflation pressure value is correctly marked in English units, it is overstated by over 500 percent in Metric units. While we recognize that consumers are supposed to identify the proper inflation pressure from the tire information placard, surveys have shown that some consumers rely on the maximum load markings on the tire. A consumer who relied on the Metric markings on these tires could over-inflate the tires to unsafe levels, potentially resulting in personal injury or tire failure.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance described is inconsequential to safety. Accordingly, Firestone's application is hereby denied, and the applicant must provide notification of the noncompliance, as required by 49 U.S.C. 30118. Also, Firestone must provide a cost-free remedy for the noncompliance.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 27, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02-22320 Filed 8-30-02; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34242]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant temporary¹ overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's rail lines between BNSF milepost 460.0 near Sweetwater, TX, and BNSF milepost 655.7 near Clovis, NM, a distance of approximately 221.2 miles.²

The transaction was scheduled to be consummated on August 22, 2002. The purpose of the temporary trackage rights is to allow UP to bridge its train service over BNSF lines while UP's main lines are out of service due to maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34242, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our website at "www.stb.dot.gov."

Decided: August 23, 2002.

¹ On August 14, 2002, UP filed a petition for exemption in STB Finance Docket No. 34242 (Sub-No. 1), *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein UP and BNSF request that the Board permit the proposed temporary overhead trackage rights arrangement described in the present proceeding to expire on or about November 23, 2002. That petition will be addressed by the Board in a separate decision.

² By amendment filed August 20, 2002, a representative of UP points out that there are several changes in milepost sequencing between Sweetwater and Clovis, which is why a subtraction of the two boundary mileposts does not yield the stated, and correct, 221.2 miles.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 02-22110 Filed 8-30-02; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8845

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 8845, Indian Employment Credit.

DATES: Written comments should be received on or before November 4, 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: Indian Employment Credit.

OMB Number: 1545-1417.

Form Number: 8845.

Abstract: Under Internal Revenue Code section 45A, employers can claim an income tax credit for hiring American Indians or their spouses to work in a trade or business on an Indian reservation. Form 8845 is used by employers to claim the credit and by IRS to ensure that the credit is computed correctly.

Current Actions: There are no changes being made to the Form 8845 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,246.

Estimated Time Per Respondent: 11 hr., 28 min.

Estimated Total Annual Burden Hours: 14,292.

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: August 16, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02-22379 Filed 8-30-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8846

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 8846, Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.

DATES: Written comments should be received on or before November 4, 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 Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.

OMB Number: 1545-1414.

Form Number: 8846.

Abstract: Employers in food or beverage establishments where tipping is customary can claim an income tax credit for the amount of social security and Medicare taxes paid (employer's share) on tips employees reported, other than on tips used to meet the minimum wage requirement. Form 8846 is used by employers to claim the credit and by the IRS to verify that the credit is computed correctly.

Current Actions: There are no changes being made to the Form 8846 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 68,684.

Estimated Time Per Respondent: 8 hr., 52 min.

Estimated Total Annual Burden Hours: 609,228.

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: August 15, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02-22380 Filed 8-30-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8850

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 8850, Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.

DATES: Written comments should be received on or before November 4, 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:* Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.

OMB Number: 1545-1500.

Form Number: 8850.

Abstract: Employers use Form 8850 as part of a written request to a state employment security agency to certify an employee as a member of a targeted group for purposes of qualifying for the work opportunity credit or the welfare-to-work credit. The work opportunity credit and the welfare-to-work credit cover individuals who begin work for the employer before July 1, 1999.

Current Actions: There are no changes being made to Form 8850 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 400,000.

Estimated Time Per Respondent: 3 hr., 59 min.

Estimated Total Annual Burden Hours: 1,596,000.

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: August 20, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02-22381 Filed 8-30-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATE: The meeting will be held September 25, 2002.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on September 25, 2002, in Room 4600E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 694-1861 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on September 25, 2002, in Room 4600E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax

returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7),

and that the meeting will not be open to the public.

David B. Robison,

National Chief, Appeals.

[FR Doc. 02-22378 Filed 8-30-02; 8:45 am]

BILLING CODE 4830-01-P



Federal Register

Tuesday,
September 3, 2002

Part II

Architectural and Transportation Barriers Compliance Board

36 CFR Parts 1190 and 1191

**Americans With Disabilities Act (ADA)
Accessibility Guidelines for Buildings and
Facilities; Final Rule**

**Americans With Disabilities Act (ADA)
Accessibility Guidelines for Buildings and
Facilities; Architectural Barriers Act (ABA)
Accessibility Guidelines; Recreation
Facilities; Supplemental Notice of
Proposed Rulemaking**

**ARCHITECTURAL AND
TRANSPORTATION BARRIERS
COMPLIANCE BOARD**

36 CFR Part 1191

[Docket No. 98–5]

RIN 3014–AA16

**Americans With Disabilities Act (ADA)
Accessibility Guidelines for Buildings
and Facilities; Recreation Facilities**

AGENCY: Architectural and
Transportation Barriers Compliance
Board.

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) is issuing final accessibility guidelines to serve as the basis for standards to be adopted by the Department of Justice for new construction and alterations of recreation facilities covered by the Americans with Disabilities Act (ADA). The guidelines include scoping and technical provisions for amusement rides, boating facilities, fishing piers and platforms, golf courses, miniature golf, sports facilities, and swimming pools and spas. The guidelines will ensure that newly constructed and altered recreation facilities meet the requirements of the ADA and are readily accessible to and usable by individuals with disabilities.

DATES: The guidelines are effective October 3, 2002. The incorporation by reference of certain publications listed in the guidelines is approved by the Director of the Federal Register as of October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0017 (Voice); (202) 272–0082 (TTY). E-mail address: greenwell@access-board.gov.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–0080, by pressing 2 on the telephone keypad, then 1, and requesting publication S–43 (Recreation Facilities Final Rule). Persons using a TTY should call (202) 272–0082. Please record a name, address, telephone number and request publication S–43. This document is available in alternate formats upon request. Persons who want

a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk). This document is also available on the Board's Internet site (<http://www.access-board.gov/recreation/final.htm>).

Background

The Americans with Disabilities Act recognizes and protects the civil rights of people with disabilities.¹ Titles II and III of the ADA require, among other things, that newly constructed and altered State and local government facilities, places of public accommodation, and commercial facilities be readily accessible to and usable by individuals with disabilities. Recreation facilities are among the types of facilities covered by titles II and III of the ADA.

The ADA designates the Access Board as the agency responsible for developing minimum accessibility guidelines to ensure that new construction and alterations of facilities covered by titles II and III of the ADA are readily accessible to and usable by individuals with disabilities.² The Access Board initially issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in 1991.³ Current ADAAG contains general scoping and technical provisions (ADAAG 1 to 4) that apply to all types of facilities, and special application sections (ADAAG 5 to 12) that include additional scoping and technical provisions for certain types of facilities.⁴ As discussed in more detail below, this final rule will amend section 4, and create a new section 15 (Recreation Facilities).

The Department of Justice is responsible for issuing regulations to

implement titles II and III of the ADA. The regulations issued by the Department of Justice must include accessibility standards for newly constructed and altered facilities covered by titles II and III of the ADA. The standards must be consistent with the minimum accessibility guidelines issued by the Access Board. The Department of Justice has adopted ADAAG as the Standard for Accessible Design for title III of the ADA.⁵ This final rule amends ADAAG by adding a new special application section for amusement rides, boating facilities, fishing piers and platforms, golf courses, miniature golf, sports facilities, and swimming pools and spas. This rulemaking has had a long history. In 1993, the Access Board established an advisory committee of 27 members to make recommendations on guidelines for recreation facilities. The Recreation Access Advisory Committee met from July 1993 to May 1994 and submitted a report to the Board, "Recommendations for Accessibility Guidelines: Recreational Facilities and Outdoor Developed Areas". After receiving the committee's report, the Board published it as an advance notice of proposed rulemaking (59 FR 48542, September 21, 1994). Over 600 comments were received on the report and questions asked in the advance notice. To obtain additional information for this rulemaking, the Board also sponsored research on access to swimming pools in 1995; held informational meetings and conducted site visits on access to miniature golf facilities in September 1996; and held informational meetings and conducted site visits on accessible amusement rides in December 1999 and March and April 2000.

A notice of proposed rulemaking (NPRM) was published in the **Federal Register** on July 9, 1999. (64 FR 37326, July 9, 1999). The comment period was originally scheduled to close on November 8, 1999, but was extended until December 8, 1999 to allow more time for the public to submit comments. These comments were submitted electronically, in writing, and as oral testimony received during two public hearings held in Dallas, TX (August 26,

¹ See 42 U.S.C. 12101 *et seq.* (<http://www.usdoj.gov/crt/ada/pubs/ada.txt>).

² The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of whom are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Service.

³ See 36 CFR part 1191, Appendix A (<http://www.access-board.gov/adaag/html/adaag.html>).

⁴ The special application sections cover the following facilities: restaurants and cafeterias (ADAAG 5); medical care facilities (ADAAG 6); business, mercantile and civic (ADAAG 7); libraries (ADAAG 8); transient lodging (ADAAG 9); transportation facilities (ADAAG 10); judicial, legislative, and regulatory facilities (ADAAG 11); and detention and correctional facilities (ADAAG 12). ADAAG 13 is reserved for housing and ADAAG 14 is reserved for public rights-of-way.

⁵ See 28 CFR part 36, Appendix A (<http://www.usdoj.gov/crt/ada/reg3a.html>). The Department of Justice standards currently include ADAAG 1 to 10. State and local governments currently have the option of using ADAAG or an earlier standard, the Uniform Federal Accessibility Standards (UFAS), when constructing or altering facilities under the Department of Justice regulations for title II of the ADA. See 28 CFR 35.151(c) (<http://www.usdoj.gov/crt/ada/reg2/html>). The Department of Justice has issued a notice of proposed rulemaking to eliminate this option. 59 FR 31808 (June 20, 1994).

1999) and Boston, MA (November 17, 1999). Over 200 people attended these hearings and approximately 54 people provided testimony. The Board received approximately 300 comments during the public comment period.

The Access Board created an ad hoc committee of Board members to review the comments received on the proposed rule. The ad hoc committee discussed significant issues associated with the comments and made recommendations to the full Board for the final rule. In an effort to provide the public with more opportunities for input into the provisions for the final rule, on July 21, 2000 the Board published a summary of the ad hoc committee's recommendations and put the summary in the rulemaking docket for public review (65 FR 4533, July 21, 2000). The comment period on the summary closed on September 19, 2000. Approximately 70 comments were received during the public comment period. Afterwards, the Board held informational meetings on the summary in Washington, DC (August 21–22, 2000) and San Francisco, CA (September 6–7, 2000).

General Issues

Incorporating the Final Rule on Recreation Facilities Into Future Revisions to ADAAG

A complete review of ADAAG has been underway for several years. ADAAG was first published on July 26, 1991. The Board is committed to ensuring that ADAAG continues to reflect technological developments and is improved in terms of usability. Efforts also include coordination with changes in national standards and model code organizations and reconciling differences between ADAAG and national consensus standards, where possible. The Board published a notice of proposed rulemaking on November 16, 1999 with proposed revisions to ADAAG. The Board plans to issue final changes to ADAAG in the near future.

The Board is issuing the final guidelines for recreation facilities prior to the publication of the final ADAAG revision. The Board then plans to incorporate these final guidelines into the final revisions to ADAAG. To effectively incorporate these guidelines into the new format, some minor formatting changes will be made. For instance, the revised ADAAG will include a new format and numbering system. This rule will need to be formatted to fit that system. Some of the provisions will also be modified slightly to avoid redundancy. No substantive changes to the text are planned. Once incorporated, the Board will develop a

guide to assist users with the new ADAAG.

The incorporation of the final recreation guidelines into the revised ADAAG will enhance the usability of the accessibility guidelines for architects, designers, manufacturers, operators and others using ADAAG. For example, accessibility guidelines for accessible parking spaces, toilet rooms, amusement rides, swimming pools, and exercise facilities will be combined into one document. Other improvements in the format of ADAAG will reduce redundancy through the use of basic technical provisions known as "building blocks," which will provide consistent dimensions for clear spaces, turning spaces, and knee and toe clearances for elements. These basic technical provisions will apply unless otherwise modified in the section containing accessibility guidelines for recreation facilities. For example, handrail requirements for sloped entries into swimming pools modify the requirements otherwise required in the ramp provisions (ADAAG 4.8.5).

Multiple Chemical Sensitivities and Electromagnetic Sensitivities

Individuals with multiple chemical sensitivities and electromagnetic sensitivities submitted a substantial number of written comments and attended the public information meetings on the draft final rule. They reported that chemicals used in recreation facilities, such as chlorine used in swimming pools and spas, and pesticides and synthetic fertilizers used on golf courses, are barriers that deny them access to those facilities. They requested the Board to include provisions in the final rule to make recreation facilities accessible for them.

The Board recognizes that multiple chemical sensitivities and electromagnetic sensitivities may be considered disabilities under the ADA if they so severely impair the neurological, respiratory or other functions of an individual that it substantially limits one or more of the individual's major life activities. The Board plans to closely examine the needs of this population, and undertake activities that address accessibility issues for these individuals.

The Board plans to develop technical assistance materials on best practices for accommodating individuals with multiple chemical sensitivities and electromagnetic sensitivities. The Board also plans to sponsor a project on indoor environmental quality. In this project, the Board will bring together building owners, architects, building product manufacturers, model code and

standard-setting organizations, individuals with multiple chemical sensitivities and electromagnetic sensitivities, and other individuals. This group will examine building design and construction issues that affect the indoor environment, and develop an action plan that can be used to reduce the level of chemicals and electromagnetic fields in the built environment.

Neither the proposed rule nor the draft final rule included provisions for multiple chemical sensitivities or electromagnetic sensitivities. The Board believes these issues require a thorough examination and public review before they are addressed through rulemaking. The Board does not address these issues in the final rule.

Existing Recreation Facilities

The Board received a significant number of comments related to the impact of these accessibility guidelines on existing facilities. Some commenters interpreted the proposed rule and the draft final rule to require all existing recreation facilities or elements of these facilities to be modified to meet the new accessibility guidelines. They expressed concern that the guidelines would have a significant economic impact on existing recreation facilities.

To clarify, ADAAG and the final accessibility guidelines for recreation facilities apply to newly designed or newly constructed buildings and facilities and to existing facilities when they are altered. ADAAG and the Department of Justice regulations address whether a change to a building or facility is considered an alteration. The publication of this final rule does not require that all existing facilities be modified to meet these guidelines. State and local governments who provide recreation facilities have a separate obligation under title II of the ADA to provide program accessibility which may require the removal of architectural barriers in existing facilities. See 28 CFR 35.150 (<http://www.usdoj.gov/crt/ada/reg2.html>). Private entities who own, lease (or lease to), or operate recreation facilities have a separate obligation under title III of the ADA to remove architectural barriers in existing facilities where it is readily achievable (*i.e.*, easily accomplishable and able to be carried out without much difficulty or expense). See 28 CFR 36.304 (<http://www.usdoj.gov/crt/ada/reg3a.html>).

Federal tax credits and deductions are available to private entities for architectural barrier removal in existing facilities. Federal funds also are available through the Community Development Block Grant Program to

remove architectural barriers in existing facilities. State and local governments may use Community Development Block Grant funds to remove architectural barriers in publicly and privately operated facilities. Entities requesting guidance on their obligations for existing facilities should contact the Department of Justice.

Equivalent Facilitation

Commenters addressing various sections of the recreation rule indicated the need for flexibility in designing and constructing accessible recreation facilities and elements. Commenters wanted to ensure that alternative designs would be permitted for providing accessibility with some of the unique elements and facilities addressed in this rule. Specific concerns were raised in comments related to accessible amusement rides and miniature golf courses.

The Board recognizes that many of the facilities and elements addressed in this rule are unique and supports the need for flexibility in making them accessible. Section 2.2 of ADAAG currently permits "departures from particular technical and scoping requirements of this guideline by the use of other designs and technologies * * * where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility." This provision applies to all facilities and elements addressed by ADAAG, including recreation facilities.

Section-by-Section Analysis

This section of the preamble contains a concise summary of the final rule and an analysis of the comments the Board received on each section. The final rule amends several existing sections of ADAAG and adds a new special application section. Section 4 of ADAAG has been amended to include provisions addressing miscellaneous sports facilities and elements as explained below.

Miscellaneous Sports Facilities and Elements

The accessibility guidelines for recreation facilities are primarily set forth in Section 15. Several changes, however, were also required within ADAAG section 4 to adequately address some of the unique sports facilities and elements.

Section 3.5 Definitions "Area of Sport Activity"

An area of sport activity is defined as "that portion of a room or space where the play or practice of a sport occurs."

The term is defined in order to clarify the requirements for connecting an accessible route with this type of space. The term is used broadly to define spaces where the play or practice of a sport occurs. It includes, but is not limited to, field sports such as softball, football, lacrosse, baseball, and soccer; court sports such as tennis, racquetball, and volleyball; and other sports such as gymnastics.

Comment. A few commenters suggested that further clarification would be helpful in the use of the term "sport" and "practice" of a sport.

Response. Providing an exhaustive list of sports is not practical, since it may inadvertently omit a sport, or fail to recognize an emerging sport of the future. The "area of sport activity" will vary from sport to sport. Exceptions to technical provisions in ADAAG 4.1.2 (3) and (4) and 4.1.3 (2) and (3) clarify that accessibility is not required in the "area of sport activity." This is consistent with the recommendations of the Recreation Access Advisory Committee and supports access to each "area of sport activity," while not affecting the nature of the sport.

Section 4.1.1(5)(b) General Exceptions

The following recreation facilities or portions of recreation facilities are exempt from accessibility requirements: Raised structures used for refereeing, judging, or scoring a sport; water slides; animal containment areas not for public use; and raised boxing rings and wrestling rings.

Comment. The proposed rule exempted structures used solely for refereeing a sport. A commenter questioned whether structures used for "judging" or "scoring" a sport would also be considered exempt.

Response. The exception has been modified in the final rule to include the term "judging" and "scoring." The Board considers the structures used for these activities to be consistent with the intent of this exception.

Comment. The proposed rule did not include any specific requirements for access to water slides. Question 4 in the proposed rule requested comments on this issue. Most of the commenters did not support providing access to the top of water slides. A few commenters suggested that access be required to the top of smaller water slides with an exemption for larger slides.

Response. An exception has been added in the final rule exempting water slides, including the structure supporting the water slide, from the guidelines. Providing access to water slides would require extensive ramping or elevators which would make the

slides cost prohibitive. Designers and operators are encouraged to provide access to smaller water slides, where possible. Recent designs for "leisure pools" have incorporated an accessible route to the top of water slides using the different elevations on a site. These designs provide increased access for individuals with disabilities.

Comment. The proposed rule did not specifically address access to "life guard stands." A few commenters recommended that structures such as life guard stands be addressed.

Response. ADAAG 4.1.1(5)(b) specifically exempts life guard stands and was added during a rulemaking for State and local government facilities (63 FR 2000, January 13, 1998).

Comment. The proposed rule included exceptions to technical provisions for accessible routes in animal containment areas. The International Association of Amusement Parks and Attractions expressed concern about general requirements for accessibility in animal containment areas that are not open to the public and are specifically limited to animal handlers.

Response. An exception has been added in the final rule to clarify that accessibility is not required to animal containment areas that are not for "public use." Where animal containment areas are open to public use such as petting farms, the provisions of ADAAG 4.3 apply. Several exceptions to the provisions of ADAAG 4.3 in animal containment areas are also included in the final rule.

Comment. The proposed rule exempted raised boxing rings from accessibility. A few commenters suggested that raised wrestling rings be added to this exception.

Response. The exception has been modified in the final rule to add wrestling rings to the exemption.

Section 4.1.2(2)(b) and 4.1.3(1)(b) Accessible Routes for Court Sports

These sections are amended to require an accessible route complying with ADAAG 4.3 to directly connect both sides of the court in court sports.

Comment. The proposed rule required an accessible route to connect both sides of the court in court sports. The American Institute of Architects (AIA) was concerned that an accessible route connecting the two sides of a court may not be a direct route and could require one to go around a multitude of courts to get to the other side of the court where a sport requires changing sides. This is especially critical in sports such as tennis, where changing sides of the court is part of the game.

Response. The accessible route must be a direct route from one side of the court to the other side. Requiring players on one side of the court to traverse through or around another court to get to the other side is not permitted.

*Section 4.1.2(3) and 4.1.3(2)
Protruding Objects in Areas of Sport Activity*

Areas of sport activity are exempt from the requirements of ADAAG 4.4 (Protruding Objects).

No substantive comments were received and no changes have been made for the final rule.

Section 4.1.2 (4) and 4.1.3(3) Ground Surfaces in Areas of Sport Activity and Animal Containment Areas

Two exceptions are added to these sections which require ground surfaces along accessible routes and in accessible spaces to comply with ADAAG 4.5. ADAAG 4.5 requires ground and floor surfaces along accessible routes to be stable, firm, and slip resistant. ADAAG 4.5 also addresses changes in level (ADAAG 4.5.2), carpet (ADAAG 4.5.3), and gratings ADAAG (4.5.4). Exception 1 exempts areas of sport activity from all requirements of ADAAG 4.5. Exception 2 exempts animal containment areas designed and constructed for public use from the requirements of ADAAG 4.5.2 and from providing a stable, firm, and slip resistant ground or floor surface.

Comment. The proposed rule required an accessible route to connect to each area of sport activity. A commenter questioned the feasibility of this requirement when connecting multiple sand volleyball courts on a beach.

Response. The final rule requires an accessible route to each area of sport activity in newly constructed facilities. For example, where a new sports field is planned with multiple fields, an accessible route is required to each field.

With respect to sand volleyball courts located at beaches, the Board plans to more specifically address the accessible route requirement in a future rulemaking on outdoor facilities, including trails, picnic and camping facilities, and beaches. It is expected that this future rule will address accessible routes on beaches, including their location to various elements on a beach.

Comment. The proposed rule exempted animal containment areas for hooved animals from the requirements of a stable, firm, and slip resistant surface. Commenters questioned why the exception was limited to "hooved" animal containment areas. Others suggested that other provisions such as

ADAAG 4.5.2 (Changes in Level) not apply within these areas.

Response. This exception has been amended in the final rule to include all animal containment areas and is not limited to those for "hooved" animals. The Board agrees that there often are areas where many different types of animals are contained and are not limited solely to hooved animals. Exemption from the requirements to ADAAG 4.5.2 (Changes in Level) has also been included since absorbent surfaces used to ensure the care and health of animals may conflict with this provision. As previously discussed, an exception has been added to ADAAG 4.1.1(5)(b) to clarify that accessibility is not required in animal containment areas that are not for public use.

*Section 4.1.3(5) Exception 4(f)
Platform Lifts for Team or Player Seating Areas*

An exception is added to this section permitting the use of a platform lift in new construction as a means of providing access to team or player seating areas serving areas of sport activity.

Comment. The proposed rule did not include an option to use a platform lift in new construction to provide access to team or player seating areas. The AIA and several architects representing a firm that specializes in sports facilities commented that platform lifts should be an option. They were particularly concerned about providing access to dugouts and other recessed team player seating areas in major league stadiums. They believed that providing a ramp parallel to the playing field presents a dangerous tripping and falling hazard for players attempting to field foul balls. Other groups representing persons with disabilities commended the Board for not allowing platform lifts in this environment in new construction. Among other issues, they cited the problems associated with relying on a mechanical device to provide access in newly constructed buildings and facilities.

Response. The final rule includes an option to use a platform lift as part of an accessible route connecting team or player seating areas. While the Board includes this as an option in new construction, it is recommended that where possible, ramps be utilized. This will reduce reliance for persons with disabilities on a mechanical device when providing access. Several minor league stadiums have incorporated a ramp into their design in recent years. It is the Board's understanding that there have been no reported incidents of accidents related to the ramps.

Information on major league stadiums is not available since ramps have not been incorporated into their designs.

Section 4.1.3(12)(c) Lockers

This section is amended to require that where lockers are provided, at least 5 percent, but not less than one, of each type of locker, must comply with ADAAG 4.25.

No substantive comments were received and no changes have been made for the final rule.

Section 4.1.3(13) Controls and Operating Mechanisms for Exercise Equipment and Machines

An exception is added to this section to exempt exercise machines from the requirements of ADAAG 4.27 (Controls and Operating Mechanisms).

No substantive comments were received and no changes have been made for the final rule.

Section 4.1.3(19)(c) Team or Player Seating Areas

This section is amended to require that where team or player seating areas contain fixed seats and serve an accessible area of sport activity, the seating area must contain the number of wheelchair spaces required by ADAAG 4.1.3(19)(a), but not less than one space. Wheelchair spaces must comply with ADAAG 4.33.2, 4.33.3, 4.33.4, and 4.33.5.

An accessible route is required to connect to the team player seating areas. An accessible route is also required to connect to the area of sport activity which is defined as "that portion of a room or space where the practice or play of a sport occurs." For the most part, the requirement is intended to provide access to the boundary of where the sport is played. In some cases, this will provide for a "level" entry to the area of sport activity such as a softball field or football field. In other cases, there may be changes in level and non-accessible surfaces. The Board recognizes that the accessible route requirement may, in some cases, not ensure access directly onto the area of sport activity. Where possible, designers are encouraged to provide for a smooth transition to the area of sport activity. This requirement is not intended to change the nature of the sport to provide access.

Comment. The AIA questioned how wheelchair spaces in team or player seating areas could meet the requirements of ADAAG 4.33.3. ADAAG 4.33.3 requires, among other things, that the wheelchair spaces provide a choice of admission prices or lines of sight

comparable to those afforded members of the general public.

Response. An exception has been added in the final rule exempting the wheelchair spaces in team or player seating areas from requirements related to choice of admission price or lines of sight comparable to those for members of the general public. Section 4.1.3(19)(c) is intended to ensure that at least one wheelchair space is provided in team or player seating areas. This can easily be accomplished through clear space adjacent to a fixed bench, for example. Bench seating will also serve as companion seating. Where designers and operators are planning facilities to serve a variety of wheelchair sports, it is recommended that the minimum be exceeded to more adequately accommodate wheelchair sports team.

Exception 2 is added to clarify that the requirements for accessible team or player seating does not apply to bowling lanes that are not required to be on an accessible route. Section 15.7.3 requires 5 percent, but not less than one, of each type of bowling lane to be served by an accessible route. Only those team or player seating areas that serve the bowling lanes required to be on an accessible route must have accessible team or player seating.

Comment. The proposed rule included an exception to ADAAG 4.1.3(19) for assembly seating in amusement facilities. The exception permitted use of a transfer seat complying with 15.1.4 where the motion of the seats is an integral part of the amusement experience. A few commenters questioned why this was permitted and recommended that wheelchair spaces be designed so as to provide the same general experience or effects as other seats.

Response. This exception has been deleted in the final rule. The Board is aware of amusement facilities where the various effects provided within the wheelchair space. Many of the effects, such as misting or smoke, may be easy to incorporate into the wheelchair space. Others effects, such as aggressive seat motion, may be extremely difficult to incorporate and may possibly be unsafe. The Board expects that designers will provide the same effects for the wheelchair space as other seats, to the extent possible. An appendix note also recommends that providing companion seats with removable armrests will provide an option for persons using wheelchairs to transfer into the seat in these venues, if desired.

Section 4.1.3(21) Dressing, Fitting, or Locker Rooms

This section requires that where dressing, fitting, or locker rooms are provided, the rooms must comply with ADAAG 4.35. An exception permits 5 percent, but not less than one, of the rooms to be accessible when they are provided in a cluster.

No substantive comments were received and no changes have been made for the final rule.

Section 4.1.3(22) Saunas and Steam Rooms

This section requires where saunas and steam rooms are provided, the rooms must comply with ADAAG 4.36. An exception permits 5 percent, but not less than one, of the rooms to be accessible when they are provided in a cluster.

No substantive comments were received and no changes have been made for the final rule.

Section 4.35 Dressing, Fitting, and Locker Rooms

Section 4.35.1 General

This section requires dressing, fitting, and locker rooms required to be accessible by ADAAG 4.1 to comply with ADAAG 4.35 and to be on an accessible route.

No substantive comments were received and no changes have been made for the final rule.

Section 4.35.4 Benches in Accessible Dressing Rooms, Fitting Rooms, and Locker Rooms

This section requires benches complying with ADAAG 4.37 in accessible dressing, fitting, and locker rooms.

No substantive comments were received and no changes have been made for the final rule.

Section 4.36 Saunas and Steam Rooms

Section 4.36.1 General

This section requires saunas and steam rooms required to be accessible by ADAAG 4.1 to comply with ADAAG 4.36.

Comment. Several commenters questioned whether an operator would be required to provide a heat resistant wheelchair in accessible saunas and steam rooms.

Response. The provision of heat resistant chairs is an operational issue and outside the jurisdiction of the Board. Questions regarding the operational issues related to the use of accessible facilities and elements will be addressed by the Department of Justice

when it adopts accessibility standards for recreation facilities.

Section 4.36.2 Wheelchair Turning Space

This section requires wheelchair turning space complying with ADAAG 4.2.3 to be provided within a sauna or steam room. An exception permits the wheelchair turning space to be obstructed by readily removable seats.

Comment. The proposed rule permitted the maneuvering space to be “temporarily” obstructed by readily removable seats. Commenters questioned what would be considered “temporary”.

Response. The term “temporarily” has been deleted in the final rule. The intent of the provision is to permit a seat or bench to be located within the required maneuvering space within a room, provided that it can be readily removed. The focus of the exception is on the seat being “readily removable” to enable persons using wheelchairs to avail themselves of smaller saunas and steam rooms.

Section 4.36.3 Sauna and Steam Room Bench

This section requires that where seating is provided in a sauna or steam room, at least one bench complying with ADAAG 4.37 must be provided. An exception permits the clear floor space required by ADAAG 4.37.1 to be obstructed by readily removable seats.

Comment. The proposed rule permitted readily removable seats to “temporarily” obstruct the clear floor space and commenters questioned what would be considered “temporary”.

Response. As discussed above, the term “temporarily” has been deleted in the final rule.

Section 4.36.4 Door Swing

This section requires that doors shall not swing into any part of the clear floor space required at an accessible bench.

No substantive comments were received and no changes have been made for the final rule.

Section 4.37 Benches

Section 4.37.1 General

Benches required to be accessible by 4.1 must comply with 4.37. No substantive comments were received and no changes have been made for the final rule.

Section 4.37.2 Clear Floor or Ground Space

This section requires clear floor or ground space complying with ADAAG 4.2.4 to be provided and be positioned for a parallel approach to a short end of

a bench seat. An exception permits the clear floor or ground space required by 4.37.2 to be obstructed by readily removable seats in saunas and steam rooms.

No substantive comments were received and no changes have been made to this provision in the final rule.

Section 4.37.3 Size

The final rule requires benches to be fixed and have seats that are 20 inches minimum to 24 inches maximum in depth and 42 inches minimum in length.

Comment. A few comments questioned whether a portable bench would meet the requirements for accessible benches.

Response. This provision has been modified in the final rule to include the term "fixed".

Section 4.37.4 Back Support

This section requires benches to have back support that is 42 inches minimum in length and that extends from a point 2 inches maximum above the seat to a point 18 inches minimum above the bench.

Comment. The proposed rule included the requirement for back support under ADAAG 4.37.2 (Size). Commenters expressed confusion over the requirements for back support for benches and some questioned whether back support was required.

Response. Back support is required for an accessible bench in a sauna or steam room, or a dressing room. To clarify this requirement, the technical provisions that were part of ADAAG 4.37.2 in the proposed rule have been included in a separate provision, ADAAG 4.37.3, in the final rule.

Section 4.37.5 Seat Height

This section requires benches to be 17 inches minimum to 19 inches maximum above the floor or ground.

No substantive comments were received and no changes have been made for the final rule.

Section 4.37.6 Structural Strength

This section requires that benches be strong enough to withstand a vertical or horizontal force of 250 pounds applied at any point on the seat, fastener, mounting device, or supporting structure.

No substantive comments were received and no changes have been made for the final rule.

Section 4.37.7 Wet Locations

This section requires that where installed in wet locations, the surface of benches must be slip-resistant and shall not accumulate water.

No substantive comments were received and no changes have been made for the final rule.

Section 10.5 Boat and Ferry Docks

This section is deleted in the final rule.

Comment. The proposed rule applied the accessibility guidelines for recreational boating facilities to boat and ferry docks located at transportation facilities, covered by ADAAG Section 10. This section of the proposed rule received little comment.

Response. The Board is concerned that those involved in the design and construction of boat and ferry docks may not have been fully aware of the proposed rule and therefore may not have evaluated its impact on such facilities. In addition, through the proposed rule, the Board sought information to establish access provisions for gangways based on the size of vessels using floating piers. Few commenters responded to the question, and none provided the type of information the Board was seeking.

The Board is not addressing commercial boat and ferry docks at transportation facilities at this time. In the future, the Board will consider whether such transportation facilities should be treated differently than recreational boating facilities covered by 15.2. As a result, ADAAG 10.5 has been deleted.

Section 15 Recreation Facilities

Section 15 has been added to ADAAG and contains accessibility guidelines for amusement rides, boating facilities, fishing piers and platforms, golf courses, miniature golf courses, exercise equipment and machines, bowling lanes, shooting facilities, and swimming pools and spas. Unless otherwise modified in section 4 or specifically addressed in 15, all other ADAAG provisions apply. For example, special technical provisions have not been included in section 15 for toilet rooms or for accessible parking. In this case, other appropriate provisions in ADAAG 4.22 and ADAAG 4.6 apply. The accessibility guidelines for play areas, which were issued on October 18, 2000 (65 FR 62498) are reprinted in Section 15.

Comment. A few commenters suggested that the term "recreation facilities" be defined. They suggested that the lack of definition leaves some doubt about how to apply the provisions in this section. They questioned whether locker rooms for a professional sports team, for example, would be considered a "recreation facility".

Response. Recreation facilities is not defined in the final rule. The term is used generally to address the types of elements and facilities covered by this section. The term is inclusive and applies to buildings and facilities designed and constructed for recreation, as well as elements and spaces located in a facility. For example, section 15.7.1 would apply to exercise equipment and machines located in an office building as a part of employee health club. Also, these provisions would apply to locker rooms for professional and other sports teams.

Section 15.1 Amusement Rides

Significant comment on amusement ride accessibility was received on the proposed rule. The proposed rule would have required that one wheelchair space and one transfer seat be provided for each 100 seats on new amusement rides and proposed technical provisions for the wheelchair spaces and transfer seats. The majority of comments were from amusement park operators, and amusement ride manufacturers and designers. The Board also received comments from groups representing persons with disabilities.

Overall, commenters did not support the provisions in the proposed rule for access to amusement rides. The commenters stated that the proposed rule lacked flexibility, making it impossible for most rides to comply with the guidelines given the uniqueness of this industry. They also raised concern about the lack of available manufactured rides that would meet the proposed provisions. Most rides are manufactured outside the United States where there is an absence of accessibility requirements. The ride manufacturers in the United States indicated significant hardship on their businesses to retool to meet some of the proposed technical provisions. Amusement park operators interpreted the proposed rule to require operators to modify manufactured rides. Most indicated that they were either unwilling or unable to modify a ride in a way that would differ from the manufacturer's specifications because they were not willing to accept the liability associated with modifying the ride or did not have sufficient engineering expertise to do so.

Additionally, several groups representing persons with disabilities expressed concern that some rides, such as walk through attractions and fun houses, would be exempt along with rides in traveling carnivals. They wanted the accessibility guidelines to encourage ride manufacturers to make all rides accessible. The Eastern

Paralyzed Veterans Association (EPVA) wanted the number of accessible amusement rides to be doubled from the proposed rule.

Because of these comments, the Board held several information meetings with representatives from the amusement industry and others to gather additional information. Site visits were also made to several amusement parks to better understand the issues raised. The information gained from these meetings and site visits have shaped the amusement ride section of the final rule.

Based on this information, the final rule differs significantly from the proposed rule. The final rule makes major changes in the number of accessible spaces per ride and in the options for providing access. It also includes different requirements for wheelchair spaces and for ride seats designed for individuals to transfer from their wheelchair or other mobility device. The final rule provides the flexibility requested by commenters in this unique environment, while still providing a high level of accessibility to persons with disabilities.

Since this is the first time national accessibility guidelines have been established for amusement rides, the Board intends to monitor the implementation of these guidelines. As with other accessibility guidelines developed by the Board, future updates and revisions are planned to ensure that the guidelines reflect new designs and technology.

Section 3.5 Definitions

Three terms are defined for amusement rides.

An "amusement ride" is a system that moves persons through a fixed course within a defined area for the purpose of amusement. Editorial changes are made in the final rule to be consistent with terms used within the amusement industry.

Comment. A few commenters questioned whether this section would apply to a ski lift, tram, or a gondola. Trams and gondolas are provided at some amusement parks.

Response. Section 15.1 is not intended to apply to ski lifts, trams, or gondolas. These devices are designed primarily for the purpose of transporting people from one point to another. While a ride on a ski lift or tram may be enjoyable, it is not designed primarily for the "purpose of amusement". Trams and similar vehicles are already addressed in the ADA Accessibility Guidelines for Transportation Vehicles (Vehicle Guidelines). See 36 CFR 1192.179.

An "amusement ride seat" is defined as a seat that is built-in or mechanically fastened to an amusement ride intended to be occupied by one or more passengers. This is a new term which has been added to the final rule.

"Amusement ride seats" are referenced in several of the technical provisions.

Comment. The proposed rule did not include the term "amusement ride seat." Several commenters including those representing the International Association of Amusement Parks and Attractions (IAAPA) questioned the differences between the transfer seat and the amusement ride seat in the proposed rule. Questions were also raised about the application of the guidelines to rides without seats or those designed with a variety of riding postures, such as toboggan style.

Response. A definition for amusement ride seats is added to the final rule. The Board intends the guidelines to apply to amusement rides with seats. Specific technical provisions included in this section address clear floor or ground space and maneuvering space requirements for amusement ride seats where transfer access is provided. Technical provisions focus on ensuring that people can transfer from their wheelchairs or mobility aids to the ride seats. With respect to the various riding postures, the Board intends these guidelines to apply to those amusement rides with ride seats, including toboggan style, but not to those amusement rides where the rider is expected to be in the prone position or standing. In these cases, however, an accessible route complying with ADAAG 4.3 is required to the load and unload area.

A "transfer device" is defined as equipment designed to facilitate the transfer of a person from a wheelchair or other mobility device to and from an amusement ride seat. Several new scoping and technical provisions included in the final rule specify a "transfer device." An appendix note provides additional information on available transfer devices, including ways to provide equipment that will provide for a safe and independent transfer from a wheelchair or other mobility device.

Section 15.1.1 General

Newly designed or newly constructed and altered amusement rides are required to comply with 15.1.1. Four exceptions are included in the final rule. Under Exception 1, portable or mobile amusement rides are not covered by the guidelines. Exceptions 2, 3, and 4 clarify that amusement rides that are controlled or operated by the rider; amusement rides designed primarily for

children, where children are assisted on and off the ride by an adult; and amusement rides without amusement ride seats are only required to comply with 15.1.4 and 15.1.5, which requires an accessible route to and maneuvering space in the load and unload areas.

Comment. Amusement park operators requested clarification regarding how the guidelines apply to existing rides.

Response. As previously mentioned, the final rule is significantly different from the proposed rule. The term "new" is included in 15.1.1 to clarify that this section applies to "new" rides and not to existing rides. The Department of Justice has the rulemaking authority to address existing rides.

A custom manufactured ride is new upon its "first use", which is the first time amusement park patrons take the ride. With respect to amusement rides purchased from other entities, "new" refers to the first permanent installation of a ride, whether the ride is used "off the shelf" or is modified before it is installed. The application of these guidelines to existing amusement rides that are altered is discussed elsewhere in this preamble. The final rule provides operators with the requested flexibility. Providing opportunities for access for persons with disabilities may be accomplished under the final rule without modifying the ride itself.

Comment. The preamble of the proposed rule explained that the guidelines applied to permanent amusement rides with fixed seats that are set up for a long duration and are not regularly assembled and disassembled. Amusement rides set up for short periods of time such as rides that are part of traveling carnivals, State and county fairs, festivals, and other special events are not addressed by these guidelines. The majority of amusement ride manufacturers supported this approach and considered it appropriate given the uniqueness of these rides. However, the commenters were concerned that the proposed rule did not specifically exempt temporary rides. Others suggested that a time frame be attached to this concept of "temporary" to clarify specifically what is meant. They suggested a 90 day or less time frame be used to define how long such rides can operate at the same location. Several groups representing persons with disabilities believed that temporary rides should also be accessible. They believed that manufacturers should be encouraged to make temporary rides as accessible as permanent rides.

Response. Exception 1 is added to specify that mobile or portable amusement rides are not covered by

15.1. The Department of Justice is authorized to determine the applicable requirement for these rides.

While mobile rides are not specifically addressed by these guidelines, other ADA requirements including general nondiscrimination obligations, program accessibility, and barrier removal provisions of the ADA apply to covered entities operating mobile or portable amusement rides. Mobile amusement rides are subject to a variety of site conditions that affect the load and unload areas. Because the rides are transported over the road, their size and weight is also restricted. This can limit the size available for the load and unload areas along with the accessible route to the ride.

Ride operators and manufacturers are encouraged to apply the provisions of this section to mobile amusement rides, where possible. Mobile rides are available that provide roll-on access and others may be close to providing transfer access with some minor adaptations in the load and unload areas. The Board will, upon request, work with interested manufacturers to provide guidance on providing either roll-on access or transfer access for someone using a wheelchair or mobility device.

Exception 2

Comment. The proposed rule excluded from the definition of amusement rides, those rides which are controlled or operated by the rider such as bumper cars and go-carts. A few commenters suggested that these types of rides also be addressed by this section. Several commenters requested guidance on whether making a ride turn faster or shake faster would be considered "control".

Response. An exception has been added to the final rule for rides that are controlled by the rider requiring such rides to only provide an accessible route to the ride and maneuvering space in the load and unload areas. The Board plans to gather additional information for making these rides accessible for potential rulemaking in the future. In the interim, designers and operators may use the applicable provisions in ADAAG and this final rule as a guide in providing access.

With respect to the issue of control, the exception is not intended to apply to those rides where patrons may affect some incidental movements of the ride, but otherwise have no control.

Exception 3

Comment. The proposed rule did not distinguish between those rides designed for adults and those designed

for young children, also known as "kiddie rides." Many amusement park operators and ride manufacturers commented that "kiddie rides" should be exempt from compliance with the provisions of 15.1.1. Most indicated that size restrictions will prohibit compliance with several of the provisions.

Response. Because of their size restrictions, an exception has been added to the final rule for "kiddie" rides requiring such rides to only provide an accessible route to and maneuvering space in the load and unload area. The requirement for an accessible route will provide access for adults and family members assisting children on and off these rides. An amusement industry definition for "kiddie rides" includes rides designed for children up to the age of 12. The Board does not support an exemption for rides designed for children up to age 12. Rather, the exception is limited to those rides designed "primarily" for children, where children are assisted on and off the ride by an adult. The Board intends that this exception be limited to those rides designed for children and not for the occasional adult user.

Exception 4

Comment. Some commenters interpreted the proposed rule to apply to amusement rides without seats.

Response. Section 15.1 of the proposed rule limited the application of this section to rides "containing fixed seats". Exception 4 is added in the final rule to further clarify that 15.1 does not apply to amusement rides without ride seats. Amusement rides without seats are required to be served by an accessible route and connect to accessible load and unload areas.

Section 15.1.2 Alterations to Amusement Rides

Section 15.1 applies to amusement rides that are altered. This section clarifies that a modification to an existing amusement ride is an alteration if one or more of the following conditions apply: (1) The amusement ride's structural or operation characteristics are changed to the extent that the ride's performance differs from that specified by the manufacturer or the original design criteria; or (2) the load and unload area of the amusement ride is newly designed and constructed.

Comment. The majority of commenters questioned how the proposed rule applied to existing amusement rides. Many commenters believed that the guidelines require that all existing amusement rides be accessible. Others inquired about the

requirements for existing rides that are modified and the type of modification that would trigger the alteration provisions.

Response. The final rule addresses alterations to existing amusement rides. See the discussion at the beginning of this preamble for further information on ADA obligations for existing amusement rides.

Where an existing amusement ride is modified in a way that does not change the ride's structural or operational characteristics to the extent that the ride's performance differs from that specified by the manufacturer's or original design criteria, the amusement ride is not required to comply with 15.1.1. Routine maintenance, painting, and changing of story boards are examples of activities that do not constitute an alteration.

As with other elements or facilities subject to the alterations provisions in ADAAG, "technical infeasibility" applies to alterations of amusement rides. In this case, compliance with the technical provisions is required except where the nature of the existing ride makes it virtually impossible to comply fully. In these circumstances, the alteration should provide the maximum accessibility feasible.

Comment. Commenters requested clarification regarding how the guidelines apply where amusement rides are moved.

Response. In response to this question, a provision has been added that requires a ride to be accessible when a new load and unload area is designed and constructed for the ride. This provision applies where a ride is moved either within a park or to another park and a new load and unload area is designed and constructed. The ride must comply with 15.1.1. Operators have a choice of providing either a wheelchair space, ride a seat designed for transfer, or a transfer device. In most cases with an existing amusement ride, providing a transfer device may be the most appropriate. This option does not require modification to the ride. Where an amusement ride is moved and the load and unload area is not modified, the provisions of 15.1.1 do not apply. In this case, the on-going obligations of "readily achievable barrier removal" or "program accessibility" will apply.

Section 15.1.3 Number Required

This section requires each amusement ride to provide at least one wheelchair space complying with 15.1.7, or at least one amusement ride seat designed for transfer complying with 15.1.8, or at least one transfer device complying with 15.1.9.

Comment. The proposed rule required one wheelchair space per 100 fixed seats and one transfer seat per 100 fixed seats to be provided on each amusement ride. An exception permitted two transfer seats in lieu of a wheelchair space where a wheelchair space is not operationally or structurally feasible. Significant comment was received on this provision during the comment period. Amusement park operators stated that the number of accessible spaces (both wheelchair and transfer seats) was too high. Several amusement park operators cited safety concerns with respect to evacuation where more than one wheelchair user may be on a ride at one time. Others expressed concern about lengthening the load and unload time. Groups representing persons with disabilities were concerned that the number of wheelchair spaces and transfer seats in the proposed rule was too low. The Eastern Paralyzed Veterans Association (EPVA) wanted the number doubled from the proposed rule, potentially requiring two wheelchair spaces and two transfer seats per ride.

Response. The final rule requires that each ride provide: (1) A wheelchair space, or (2) a ride seat designed for transfer, or (3) a device to facilitate the transfer of a person in a wheelchair from the load or unload area to a ride seat. This represents a decrease in the number of accessible spaces from the proposed rule and is no longer dependent on the number of seats per ride. Designers and operators have the choice of deciding which of the three types of access is appropriate for a given ride. Where a manufactured ride does not permit space for a wheelchair, for example, a ride seat designed for transfer or a transfer device may be provided to help an individual transfer into the ride seat.

The Board is aware of amusement rides in certain parks that currently exceed this minimum and provide more than one wheelchair space on a given ride. In these cases, more persons with disabilities and their families are able to ride at the same time. Amusement park operators are encouraged to exceed the minimum with their new rides.

Section 15.1.4 Accessible Route

This section requires that, when in the load and unload position, amusement rides with wheelchair spaces, or ride seats designed for transfer, or transfer devices, must be served by an accessible route complying with ADAAG 4.3. Any part of an accessible route serving amusement rides with a slope greater than 1:20 is considered a ramp and must comply

with ADAAG 4.8. The accessible route is required only to the wheelchair space or transfer loading station, and not to all stations. This route can deviate from the main route in order to access the particular station designated.

Three new exceptions to 15.1.4 are provided in the final rule. Exception 1 exempts ramps from the maximum slope specified in ADAAG 4.8.2, where compliance with 4.8.2 is structurally or operationally infeasible, provided that the slope of the ramp may not exceed 1:8. Exception 2 exempts the requirements for handrails on the accessible route where compliance is structurally or operationally infeasible. Exception 3 permits that use of limited-use/limited-application elevators and platform lifts complying with ADAAG 4.11 to be part of an accessible route serving the load and unload area.

Comment. The proposed rule required an accessible route to connect the portion of the load and unload area serving each accessible amusement ride and to provide a maneuvering space with a slope not greater than 1:48. Commenters questioned whether the 1:48 slope applied to the accessible route on the ride and the appropriateness of this requirement for those rides where a transfer seat was provided.

Response. The requirements for an accessible route are maintained in the final rule, but are modified to clarify that at least one accessible route requirement applies when the ride is in the load and unload position. The requirement for a maneuvering space is moved to 15.1.4, which addresses the load and unload areas. The provision also clarifies that where the running slope serving the amusement ride or transfer devices is greater than 1:20, the provisions of ADAAG 4.8 apply.

Comment. Operators expressed concerns with the requirements of ADAAG 4.8 with respect to the maximum slope (1:12) and the maximum rise (30 inches) for the accessible route. They described rides where space limitations will prohibit long ramps and where fundamental changes to amusement rides would be necessary to comply with ADAAG 4.8.2.

Response. An exception is added in the final rule that exempts the accessible route serving accessible rides from the maximum slope specified in ADAAG 4.8.2, provided that the slope may not exceed 1:8. The exemption only applies where compliance with ADAAG 4.8.2 is "structurally or operationally" infeasible. The exception for structural or operational limitations is limited to that portion of the accessible route connecting the load and unload areas

with the amusement ride. There is no exception for other portions of the accessible route, such as the queue line leading to the load and unload areas.

Comment. Ride operators and designers also stated that the requirement for handrails was not practical on the portion of the accessible route connecting the load and unload areas and the ride. They again cited space limitations especially where ramps are integrated into the ride and folded out of the way when the ride is in use.

Response. An exception from the requirement for handrails is added in the final rule. Similar to exception 2, this exception is limited to circumstances where compliance with the handrail requirement is structurally or operationally infeasible.

Comment. The proposed rule did not include a provision permitting the use of a limited-use/limited-application elevator or a platform lift as a part of the accessible route in providing access to load and unload areas. The American Institute of Architects (AIA) and others in the amusement industry recommended their use in connecting these areas, especially in connecting elevated load and unload areas and those that cross tracks.

Response. An exception is provided in the final rule permitting the use of limited-use/limited-application elevators and platform lifts complying with ADAAG 4.11. The Board has included this option in the final rule to address some of the unique designs and elevated loading areas used within an amusement park. Where platform lifts are used, they must comply with ADAAG 4.11. Future revisions to ADAAG will include technical provisions for limited-use/limited-application elevators. At that time, appropriate provisions will be referenced for these elevators. Currently available design and safety standards should be applied in the interim.

Comment. Some commenters questioned whether moving turnstiles and walkways can serve as part of an accessible route connecting amusement rides.

Response. The Board has not specifically addressed moving turnstiles and walkways, since they are always capable of stopping or slowing to accommodate guests needing additional time. At this time there is not sufficient information to suggest a consistent safe speed for use for all persons with disabilities. Some individuals will be able to maneuver within the speed and time provided on the moving walkway or turnstile, while others will need additional time. Operators may need to

adjust the speed accordingly to reasonably accommodate guests with disabilities.

Section 15.1.5 Load and Unload Areas

This section requires load and unload areas serving amusement rides required to comply with 15.1 to provide a maneuvering space complying with ADAAG 4.2.3. The maneuvering space must have a slope not steeper than 1:48. The maneuvering space is permitted to overlap the accessible route and the required clear floor spaces.

No substantive comment was received and no changes have been made for the final rule.

Section 15.1.6 Signage

This section requires signage to be provided at the entrance of the queue or waiting line for each amusement ride to identify the type of access provided (e.g., wheelchair access or transfer access). Where an accessible unload area also serves as the accessible load area, signage must be provided at the entrance to the queue or waiting line indicating the location of the accessible load and unload area. This is important to avoid unnecessary backtracking when patrons begin the process of waiting in line for a particular ride. No substantive comments were received and no changes have been made to this provision in the final rule.

Section 15.1.7 Amusement Rides With Wheelchair Spaces

This section contains technical provisions for amusement rides with wheelchair spaces.

Comment. Several amusement ride designers and manufacturers raised concerns about technical provisions for wheelchair spaces on amusement rides. Most commenters believed that the space required was too large and boxy, and would significantly limit the number of amusement rides that could incorporate such a space. Some recommended that knee and toe clearances be incorporated into the space. In general, designers and operators requested more flexibility with wheelchair spaces on amusement rides.

Response. The Board has significantly modified the requirements for wheelchair spaces on amusement rides. The final rule includes changes which address the commenters concerns, while still requiring a minimum space that would serve most mobility devices on an amusement ride. The Board recommends that where possible, designers and manufacturers exceed the minimum space. Providing additional space will greatly enhance the ease in

loading and unloading and accommodate a greater variety of mobility devices.

Section 15.1.7.1 Floor and Ground Surface

This section contains technical provisions for floor or ground surface of wheelchair spaces.

Comment. The proposed rule required wheelchair spaces to comply with several provisions of ADAAG 4.5 (4.5.1, 4.5.3, 4.5.4). Commenters expressed some confusion over these references and sought clarification.

Response. Rather than referencing ADAAG 4.5, the final rule incorporates these provisions into 15.1.7.1 for clarity. Other editorial changes are also made within this section.

Section 15.1.7.1.1 Slope

This section requires the floor or ground surface of wheelchair spaces to have a maximum slope of 1:48 when in the load and unload position and to be firm and stable.

Comment. Commenters questioned the appropriateness of requiring the clear space to be level when the amusement ride is in motion.

Response. The section is modified to clarify that the maximum 1:48 slope is only required when the amusement ride is in the load and unload position.

Section 15.1.7.1.2 Gaps

This section requires floors of amusement rides with wheelchair spaces and floors of load and unload areas to be coordinated so that when the amusement rides are at rest in the load and unload position, the vertical difference between the floors must be within plus or minus $\frac{5}{8}$ inches and the horizontal gap should be no greater than 3 inches under normal passenger load conditions. An exception permits that where it is not operationally or structurally feasible to meet the horizontal or vertical difference requirements, ramps, bridge plates, or similar devices complying with the applicable requirements of 36 CFR 1192.83(c) (the Board's vehicle accessibility guidelines) must be provided.

Comment. No substantive comment was received on this section. Several representatives from the amusement industry, however, recommended that the Board reference an ASTM Standard Practice for the Design and Manufacture of Amusement Rides and Devices where ramps, bridge plates, lifts, or similar devices are used.

Response. The Board carefully examined the suggested ASTM Standard Practice and determined that it was

designed as a safety standard rather than a standard that provides guidance on the minimum access requirements for ramps, bridge plates, lifts, and similar devices. Operators and manufacturers are not precluded from also following the standards in the ASTM Standard Practice for the operation of these elements. The applicable requirements of 36 CFR 1192.83(c) (ADA Accessibility Guidelines for Transportation Vehicles—Light Rail Vehicles and Systems—Mobility Aid Accessibility) are available on the Board's Web site at www.access-board.gov/transit/html/vguide.htm#LRVM.

Section 15.1.7.2 Clearances

This section requires clearances for wheelchair spaces to comply with 15.1.7.2. Three new exceptions are added. Exception 1 permits securement devices, where provided, to overlap the required clearances of the wheelchair space. Exception 2 permits the wheelchair space to be mechanically or manually repositioned. Exception 3 permits departure from the requirements of ADAAG 4.4.2 (Head Room) for the wheelchair space.

Comment. The proposed rule did not specifically address securement devices in wheelchair spaces. Commenters questioned whether securement devices could be located within the minimum clear space requirements for wheelchair spaces on amusement rides. They noted that while the proposed rule did not specifically address or require these devices, many operators have provided them where wheelchair spaces are provided on amusement rides.

Response. The final rule adds an exception to 15.1.7.2 to permit securement devices to overlap required clearances for wheelchair spaces on amusement rides. However, the final rule does not require securement devices. The decision about whether securement devices are needed is left up to the designer or manufacturer. Where provided, these devices may overlap the required clearances for wheelchair spaces.

Comment. As previously discussed, the Board received a significant number of comments from representatives in the amusement industry on the need for more flexibility. Several operators of large parks demonstrated ways that wheelchair spaces were provided on rides through the use of a turntable. This permits the space to be orientated for a forward approach and later turned to be in line with the direction of the motion of the amusement ride. Commenters did not consider repositioning to be an option under the proposed rule.

Response. Exception 2 has been added to the final rule and permits the wheelchair space on an amusement ride to be either manually or mechanically repositioned.

Comment. A few amusement park designers raised concern about the head clearance requirements of ADAAG 4.4 (Protruding Objects) for the wheelchair space located on an amusement ride. Amusement rides are often designed to move through confined spaces in order to enhance the amusement experience. Since most of these rides are designed for seated patrons, designers requested exemption from this requirement.

Response. Exception 3 is added in the final rule and exempts wheelchair spaces on rides from ADAAG 4.4.2 (Head Room). This exception applies to circulation space and clear space requirements on the ride. It does not apply to circulation areas and accessible routes in the queue line or the load and unload areas.

Section 15.1.7.2.1 Width and Length

This section requires wheelchair spaces to have a width of 30 inches minimum and a length of 48 inches minimum measured 9 inches minimum above the ground or floor surface.

Comment. The proposed rule required the wheelchair space to be a minimum of 36 inches in width. This width was based on the minimum 30 inch width needed for a stationary wheelchair with the additional 6 inches necessary for repositioning in confined spaces which allows space for the front casters of a wheelchair to turn and move when backing up. Designers expressed significant concern over the 36 minimum width and questioned why it was necessary where the space is reached in a forward direction. They further cited designs where the space is manually or mechanically repositioned and therefore should not require further maneuvering. Some commenters also suggested that the depth of the clear space could be 48 inches in all cases.

Response. The minimum width of the wheelchair space is reduced to 30 inches in the final rule. While the Board has decreased the minimum width, it recommends that designers and manufacturers exceed the minimum where possible to allow for increased maneuvering space.

Section 15.1.7.2.2 Wheelchair Spaces—Side Entry

This section requires that where the wheelchair space can be entered only from the side, the ride must be designed to permit sufficient maneuvering space for individuals using a wheelchair or

mobility device to enter and exit the ride.

Comment. A few commenters questioned what the minimum space requirements would be for a ride entered from the side. They questioned whether a 32 inch side opening leading to a 30 inch wide by 48 inch long space would be sufficient.

Response. Section 15.1.7.2.2 is added to address rides with side entries. A center opening of 32 inches combined with a minimum space of 30 inches wide and 48 inches long is not adequate space for maneuvering. Designers must consider the position of the opening in relation to the minimum space. In some cases, additional clear space and larger openings will be necessary to allow for maneuvering a wheelchair on the ride. An appendix note is included to provide further guidance.

Section 15.1.7.2.3 Protrusions in Wheelchair Space

This section permits protrusions in the wheelchair spaces on amusement rides. Objects are permitted to protrude a distance of 6 inches maximum along the front of the wheelchair space where located 9 inches minimum and 27 inches maximum above the wheelchair space. Objects are also permitted to protrude a distance of 25 inches maximum along the front of the wheelchair space where located more than 27 inches above the wheelchair space.

Comment. As previously noted, amusement ride designers and operators commented that the wheelchair space clearances in the proposed rule were too restrictive and did not permit knee and toe clearances. They suggested that the clearances could be reduced without compromising the minimum space requirements.

Response. The final rule permits protrusions in the wheelchair space on amusement rides.

Section 15.1.7.3 Openings

This section requires that where openings are provided to access wheelchair spaces on amusement rides, the entry must provide a 32 inch minimum clear opening.

Comment. The proposed rule did not specify a minimum opening space where wheelchair spaces are provided on amusement rides. Commenters requested guidance on this dimension.

Response. A provision is added in the final rule to address the minimum width of openings where wheelchair spaces are provided on an amusement ride. This is consistent with minimum width requirements for doors and other

passageways that are part of an accessible route.

Section 15.1.7.4 Approach

This section requires one side of the wheelchair space to adjoin an accessible route.

No substantive comment was received on this provision.

Section 15.1.7.5 Companion Seats

This section requires that where the interior of an amusement ride is greater than 53 inches in width, seating is provided for more than one rider, and the wheelchair is not required to be centered within the amusement ride, a companion seat must be provided for each wheelchair space.

Comment. The proposed rule required companion seating where seating for more than one rider is provided. Ride manufacturers commented that providing companion seating may not be possible on rides where the center of gravity is critical to its operation. They noted that providing space for an individual seated in a wheelchair and a seated companion may increase and change the weight distribution on a ride. They supported a provision with limits that are linked to the minimum width of the ride, whether or not seating is provided for more than one rider, and whether the wheelchair space is centered on the ride.

Response. This section is modified in the final rule to address the concerns raised. Consistent with the proposed rule, companion seating is required only where seating is provided for more than one rider. Additionally, companion seating is required only where the interior of an amusement ride is greater than 53 inches in width and the wheelchair is not required to be centered within the amusement ride.

Section 15.1.7.5.1 Shoulder-to-Shoulder Seating

This section requires that where an amusement ride provides shoulder-to-shoulder seating, companion seats must be shoulder-to-shoulder with the adjacent wheelchair space.

Comment. Commenters suggested that in some circumstances, shoulder-to-shoulder seating may not be possible. They cited examples of water rides where the rider's center of gravity is critical. Adding two riders side by side can alter the balance of the ride.

Response. An exception is added in the final rule that shoulder-to-shoulder companion seating is required only to the maximum extent feasible, where compliance is not operationally or structurally feasible.

Section 15.1.8 Amusement Ride Seats Designed for Transfer

This section requires that amusement rides with ride seats designed for transfer must comply with 15.1.8 when positioned for loading and unloading.

Comment. Significant comment was received on the technical provisions addressing transfer seats. Some interpreted the proposed rule to require a "special seat" in addition to other ride seats. Others believed that the technical provisions did not provide sufficient flexibility, especially given the diversity of rides and ride seats.

Response. The final rule requires that each ride provide: (1) A wheelchair space, or (2) an amusement ride seat designed for transfer, or (3) a system to facilitate the transfer of a person in a wheelchair from the load or unload area to a ride seat. Where ride seats are designed for transfer, this section applies. For the most part, the technical provisions for space and other features are applied to both the ride seat and the transfer device since both elements are designed for an individual to transfer from their wheelchair or mobility device to an element. A ride seat designed for transfer is usually a seat that is a permanent part of the ride itself.

Section 15.1.8.1 Clear Floor Space

This section requires clear floor space complying with ADAAG 4.2.4 to be provided in the load and unload area adjacent to amusement ride seats designed for transfer.

Comment. The proposed rule required the clear floor space to comply with ADAAG 4.2.4 and be positioned with the longer dimension parallel to the unobstructed side of the transfer seat. The space was also required to be located within 3 inches maximum of the transfer seat. Commenters supported the basic clear floor space requirement of 30 inches by 48 inches. Several commenters however, believed that the requirements for the orientation of the clear space were too stringent for two reasons. First, the orientation required in the proposed rule was potentially limited to a side transfer. Many individuals choose to transfer using a diagonal or front approach. Second, they were concerned about the variety of amusement rides and load and unload areas. They recommended that the orientation of the clear space with respect to its location to the ride seat be left up to the designer.

Response. The final rule requires a 30 inch wide by 48 inch deep clear space to be adjacent to the ride seat designed for transfer. The position of the clear space is not specified in the final rule.

Designers will decide its location based on what is best suited for transfer on a particular ride.

Section 15.1.8.2 Transfer Height

This section requires the height of ride transfer seats to be located 14 inches minimum to 24 inches maximum measured above the load and unload surface.

Comment. The proposed rule required the transfer seat to be between 17 and 19 inches based on other elements within ADAAG where individuals using wheelchairs and other mobility devices are expected to transfer. Commenters requested the range to be greater.

Response. The final rule provides a greater range in the height of the ride seat designed for transfer. Providing a greater range in this height should reduce reliance on transfer devices and have the effect of decreasing the number of transfers to get from one's wheelchair or mobility device to a ride seat. The Board recognizes that amusement rides have unique designs. The increase in the transfer height range is limited to amusement rides because of their unique designs. The goal is to provide designs that afford the least amount of transfers for the least amount of distance. The Board recognizes that providing a greater range in the transfer height may make transfers more difficult for some people with disabilities. Based on this concern, and the fact that the transfer height for amusement rides is new, the Board will closely monitor how well the range provides access to amusement rides. Where possible, designers are encouraged to locate the transfer seat between 17 inches and 19 inches above the load and unload surface.

Section 15.1.8.3 Transfer Entry

This section requires that where openings are provided to transfer to amusement ride seats, the space must be designed to provide clearance for transfer from a wheelchair or other mobility device to the amusement ride seat.

Comment. The proposed rule required the transfer entry on the amusement ride to be a minimum of 36 inches wide. The entry was also required to be positioned parallel and adjacent to the longer dimension of the clear floor space. Amusement ride designers and manufacturers commented that the 36 inch width was excessive and believed that few rides, if any, could comply with this dimension. They further explained that openings are generally kept to a minimum since the sides of the ride often serve as a part of the restraint or securement system for the ride.

Response. Due to the large variance of amusement rides and the potential interference with the securement system, the final rule requires a space to be designed to provide clearance for transfer from a wheelchair or mobility device to the amusement ride seat. Specific dimensions for the opening are not provided in the final rule.

Section 15.1.8.4 Wheelchair Storage Space

This section requires wheelchair storage spaces complying with ADAAG 4.2.4 to be provided in or adjacent to unload areas for each required amusement ride seat designed for transfer. The space must not overlap any required means of egress or accessible route.

Comment. Some commenters interpreted the provision to require some type of constructed storage space.

Response. Clear space is needed in the load and unload areas for individuals to leave their wheelchairs when they transfer onto amusement rides. ADAAG 4.2.4 specifies a minimum 30 inch by 48 inch space for a stationary wheelchair. For safety reasons, the space must not overlap any required means of egress or accessible route. This provision does not require a constructed element for storage, only a space. Most current designs used for load and unload areas will include sufficient space to comply with this provision.

Section 15.1.9 Transfer Devices for Use With Amusement Rides

This section requires that transfer devices for use with amusement rides must comply with 15.1.9 when positioned for loading and unloading.

Comment. As previously discussed, significant comment was received on the technical provisions addressing transfer seats. Some interpreted the proposed rule to require a "special seat" in addition to other ride seats. Others believed that the technical provisions did not provide sufficient flexibility, especially given the diversity of rides and ride seats.

Response. The final rule requires that each ride provide: (1) A wheelchair space, or (2) an amusement ride seat designed for transfer, or (3) a system to facilitate transfer of a person in a wheelchair from the load or unload area to a ride seat. This section applies where transfer devices are used to provide access to an amusement ride seat. A transfer device can be provided as an integral part of the ride, or as a permanent or temporary part of the facility. Significant flexibility is provided for ride designers or park

operators to develop these transfer devices. Transfer devices may include lifts, ramps, transfer platforms and steps, or other similar systems and do not require modification to manufactured rides. Information is provided in the appendix to assist operators in selecting from different types of transfer devices.

Section 15.1.9.1 Clear Floor Space

This section requires clear floor space complying with ADAAG 4.2.4 to be provided in the load and unload area adjacent to transfer devices.

Consistent with the clear space requirement for ride seats designed for transfer, the position of the clear space adjacent to the transfer devices is not specified in the final rule. Designers will decide its location based on what is best suited for transfer on a particular transfer device.

Section 15.1.9.2 Transfer Height

This section requires the height of transfer device seats to be located 14 inches minimum to 24 inches maximum measured above the load and unload surface.

The Board has applied the same range established for amusement ride seats designed for transfer to transfer devices. As previously stated, the goal is to provide designs that afford the least amount of transfers for the least amount of distance.

Where possible, designers are encouraged to locate the transfer device between 17 inches and 19 inches above the load and unload surface. Further guidance related to maximum heights for vertical movements when transferring within a transfer device is provided in the appendix.

Section 15.1.9.3 Wheelchair Storage Space

This section requires wheelchair storage spaces complying with ADAAG 4.2.4 to be provided in or adjacent to unload areas for each required transfer device and must not overlap any required means of egress or accessible route.

Comment. Some commenters interpreted the provision to require some type of constructed storage space.

Response. Clear space is needed in the load and unload areas for individuals to leave their wheelchairs when they transfer onto transfer devices. ADAAG 4.2.4 specifies a minimum 30 inch by 48 inch space for a stationary wheelchair. For safety reasons, the space must not overlap any required means of egress or accessible route. This provision does not require a constructed element for storage, only a

space. Most current designs used for load and unload areas will include sufficient space to comply with this provision.

Other Issues

Accessible Routes in Temporary Places of Amusement

Comment. The proposed rule requested comment on providing accessible routes on sites used for fairs, carnivals, and other temporary places of amusement. Usually a site such as a field or parking lot may be used for a short period of time for temporary places of amusement.

Response. The Board received few comments on this issue. The final rule does not include any provisions for accessible routes in temporary places of amusement. The Department of Justice has the authority to address this issue. Given the diversity of sites and complexity of agreements involved when using sites on a temporary basis, one set of guidelines is not practical. State and local government entities covered by title II may not, in determining the site or location of a facility, make selections that have the effect of excluding individuals with disabilities (28 CFR 35.130(b)(4)). Where a site is altered by installing some type of surface, that surface must be stable, firm, and slip resistant and meet other requirements in ADAAG 4.3 for the accessible route. Temporary structures are covered by ADAAG 4.1.1(4) and are required to comply with ADAAG. As with other alterations, "technical infeasibility" permits departure from technical provisions where existing physical or site constraints prohibit modification or addition of elements, spaces, or features.

Section 15.2 Boating Facilities

Section 3.5 Definitions

This section defines five terms for boating facilities.

A "boat launch ramp" is a sloped surface designed for launching and retrieving trailered boats and other water craft to and from a body of water.

A "boat slip" is that portion of a pier, main pier, finger pier, or float where a boat is moored for the purpose of berthing, embarking, or disembarking.

A "boarding pier" is a portion of a pier where a boat is temporarily secured for purposes of embarking and disembarking.

A "gangway" is a variable-sloped pedestrian walkway linking a fixed structure or land with a floating structure. This definition does not apply to gangways which connect to vessels.

A "transition plate" is a sloping pedestrian walking surface located at the end(s) of a gangway.

Comment. The proposed rule included definitions for boat launch ramp, boat slip, design high point, and gangway. Commenters recommended rewording these definitions. Commenters also recommended that additional definitions be added, such as handrail, landings, pier, main pier, finger pier, boarding pier, fixed and floating piers, mooring space, transient slips, and transition plate.

Response. The final rule provides five definitions. Definitions for boat launch ramp, boat slip, and gangway, have been retained but have been changed to improve clarity. Definitions for boarding pier and transition plate have been added, and the definition for design high point has been removed. Additional terms suggested by commenters were not added since they were not used in the technical or scoping provisions of the boating section.

Section 15.2.1 General

This section requires newly designed or newly constructed and altered boating facilities to comply with 15.2.

Comment. Some commenters did not want the rule to apply to each boating facility. They noted that designers and facility managers needed flexibility to provide reasonable accommodations in an environment which may contain extreme physical conditions. Several commenters requested that where two or more boating facilities are located within 10 miles of each other, only one facility should be accessible. Other commenters assumed that all existing facilities would have to immediately conform to the final rule.

Response. These guidelines apply to each newly designed or newly constructed boating facilities. Altered facilities must conform to the guidelines to the degree required by ADAAG 4.1.6. Where an existing facility is not being altered, the guidelines do not require that alterations be performed.

Comment. Commenters requested clarification on the term "recreational boating facility."

Response. This section primarily applies to piers and docks typically found at marinas where recreational boats are moored for embarking and disembarking occupants, but will apply in other non-marina settings. Where a vessel is primarily used for recreation, generally piers and docks designed and constructed to provide mooring and other services for such vessels would be covered by this section. Recreational boats range in size from small canoes to

large sailboats and power boats. The final rule is not intended to cover piers used solely by ferries or other commercial vessels, such as freighters, ocean supply vessels, and commercial fishing vessels.

Boating facilities covered by this final rule vary in size. Some contain as few as one boat slip (for example, a small campground with a short non-demarcated pier) and others are large enough to contain several thousand boat slips (for example, a large marina with many boat basins). Some have piers and boat launch ramps, while others only have piers. A boating facility may only contain a single launch ramp with no boarding pier or may contain multiple launch ramps with multiple boarding piers. In some cases, a site (such as a State park with a large lake) may contain more than one boating facility. In other cases, several boating facilities may be located in the same waterfront area, each operated by different operators.

Section 15.2.2 Accessible Route

This section requires that accessible routes, including gangways that are part of an accessible route, comply with ADAAG 4.3. ADAAG 4.1.2(2) requires that at least one accessible route connect accessible buildings, facilities, elements, and spaces on the same site. Therefore, an accessible route must connect accessible boat slips with other accessible elements on the same site. Eight exceptions, discussed below, have been added which modify the accessible route requirements as they relate to connecting floating piers.

No exceptions have been provided for accessing fixed piers. Therefore, accessible routes serving fixed piers must meet all the requirements of ADAAG 4.3.

Exception 1 Alterations to Existing Gangways

Exception 1 permits the replacement and alteration of existing gangways or series of gangways without triggering an increase in the length of the gangways, unless required by ADAAG 4.1.6(2).

Comment. Commenters noted that for maintenance or safety reasons, gangways are sometimes replaced or altered without any other changes being made to the floating piers and land based features located at the ends of the gangways. Under ADAAG's requirements for alterations, a replaced gangway would have to meet the requirements of section 15.2.2. The primary difficulty typically involves meeting slope requirements, rather than meeting handrail and transition plate requirements. In many cases,

compliance with section 15.2.2 would require longer gangways to be installed. To install a longer gangway, changes to adjacent structures may be needed and such changes could also lead to reductions in the number of boat slips available. Available water sheet may also prevent lengthening of the gangways in an existing boating facility.

Response. The final rule includes an exception that does not require an increase in the length of the gangway, where gangways are replaced or altered. However, under ADAAG 4.1.6(2), alterations to areas containing primary functions may require existing gangways and adjacent structures to be brought into conformance with section 15.2.2. ADAAG 4.1.6(2) provides that, when an area containing a primary function is altered, an accessible path of travel must be provided to the altered area unless the cost and scope of the alterations to provide an accessible path of travel is disproportionate to the overall alterations as determined under criteria established by the Department of Justice. The Department of Justice regulations for title III of the ADA deem alterations to provide an accessible path of travel to be disproportionate when the cost exceeds 20 percent of the cost of the overall alterations.⁶

Exceptions 2 and 3 Maximum Gangway Rise and Slope

Exception 2 permits gangways or series of gangways to exceed the maximum rise specified in ADAAG 4.8.2. Exception 3 permits gangways to exceed the maximum slope specified in ADAAG 4.8.2, where the total length of the gangways serving as part of a required accessible route is at least 80 feet.

Comment. One of the most difficult issues relating to accessibility in floating boating facilities is gangway slopes. The proposed rule permitted gangway slopes to exceed a maximum slope of 1:12 at such times as when the distance between the design high point and water level exceeded a specific value depending on the size of the pier. In addition, the proposed rule exempted gangways from the maximum rise in ADAAG 4.8.2.

Over 60 organizations and individuals responded to the above proposals. Most indicated that they did not support the provisions. The comments raised concerns about how to calculate the pier square footage and what was considered a "pier." Some asked whether levees, boardwalks, or retaining walls are fixed piers and how to measure the square

footage. Others asked about private operators using floating piers and leasing space at a city pier. They questioned whether the square footage of the city pier is included in the calculations for determining access to the privately owned floating pier. One commenter noted that facility size determinations based on square footage may tend to drive entities to reduce pier widths which could compromise safety and stability.

A few commenters questioned how the design high point was selected. They questioned whether this point was the 100 year flood line, mean high tide, extreme high tide, ordinary high water, or high pool water line. One commenter noted that what is a safe and practical upper limit is not constant and easily determined.

Some commenters were concerned that facilities located where water level fluctuations are over 40 feet, would end up with no access or only limited access. A number of commenters suggested that a maximum gangway slope be established for most conditions, if not all conditions. Recommended slope maximums ranged from 5 percent to 15 percent.

At least 10 commenters noted that the requirements should ideally be site specific because of the varying logistical problems and differing geographic conditions at locations where water level fluctuations range from a few inches to over 100 feet. These commenters said that the table in the proposed rule would create hardships for existing facilities where space limitations are present, by requiring reductions in boat slip counts and by discouraging operators from upgrading their facilities. A number of commenters recommended that accessible gangways only be required where they serve 100 or more boat slips.

Using recommendations made by a number of commenters and combined with an effort to reduce the complexity of the final rule, the Board published a summary of a draft final rule for comment. In this draft, the Board indicated that the slope of a gangway would be permitted to exceed the maximum slope of 1:12 where the linear feet of mooring space along the perimeter of the piers at a facility was less than 1,000 feet (approximately 20–30 slips) and the water fluctuation was more than one foot. The provision, which was a general exception from the maximum slope requirement, was intended to provide regulatory relief for smaller boating facilities where an extensive gangway system may be cost prohibitive. Linear feet of mooring space was used instead of the square footage

⁶ See 28 CFR 36.403(f)(1) (<http://www.usdoj.gov/crt/ada/reg3a.html>).

of a facility to more effectively measure the size of usable space where boats can dock rather than other spaces at a boating facility.

The draft final rule also required that where the linear feet of mooring spaces along the perimeter of the piers at a facility was less than 3,000 feet (approximately 50–70 slips) and the water fluctuation was more than 5 feet, the maximum gangway slope would be permitted to be 1:8 maximum. This exception allowed for a steeper slope than generally provided in ADAAG.

Lastly, the draft final rule stated that where the water fluctuation was more than 10 feet, gangways would be permitted to exceed the maximum slope of 1:12. Providing complying gangway slopes where the water fluctuation exceeds 10 feet requires extensive gangway systems and supporting facilities. It was noted in the draft final rule that although the gangway slope was permitted to be any slope, the gangway was not allowed to consist of stairs, since stairs are not permitted to be part of an accessible route.

During two public information meetings and from written comment received on the summary of the draft final rule, commenters generally supported simplifying the rule. Some expressed concerns about allowing a 1:8 slope on gangways, and others objected to using linear feet to determine the size of smaller facilities. A few commenters noted that the maximum feasible length of a gangway is between 60 and 70 feet. These commenters indicated that providing longer gangways, or providing two or more shorter gangways as part of a gangway and ramp system, dramatically increased the costs, complexity, and maintenance of the structure. Some commenters pointed out that because gangways often depart from a landside connection which is positioned at least 3 to 4 feet above high water, a 120-foot gangway provided to handle a 10-foot water level change actually needs to be at least 156 to 168 feet long (or a series of gangways and ramps with the same aggregate length).

Response. It is recognized that many factors which vary throughout the country add to the complications of providing larger gangway and ramp systems to handle greater changes in water fluctuation and elevation. Factors include water level changes, distance of gangway departure points above high water marks, available water sheet to construct within, location of shipping channels into which piers and gangways cannot project, wind load on floating structures as they get bigger, types of mooring systems, dead and live loads of gangways and the size of floating

facilities to support them, currents, boat wakes, and the ability to remove floating structures when bodies of water freeze over. In the proposed rule, the Board attempted to define the level of access based on the size of a facility (*i.e.*, pier square footage). Comments noted that many other factors besides facility size, play a role in determining what is feasible. Because factors vary throughout the country and could vary between adjacent sites and adjacent facilities, selecting one factor or a list of factors to measure for determining appropriate gangway slope is not feasible.

In an effort to provide a simplified rule and establish a starting point for determining gangway access, the final rule focuses on a maximum feasible gangway length. In response to the draft final rule, a recommendation was developed by the California Department of Boating and Waterways, Oregon State Marine Board, Clean Harbor Action, and Revitalize Our Waterways (and supported by over 20 other commenters). This recommendation showed that it would be feasible in new construction to provide up to 80-foot gangways. From this comment (which also contained recommendations for different gangway slopes for varying changes in elevation), the Board developed the final rule which is based only on gangway length. Exception 3 requires that an entity either (1) provide a gangway (or series of gangways) at least 80 feet in total length, or (2) provide a gangway (or series of gangways) which does not exceed a maximum slope of 1:12. The final rule also retains the exception permitting gangways to be any length without a landing. As these exceptions only apply to gangways, ramps constructed on floating piers and ramps providing access to landside connections of gangways are not permitted to use these exceptions. Since the final rule does not use water level change as a mechanism for determining gangway accessibility, the definition for design high point was removed. The appendix includes the following two examples.

Example 1. Boat slips which are required to be accessible are provided at a floating pier. The vertical distance an accessible route must travel to the pier when the water is at its lowest level is 6 feet, although the water level only fluctuates 3 feet. To comply with exceptions 2 and 3, at least one design solution would provide a gangway at least 72.25 feet long which ensures the slope does not exceed 1:12.

Example 2. A gangway is provided to a floating pier which is required to be on an accessible route. The vertical distance is 10 feet between the elevation where the gangway departs the landside connection and

the elevation of the pier surface at the lowest water level. Exceptions 2 and 3, which modify 4.8.2, permit the gangway to be at least 80 feet long. Another design solution would be to have two 40-foot continuous gangways joined together at a float, where the float (as the water level falls) will stop dropping at an elevation five feet below the landside connection.

Comment. A number of commenters expressed concern that steeper gangway slopes and the absence of level landings every 30 feet created barriers for persons with disabilities. Some commenters also noted that State and local governments should be held to a higher standard than private entities.

Response. As water levels rise and fall, gangway slopes also rise and fall. In some areas, there will be times that a gangway slope is less than 1:20 and at other times it will be greater than 1:12. The Board has attempted to balance the needs of persons with disabilities with the cost of providing access in an environment that can vary dramatically throughout the country. The Board also decided against providing different requirements for boating facilities operated by State and local government or private entities. As this is the first time Federal accessibility guidelines have been developed to address these types of facilities, the Board plans to closely monitor how well the guidelines provide access and what new technologies are developed to provide equivalent or better access.

Comment. A few commenters representing passenger vessel owners were concerned that the gangway provisions would also apply to gangways serving passenger vessels.

Response. The gangway provisions of this rulemaking only apply to gangways which access floating piers from the land or fixed structures. The Board is working on a separate rulemaking which will address passenger vessel access. A statement has been added to the gangway definition indicating that the definition does not apply to gangways which connect to vessels.

Exception 4 Small Boating Facilities With Less Than 25 Boat Slips

Exception 4 permits gangways to exceed the maximum slope specified in ADAAG 4.8.2, where a facility contains less than 25 boat slips and where the total length of the gangway, or series of gangways, serving as part of a required accessible route is at least 30 feet.

Comment. Commenters were concerned about how the gangway requirements would impact smaller facilities.

Response. The proposed rule and the draft final rule lessened the impact on

smaller boating facilities based on pier square footage or linear feet. Most commenters recommended using number of boat slips. Since the final rule does not address piers used by transportation vessels covered by ADAAG 10.5, which are more likely to contain a limited number of very large slips, basing the exception on boat slip numbers is appropriate.

Exception 5 Transition Plates

Exception 5 permits transition plates to be located at the ends of gangways instead of the landings specified by ADAAG 4.8.4.

Comment. The proposed rule permitted gangways to have transition plates at the top and bottom. Comments ranged from noting the need for a definition, setting out maximum lengths and slopes, and having them meet gangway requirements.

Response. In the final rule, a definition for transition plate has been added to ADAAG 3.5. Where transition plates are part of an accessible route, the transition plates must comply with ADAAG 4.3, unless one of the exceptions in 15.2.2 applies. For example, ADAAG 4.3.7 and 4.8.2 would prohibit transition plates from having a slope greater than 1:12. Where the requirements of ADAAG 4.8 apply (because the slope is greater than 1:20), the transition plates must have landings complying with ADAAG 4.8.4 at the non-gangway end.

Exception 6 Handrail Extensions

Exception 6 does not require handrail extensions, where gangways and transition plates connect and both are required to have handrails. In addition, the exception provides that where handrail extensions are provided on gangways or transition plates, the extensions are not required to be parallel with the ground or floor surface.

Comment. The proposed rule did not require handrail extensions on gangways or landings where they connect to transition plates and did not require handrail extensions at transitions plates. Although some commenters supported the exception, others noted that handrail extensions were needed, particularly on gangways when the transition plate had no handrail. Commenters also noted the difficulty in complying with ADAAG 4.8.5, which requires handrail extensions to be parallel with the ground or floor surface. As gangway slopes change, handrails extensions at the end of gangways and transition plates are no longer parallel. Other commenters requested that transition plates always have handrails and

questioned whether gangway handrails had to be connected or continuous with landing handrails.

Response. The exception has been rewritten to address most of the concerns raised. The determination of whether a transition plate is required to have a handrail will be triggered by the requirements of ADAAG 4.3.7 and 4.8.5. Regarding connections to landing handrails, gangways required to comply with ADAAG 4.8.5 are required to have continuous handrails on both sides. When gangway handrail extensions are required, subject to exception 5 exclusions, the extensions would overhang landings and transition plates 12 inches minimum. ADAAG contains no requirement that these extensions connect handrails which might be provided on landings or guardrails which also may be provided.

Exception 7 Cross Slope

Exception 7 permits the cross slope of gangways, transition plates, and floating piers that are part of an accessible route to be 2 percent maximum measured in the static position.

Comment. Commenters representing State recreational boating agencies expressed concern about constructing floating piers and gangways which must conform to a 2 percent maximum cross slope 100 percent of the time in all weather and water conditions.

Response. Exception 7 was added to address this concern by specifying that the maximum cross slope is measured in the static condition. Gangways and piers which are part of an accessible route are expected to be designed and constructed to meet the 2 percent maximum cross slope. Once they are placed in the water, measurements absent live loads are to be made from a static condition without motion or wave action. Where floating piers are grounded out due to low water conditions, the slope requirements would not apply to such floating piers and associated gangways and transition plates.

Exception 8 Limited-Use/Limited-Application Elevators and Platform Lifts

Exception 8 permits limited-use/limited-application elevators or platform lifts complying with ADAAG 4.11 to be used in lieu of gangways complying with ADAAG 4.3.

Comment. One commenter pointed out that other methods, such as platform lifts and elevators should be used to provide access to a floating pier. Another commenter noted that a product, similar to a platform lift, had been developed for accessing floating piers. They believed that the final rule

should encourage technological developments in this area.

Response. ADAAG 4.3 and 15.2 allow accessible routes to consist of elevators, ramps, and (when accessing floating piers) gangways. However, under ADAAG 4.1.3(5), Exception 4, the use of a platform lift to access a pier (floating or fixed) would be prohibited in new construction. In alterations to existing facilities, this restriction does not apply. (See ADAAG 4.1.6(3)(g) regarding platform lift usage in alterations.) Exception 8 was added to allow more flexibility in providing access to floating piers and to encourage the development of other methods of access using mechanical means. This exception modifies the requirements of ADAAG 4.1.3(5) and allows the use of platform lifts and limited-use/limited-application elevators in new construction as part of an accessible route connecting floating piers.

Section 15.2.3 Boat Slips: Minimum Number

This section requires that where boat slips are provided, accessible boat slips complying with section 15.2.5 must be provided in accordance with Table 15.2.3. Boarding piers at boat launch ramps are not counted for this purpose. Where the number of boat slips is not identified, each 40 feet of boat slip edge provided along the perimeter of the pier shall be counted as one boat slip for purposes of this section.

Comment. The proposed rule required that where boat slips are provided, at least 3 percent of all boat slips, but not less than one boat slip, be accessible. Comments varied between supporting a range from 1 percent to 4 percent. Some comments recommended that the number of accessible boat slips be the same as the number of required accessible vehicle parking spaces. One commenter recommended that one of each type of slip be accessible. A facility operator noted that at large facilities, a 3 percent scoping provision would require more accessible boat slips than a similar number of vehicle parking spaces. Several commenters questioned whether the need for accessible slips was as high as the need for accessible parking.

Response. The Board is not convinced that the scoping for accessible boat slips needs to be the same as the scoping for accessible vehicle parking spaces and is concerned that the proposed 3 percent would require more accessible slips in larger facilities than a similar number of parking spaces. The final rule modifies the scoping by reducing the percentage of accessible boat slips in larger facilities. A table is added to the final

rule to show the required number of accessible boat slips. The table starts with 3 percent and reduces down to 1 percent as the number of boat slips increase. For example, a 100-slip marina would need 3 accessible slips, and a 1,450-slip marina would need 17 accessible slips. Since this is the first time Federal guidelines have addressed the minimum number of accessible boat slips, the Board plans to closely monitor how the numbers meet the needs of individuals with disabilities.

Comment. The proposed rule also required that where the number of slips cannot be identified, each 40 feet of mooring space provided along the perimeter of a pier be counted as one boat slip for the purpose of applying this section. Most commenters supported the requirement. A few commenters noted that most recreational boats are less than 40 feet in length and recommended a number less than 40 feet.

Response. Although most recreational boats are less than 40 feet, the final rule seeks to increase the likelihood that accessible slips at non-demarcated piers are long enough to accommodate most types of common recreational boats. For this reason, the final rule has retained using 40 feet as the distance for determining the number of slips at piers where slips are not demarcated. (See section 15.2.4.1 regarding lengths of boarding piers at launch ramps.) The following two examples are included in the appendix.

Example 1. A site contains a new boating facility which consists of a single 60-foot pier. Boats are only moored parallel with the pier on both sides to allow occupants to embark or disembark. Since the number of slips cannot be identified, section 15.2.3 requires each 40 feet of boat slip edge to be counted as one slip for purposes of determining the number of slips available and determines the number required to be accessible. The 120 feet of boat slip edge at the pier would equate with 3 boat slips.

Table 15.2.3 would require 1 slip to be accessible and comply with 15.2.5. Section 15.2.5 (excluding the exceptions within the section) requires a clear pier space 60 inches wide minimum extending the length of the slip. In this example, because the pier is at least 40 feet long, the accessible slip must contain a clear pier space at least 40 feet long which has a minimum width of 60 inches.

Example 2. A new boating facility consisting of a single pier 25 feet long and 3 feet wide is being planned for a site. The design intends to allow boats to moor and occupants to embark and disembark on both sides, and at one end. As the number of boat slips cannot be identified, applying section 15.2.3 would translate to 53 feet of boat slip edge at the pier. This equates with two slips. Table 15.2.5 would require 1 slip to be accessible. To comply with 15.2.5 (excluding

the exceptions within the section), the width of the pier must be increased to 60 inches. Neither (15.2.3 nor 15.2.5) requires the pier length to be increased to 40 feet.

Comment. The proposed rule counted boat launch ramp boarding piers as boat slips for determining the number of accessible slips required at a facility. The proposed rule also required at least one additional accessible boat slip to be provided adjacent to accessible launch ramps, where boarding piers were provided. Some commenters thought that this requirement would cause confusion. A few commenters questioned whether boat slips should be provided on boarding piers because boat slips are rented, leased or purchased, but boarding piers are used in a short-term manner. A number of commenters believed the provision required that launch ramps must have boarding piers.

Response. To avoid confusion, the final rule addresses scoping requirements for launch ramp boarding piers separately from boat slips. A definition has been added to ADAAG 3.5 for boarding piers.

Comment. Many commenters expressed concern that accessible slips had to be reserved only for persons with disabilities similar to how vehicle parking spaces are reserved.

Response. Accessible boat slips are not "reserved" for persons with disabilities in the same manner as accessible vehicle parking spaces. Rather, accessible boat slip use is comparable to accessible hotel rooms. The Department of Justice is responsible for addressing operational issues relating to the use of accessible facilities and elements. The Department of Justice currently advises that hotels should hold accessible rooms for persons with disabilities until all other rooms are filled. At that point, accessible rooms can be open for general use on a first come, first serve basis. This information has also been included in the appendix.

Section 15.2.3.1 Dispersion

This section requires that accessible boat slips be dispersed throughout the various types provided. It does not require an increase in the minimum number of boat slips required to be accessible.

Comment. Commenters expressed concern about how many accessible gangways would be required due to this dispersion requirement. Commenters noted that some facilities have several floating piers, each connected by an individual gangway. If accessible slips must be placed on more than one pier (due to the dispersion requirement), more than one accessible gangway system would be required.

Response. This provision does not prohibit accessible boat slips from being grouped at one or more piers, where such grouping does not reduce the number of type of slips that are required to be accessible. In cases where relocation of types of accessible boat slips to one pier is not possible, this dispersion provision will require more than one conforming gangway system.

Comment. Commenters requested more information on the different "types" of boat slips.

Response. Features to be considered in determining types of boat slips include the size of the boat slips, whether there are single berths or double berths, shallow water or deep water, transient, longer-term lease, covered or uncovered, and whether slips are equipped with features such as telephone, water, electricity, and cable connections. Because the term "boat slip" is intended to cover any pier area where passengers or occupants embark or disembark, unless classified as a launch ramp boarding pier, other piers not typically thought of as containing "boat slips" are covered by this dispersion requirement. Therefore, for example, a fuel pier used on a short term basis may contain boat slips, and this type of slip would be included in determining compliance with section 15.2.3.1. This information has also been included in the appendix.

Comment. The proposed rule required that accessible boat slips be located nearest to the amenities provided in the boating facility. Some commenters noted that adding this requirement to the dispersion provision increased the difficulty in providing accessible slips in existing facilities. It also tended to require more accessible gangways even in new construction. Commenters also questioned how to identify an amenity and if it is desirable to be located nearest an amenity. For example, being located near the toilet room might be desirable for one person but not for someone sensitive to noise and odors. Likewise, having an accessible slip located nearest the fuel pier may be beneficial for one person and not desired by others. One commenter noted that at existing facilities, corner slips are already accessible, but may not be closest to amenities.

Response. The "amenities" section has been removed from the final rule, because the rule intends to allow accessible boat slips to be grouped on one or more piers. In addition, the provision was removed due to comments which questioned whether being closest to an amenity is desirable.

Section 15.2.4 Boarding Piers at Boat Launch Ramps

This section requires where boarding piers are provided at boat launch ramps, at least 5 percent, but not less than one, of the boarding piers must comply with 15.2.4 and be served by an accessible route complying with ADAAG 4.3.

Exception 1 permits accessible routes serving floating boarding piers to use the exceptions in section 15.2.2.

Exception 2 permits gangways to exceed the maximum slope and rise specified by ADAAG 4.8.2, where the total length of the gangways serving as part of a required accessible route is greater than 30 feet. Lastly, exception 3 indicates that where the accessible route serving a floating boarding pier or skid pier is located within a boat launch ramp, ADAAG 4.8 does not apply to the portion located within the boat launch ramp.

Comment. As noted above, some commenters thought that the proposed rule required that an accessible slip or boarding pier had to be provided at boat launch ramps.

Response. The proposed rule did not require that accessible boarding piers be provided at every facility with a launch ramp. Where boarding piers are provided, the proposed rule required that at least one accessible boat slip be provided adjacent to the launch ramp to ensure that at least one boarding pier complied with the pier clearance requirements. By using the term "boat slip", the Board did not intend to ensure that a rented, leased, or purchased mooring space would be available at the launch ramp, as some commenters concluded.

Comment. The proposed rule required that where boat launch ramps are provided with boarding piers, at least one accessible slip be provided adjacent to a boat launch ramp. A few commenters suggested that 50 percent, but not less than one boarding pier, be accessible.

Response. The final rule requires 5 percent, but not less than one, of boarding piers to be accessible. Most facilities with launch ramps only have one or two launch ramps. Compliance with this provision would translate to 100 percent or 50 percent access, assuming each launch ramp had its own boarding pier. Since some facilities have more than 20 launch ramps, the provision is consistent with how ADAAG addresses some conditions where multiple features are provided for the same use.

Comment. Some commenters were concerned that to serve an accessible floating boarding pier, the accessible

route would have to run down the launch ramp and would require the slope of the launch ramp to be 1:12 maximum. Such a slope would dramatically effect the ability to launch and retrieve trailered boats. A few commenters noted that in designs using a string of boarding piers connected together, as water levels decline, the boarding piers end up resting on the launch ramp surface. Therefore, they would match the slope of the launch ramp which is generally steeper than 1:8. In such a design, some piers actually function as gangways for a period of time.

In another design, a stationary boarding pier (also known as a skid pier) rests on the launch ramp surface, but is repositioned as water levels rise and fall. This design also allows the skid pier to be easily removed where the body of water becomes ice bound and deicing equipment is not practical. An example of a fixed boarding pier was provided which showed two levels connected by handrail equipped ramps. During high water, boaters used the upper level while the lower level and the ramp connecting it were covered by water. At low water, the lower level is used.

One commenter noted the value floating boarding piers provide for persons with disabilities when accessing a boat since the pier remains at a set height above the water. A few pointed out that accessible routes serving boarding piers were not required to run down the launch ramp but could be provided alongside the ramp. Another commenter noted that constructing switchback ramps or any other structure within the area near the shoreline was subject to more environmental limitations and was a problem particularly for providing access at existing launch ramps. Several commenters pointed out that at launch ramps, handrails and guardrails on some gangways (primarily on short gangways) are not provided because they interfere with boat lines as boats are launched or retrieved. One commenter mentioned that providing accessible boarding piers was not a problem, but providing the accessible route to it was a problem. The commenter noted that if the requirements were too difficult, entities would stop providing boarding piers.

Response. Anecdotal information indicates that boarding piers are not provided at all launch ramps. For example, the Michigan Department of Natural Resources reported that of their over 900 boating access sites, approximately half are provided with boarding piers (also known as courtesy

piers or docks). Since boarding piers may improve the ability for persons with disabilities to embark and disembark boats at launch ramps, the final rule seeks to not discourage entities from providing them. The Board has identified two areas of concern.

The first concern relates to accessing floating boarding piers. Boarding piers, when provided, tend to be quite small as compared to the square footage of piers used as boat slips. Many boating facilities consist of only one or two launch ramps and maybe a boarding pier, and contain no other boating structures. Providing access to floating boarding piers are subject to many of the same factors as providing access to floating piers which contain boat slips. In the final rule, the Board added exception 1 to section 15.2.4. This exception allows launch ramp boarding piers to use specified exceptions contained in section 15.2.2.

Exception 4 in section 15.2.2 allows boating facilities with less than 25 slips to have shorter gangways. To provide a similar small facility exception for boarding piers, exception 2 was added to 15.2.4. The exception exempts gangways accessing floating boarding piers at launch ramps from complying with the maximum slope requirements of ADAAG 4.8.2 where the gangways are at least 30 feet in length.

The Board's second area of concern focused on the effect of the accessible route requirements on a launch ramp, where the connection to a boarding pier is located within a launch ramp. As noted in the comments, the issue is not only the running slope requirement of an accessible route, but also includes the handrail, landing, and maximum rise requirements.

To address this concern, the Board added exception 3 to this section of the final rule. This exception provides that the requirements of ADAAG 4.8 do not apply to accessible routes located within launch ramps which serve floating boarding piers or skid piers also located within launch ramps. Although ADAAG 4.8 does not apply, other requirements of ADAAG 4.3 are applicable. For example, an accessible route with a minimum width of 36 inches must serve the boarding pier. Large "V" shaped groves which are typically provided to increase tire traction would not be allowed by ADAAG 4.3.6 (which references ADAAG 4.5) within the accessible route. Cross slopes requirements of ADAAG 4.3.7 remain 1:50 maximum. It is noted that ADAAG 4.3 does not require the entire launch ramp to meet these requirements, but does apply them to the 36 inch wide minimum accessible

route which shares the launch ramp surface and connects to the boarding pier and accessible elements on the boarding pier. Exception 3 only exempts the ramp requirements contained in ADAAG 4.8, such as maximum slope, maximum rise, handrails, and level landings. The following two examples are included in the appendix.

Example 1. A chain of floats are provided on a launch ramp to be used as a boarding pier which is required to be accessible by 15.2.4. At high water, the entire chain is floating and a transition plate connects the first float to the surface of the launch ramp. As the water level decreases, segments of the chain end up resting on the launch ramp surface, matching the slope of the launch ramp. As water levels drop, segments function also as gangways because one end of a segment is resting on the launch ramp surface and the other end is connecting to another floating segment in the chain.

Under ADAAG 4.1.2(2), an accessible route must serve the last float because it would function as the boarding pier at the lowest water level, before it possibly grounded out. Under exception 3, because the entire chain of floats is part of the accessible route, each float is not required to comply with ADAAG 4.8, but must meet all other requirements in ADAAG 4.3, unless exempted by exception 1. In this example, because the entire chain also functions as a boarding pier, the entire chain must comply with the requirements of 15.2.5, including the 60 inch minimum clear pier width provision.

Example 2. A non-floating boarding pier supported by piles divides a launching area into two launch ramps and is required to be accessible. Under ADAAG 4.1.2(2), an accessible route must connect the boarding pier with other accessible buildings, facilities, elements, and spaces on the site. Although the boarding pier is located within a launch ramp, because the pier is not a floating pier or a skid pier, none of the exceptions in 15.2.4 apply. To comply with ADAAG 4.3, either the accessible route must run down the launch ramp or the fixed boarding pier could be relocated to the side of the two launch ramps. The second option leaves the slope of the launch ramps unchanged, because the accessible route runs outside the launch ramps.

Comment. A few commenters questioned how the accessible route required by ADAAG 4.1.2 should connect a launch ramp which does not have a boarding pier.

Response. In the Recreation Access Advisory Committee, Boating and Fishing Facilities subcommittee report, the subcommittee recommended that the accessible route run to the crown of the launch ramp. In response to the ANPRM, commenters questioned how the "crown" would be determined. Because a precise spot at the launch ramp could not be identified to which the accessible route connects, neither the proposed rule nor the final rule

addresses this issue. As the final rule does not intend to change the slope of launch ramps, the accessible route required by ADAAG 4.1.2 is required to connect the launch ramp, but the specific point of connection is not set out.

Section 15.2.4.1 Boarding Pier Clearances

This section requires that at boarding piers, the entire length of the piers required to be accessible by section 15.2.4, must comply with section 15.2.5.

Comment. Some commenters questioned if the proposed rule required a minimum length of 40 feet for the accessible boarding piers.

Response. Neither the proposed rule, nor the final rule establishes a minimum length for accessible boarding piers. The accessible boarding pier would have a length which is at least equal to other boarding piers provided at the facility. Where only one boarding pier is provided, it would have a length equal to what would have been provided if no access requirements applied. The entire length of accessible boarding piers would be required to comply with the same technical provisions that apply to accessible boat slips. For example, at a launch ramp, if a 20-foot long accessible boarding pier is provided, the entire 20 feet must comply with the pier clearance requirements in section 15.2.5. Likewise, if a 60-foot long accessible boarding pier is provided, the pier clearance requirements in section 15.2.5 would apply to the entire 60 feet. An advisory note has been added to the appendix which provides similar information regarding lengths of boarding piers.

Section 15.2.5 Accessible Boat Slips

This section sets out requirements for accessible boat slips. Section 15.2.5.2 specifically addresses cleats and other boat securement devices.

Section 15.2.5.1 Clearances

This section requires that accessible boat slips be served by clear pier space 60 inches wide minimum and at least as long as the accessible boat slips. Additionally, every 10 feet maximum of linear pier edge serving the accessible boat slips must contain at least one continuous clear opening 60 inches minimum in width. The provision is unchanged from the proposed rule, although three exceptions have been added.

Exception 1 Reduced Width

Exception 1 allows the width of the clear pier space to be 36 inches minimum for a length of 24 inches

maximum, provided that multiple 36 inch wide segments are separated by segments that are 60 inches wide and 60 inches long.

Comment. Some commenters requested piers to be 72 to 96 inches wide to improve safety for persons who use wheelchairs. Others commenters were satisfied with the 60 inch minimum width but wanted the ability to reduce the width down to 36 inches in places to get around objects like supporting piles located within the clear pier space. One commenter requested, in response to the draft final rule, a reduced width because environmental agencies are making it harder to install finger piers wider than 4 feet.

Response. The 60 inch minimum width is consistent with the width required at access aisles for standard accessible parking spaces and was supported in the Recreation Access Advisory Committee, Boating and Fishing Facilities subcommittee report. Because the final rule allows obstructions to be located around the edge of the finger piers where 60 inch openings are available, unlike vehicle access aisles, it is not necessary for the entire pier to have a 60 inches clear width. Exception 1 allows reductions in the width of the pier clearance. The exception was included in the draft final rule and received little comment. An advisory note has been added to the appendix which recommends that clear pier spaces be wider than 60 inches, particularly on floating piers which are less stable, to improve the safety for persons with disabilities.

Comment. A number of commenters recommended that instead of the 60 inch clear width running the length of the slip, only one 60 inch by 60 inch space be required at the accessible boat slip. This space could be placed either alongside the slip or at the head of the slip on the main pier. These commenters also recommended that where finger piers at the facility are longer than 20 feet, a second 60 inch by 60 inch space should be provided at the slip.

Response. As recreational boats vary in shape, size, and layout, it cannot easily be known where persons with disabilities would embark or disembark a boat. By requiring the clear pier space along the entire length of the slip, access options between the boat and the pier are improved. Although the final rule does not require the entire edge of the clear pier space to be unobstructed, by extending the clear pier space the length of the slip, the number of 60 inch continuous clear openings increases which further improves access between the boat and the pier.

Exception 2 Edge Protection

Exception 2 permits edge protection 4 inches high maximum and 2 inches deep maximum at the continuous clear openings.

Comment. The proposed rule required that every 120 inches maximum of linear pier edge serving the accessible boat slips contain at least one continuous clear opening 60 inches minimum. A few commenters noted that the provision would not allow edge protection to be placed within the opening.

Response. In response to the ANPRM, commenters had mixed views on the use of edge protection. Some maintained that edge protection was necessary to protect persons who use wheelchairs from falling off the pier edges. Others maintained that edge protection created a tripping hazard as persons moved between a pier and boat. The proposed rule did not address edge protection at piers but did prohibit its installation at the continuous clear openings at the accessible slips. The Board has not taken a position on whether edge protection should be provided at piers, but has provided exception 2 so as not to prohibit its use at the continuous clear openings. Maximum dimensions are provided to control the size of the edge protection so as not to block the clear openings.

Exception 3 Alterations to Existing Facilities

Exception 3 provides that in alterations to existing facilities, the clear pier space can be located perpendicular to the boat slip and extend the width of the boat slip. This exception is available only if the facility has at least one boat slip complying with section 15.2.5 and where further compliance with 15.2.5 would result in a reduction in the number of boat slips available or result in a reduction in the widths of existing slips.

Comment. Some commenters disagreed with requiring clear pier spaces alongside accessible boat slips where finger piers are not provided within the facility. Others noted that at existing facilities, increasing finger pier widths, on which pier clearances would be provided, may reduce the number of slips available.

Response. Although commenters at the two information meetings on the draft final rule indicated that more recreational boats are designed to be boarded from the stern, many recreational boats still provide for side boarding. To maximize the options for persons with disabilities to board, the requirement that the clear pier space

extend the length of the accessible boat slip in newly constructed facilities has not been modified. However, exception 3 has been added to the final rule to reduce the impact of this provision on existing facilities.

Section 15.2.5.2 Cleats and Other Boat Securement Devices

This section clarifies that cleats and other boat securement devices are not required to comply with ADAAG 4.27.3.

Comment. A few commenters noted that at accessible boat slips, controls and operating mechanisms (such as power receptacles, and water and sewage connections) should comply with ADAAG 4.27.

Response. Although section 15.2 contains requirements for recreational boating facilities, other requirements in ADAAG 4.1 still apply. Therefore, ADAAG 4.1.3(13) would require controls and operating mechanisms, such as electrical and water connections, at accessible boat slips to comply with ADAAG 4.27. However, because mooring features used to secure a boat, when raised, exert higher load pressures at the point of pier attachment, the danger of failure increases, particularly on floating piers. For this reason, section 15.2.5.2 was added which states that the reach range requirements of ADAAG 4.27.3 do not apply to boat securement devices.

Section 15.3 Fishing Piers and Platforms

Section 15.3.1 General

This section requires that newly designed or newly constructed and altered fishing piers and platforms comply with section 15.3.

Comment. Commenters questioned how the guidelines would apply to places that people may fish from, but were not constructed for fishing (e.g., a breakwater jetty, a bridge, or a flood control dam).

Response. Structures that have been designed and constructed for purposes other than fishing, even though persons may use the structure for fishing, are not required to comply with this section. However, piers and platforms that are newly designed or constructed and altered for the specific purpose of fishing are required to comply with this section.

Section 15.3.2 Accessible Route

This section requires that accessible routes, including gangways that are part of accessible routes serving fishing piers and platforms comply with ADAAG 4.3. Exception 1 permits the accessible route, serving floating fishing piers and platforms to use exceptions 1, 2, 5, 6, 7,

and 8 in section 15.2.2. Exception 2 provides that where the total length of the gangway or series of gangways serving as part of a accessible route is at least 30 feet, the maximum slope specified by ADAAG 4.8.2 does not apply to the gangways.

Comment. The proposed rule required the accessible route connecting to floating fishing piers and platforms to comply with the provisions for accessible routes at boating facilities. This section received only a few comments. One commenter recommended that the square footage values in the proposed rule be reduced for application to floating fishing piers. Another commenter noted that such a requirement would discourage entities from providing fishing piers.

Response. The final rule references exceptions 1, 2, 5, 6, 7 and 8 of 15.2.2 (Boating Facilities) for floating fishing piers and platforms. Exception 4 in section 15.2.2 allows boating facilities with less than 25 slips to have shorter gangways. To provide a similar small facility exception for floating fishing piers, exception 2 was added to section 15.3.2 and is based on a similar exception in section 15.2.4 which applies to floating boarding piers. The following example is included in the appendix.

Example. To provide access to an accessible floating fishing pier, a gangway is used. The vertical distance is 60 inches between the elevation that the gangway departs the landside connection and the elevation of the pier surface at the lowest water level. Exception 2 permits the use of a gangway at least 30 feet long, or a series of connecting gangways with a total length of at least 30 feet. The length of transition plates would not be included in determining if the gangway(s) meet the requirements of the exception.

Comment. One designer questioned whether the proposed rule prohibited gangways which comply with ADAAG 4.8.

Response. ADAAG 4.1.2(2) requires at least one accessible route complying with ADAAG 4.3 to connect accessible buildings, facilities, elements, and spaces that are on a site. ADAAG 4.3.7 requires an accessible route with a running slope greater than 1:20 to comply with the ramp requirements of ADAAG 4.8. Although the final rule contains exceptions which modify the requirements of ADAAG 4.8, the use of these exceptions is not mandatory. Designers are encouraged to provide greater access for gangways and exceed the minimums contained in the exceptions and the minimum requirements of ADAAG 4.8.

Section 15.3.3 Railings

This section requires that where railings, guards, or handrails are provided, they must comply with 15.3.3.

Section 15.3.3.1 Edge Protection

This provision requires edge protection that extends 2 inches minimum above the ground or deck surface. An exception provides that where the railing, guardrail, or handrail is 34 inches or less above the ground or deck surface, edge protection is not required if the deck surface extends 12 inches minimum beyond the inside face of the railing. The toe clearance must be 9 inches minimum above the ground or deck surface beyond the railing and be 30 inches minimum wide.

Comment. The proposed rule did not permit other options for edge protection on floating fishing piers and platforms. Commenters provided designs of fishing stations incorporating an extended deck past the rail or guard that enable a person using a wheelchair or mobility device the opportunity for toe clearance beyond the face of the railing or guard. They felt that this design should be permitted and encouraged the Board to incorporate into the final rule.

Response. The proposed rule required edge protection where railings are provided and did not provide the flexibility designers of fishing piers and platform requested. An exception has been added to the final rule to permit more flexibility in providing a variety of designs that promote increased levels of accessibility to anglers with disabilities.

Section 15.3.3.2 Height

This section requires at least 25 percent of the railings to be a maximum of 34 inches above the ground or deck surface.

The Board sought comment on the height of lowered guards and what steps have been taken to ensure that their use was permitted under applicable building codes and standards. Additionally, in light of concerns that have been raised about safety issues related to lower guards, the Board also sought information on experiences designers or operators have had where guards on floating fishing piers and platforms have been lowered to accommodate individuals using wheelchairs and other mobility devices while fishing.

Comment. Many commenters supported the use of lowered rails or guards to provide persons using wheelchairs or other mobility devices the opportunity to fish. Commenters gave examples of providing lowered

rails or guards for many years, in many different applications, with no reported safety or injury problems. Commenters provided descriptions of unique and innovative designs of fishing stations constructed for use by persons with disabilities.

Response. The final rule retains the requirement that, where provided, 25 percent of the railing must be at a lowered height. Current designs, provided by commenters, supported a maximum height of the lowered rail or guard to be at 34 inches above the ground or deck surface. The height requirement for 25 percent of the rail has been changed in the final rule to 34 inches maximum above the ground or deck surface.

Comment. Some commenters believed that the Occupational Safety and Health Administration (OSHA) standards apply to recreational fishing piers and platforms. The OSHA standards apply to places where employment is performed and prescribe a 42 inch high railing along open sides of platforms located 4 feet or more above the floor. 29 CFR 1910.5 and 1910.23 (c) and (e). Other commenters believed that recreational fishing piers and platforms are covered by State and local building codes, which typically prescribe 42 inch high guards along open sides of platforms located more than 30 inches above the floor. These commenters were concerned that requiring at least 25 percent of railings to be a maximum 34 inches high conflicts with the OSHA standards, and State and local building codes.

Response. Recreational fishing piers and platforms are subject to OSHA safety standards only if they are places of work. In some cases there may be both workers and recreational users on a pier. In those cases, OSHA standards would apply, and the pier would be exempted from the height requirements in the final rule, as discussed below.

The International Code Council has advised the Board that recreational fishing piers and platforms are not covered by model building codes unless they are an integral part of a building that is regulated by the adopting State or local authority. To avoid potential conflicts, an exception has been added to the final rule that permits a higher guard to be provided along a recreational fishing pier or platform where the guard complies with the International Building Code (IBC) (2000 edition) requirements for height (not less than 42 inches high) and opening limitations (4 inch diameter sphere cannot pass through any opening up to a height of 34 inches; and 8 inch diameter sphere cannot pass through

any opening from a height of 34 inches to 42 inches). This exception can be used if a recreational fishing pier or platform is covered by a State or local building code; or if a design professional believes that a specific location warrants enhanced safety measures; or if an employer provides a 42 inch high railing to comply with OSHA standards.

Section 15.3.3.3 Dispersion

This section requires that lowered railings be dispersed throughout a fishing pier or platform.

Comment. A commenter requested guidance on the criteria used to determine dispersion.

Response. Anglers who stand can fish from any part of a pier or platform and can change location depending on the fishing or water conditions. Where railings, guards, and handrails have been installed on fishing piers and platforms, the height of the railings interfere with fishing and block vision for persons who use wheelchairs and other mobility devices. This provision requires that where railings are provided, the dispersion of the lowered railings provide similar choices to fish from a variety of locations. The distribution of lower railings could include locations of different water depths with some that provide shading or are close to shore, and could take into account the tides or water fluctuations.

Section 15.3.4 Clear Floor or Ground Space

This section requires that at least one clear floor or ground space complying with ADAAG 4.2.4 be provided where the lowered railing height is located. Where no railings are provided, at least one clear floor or ground space complying with ADAAG 4.2.4 must be provided. No substantive comments were received and no changes were made to this provision for the final rule.

Section 15.3.5 Maneuvering Space

This section requires that at least one maneuvering space complying with ADAAG 4.2.3 be provided on a fishing pier or platform. The maneuvering space is permitted to overlap the accessible route and the clear floor space required by 15.3.4. No substantive comments were received and no changes were made to this provision for the final rule.

Golf

Section 3.5 Definitions

Two terms used in this section are added to ADAAG 3.5 (Definitions).

A "golf car passage" is defined as a continuous passage on which a

motorized golf car, also known as a golf cart, can operate. Designers and operators sometimes use the term "golf car path" to identify what the Board is defining as a "golf car passage." Because the term "golf car path" may connote a prepared surface, the term was not used. While a golf car passage must be usable by golf cars, it does not necessarily need to have a prepared surface.

A "teeing ground" is the starting place for a hole to be played. This definition is consistent with the United States Golf Association definition, which describes a teeing ground as a rectangular area two club-lengths in depth, with the front and sides defined by the outside limits of two tee-markers.

Section 15.4.1 General

This section requires newly designed or newly constructed and altered golf courses, driving ranges, practice putting greens, and practice teeing grounds to comply with 15.4.

Section 15.4.2 Accessible Route—Golf Courses

This section requires an accessible route to be 48 inches wide minimum, or 60 inches minimum if handrails are provided, to connect accessible elements and spaces located within the boundary of a golf course. Additionally, an accessible route must connect the golf car rental area, bag drop areas, practice putting greens, accessible practice teeing grounds, course toilet rooms, and course weather shelters.

Exception 1 permits the use of a golf car passage complying with section 15.4.7 in lieu of all or part of an accessible route. This exception does not apply to the required accessible route complying with 4.3 when connecting elements and amenities outside of the boundary of the golf course (*i.e.*, accessible vehicle parking spaces with the golf course clubhouse entrance). Exception 2 provides that handrails are not required on accessible routes within the boundary of a golf course. It is hazardous for handrails to be located through a green, or on teeing grounds, because of the danger of golf balls ricocheting off rails. Since course elements could be accessible from golf car passages in lieu of an accessible route, handrails would be of little utility along these routes.

The guidelines recognize that providing an accessible route may be impractical on a golf course for several reasons. First, the route of play for a golfer is dependent on where the ball lands and is therefore unpredictable. Secondly, there is an assumption that on many courses, golfers use a golf car to move throughout the course. Finally,

requiring an accessible route throughout a course could alter the slopes within some courses and eliminate some of the challenge of the game. The guidelines permit accessible elements and spaces within the boundary of the course and areas used for practice putting or driving and other course amenities outside the boundary of the course to be connected through either an accessible route or a golf car passage.

The 48 inch minimum width for the accessible route is necessary to ensure passage of a golf car on either the accessible route or the golf car passage. This is important where the accessible route is used to connect the golf car rental area, bag drop areas, practice putting greens, accessible practice teeing grounds, course toilet rooms, and course weather shelters. These are areas outside the boundary of the golf course, but are areas where an individual using an adapted golf car may travel. A golf car passage may not be substituted for other accessible routes, required by ADAAG 4.1.2, located outside the boundary of the course. The following example is included in the appendix.

Example. An accessible route connecting an accessible parking space to the entrance of a golf course clubhouse is not covered by this provision permitting a golf car passage in lieu of an accessible route required by 4.1.2.

Comment. The proposed rule sought comment on the option of using a golf car passage in lieu of an accessible route for smaller courses (*i.e.*, 3 or 6 holes).

Response. Commenters supported the use of the golf car passage on smaller courses. The final rule provides golf course designers and operators the opportunity to choose between providing either a golf car passage or an accessible route for all courses regardless of size.

Comment. Commenters questioned who would be responsible for providing single rider adaptive golf cars. Additionally, commenters questioned if a course could establish criteria for restricting use due to terrain conditions. Others wanted to know if there are plans to create regulations or guidelines for accessible golf cars. Persons with disabilities supported the use of adaptive or single rider golf cars and gave examples of experiences at courses currently permitting or providing access via golf cars to courses.

Response. The Board develops and maintains accessibility guidelines for the built environment. It is outside the jurisdiction of the Board to address the operational and procedural requirements of a golf course. Operational and procedural issues are

within the jurisdiction of the Department of Justice.

Comment. The requirements for an accessible route or golf car passage seek to provide access for players with disabilities to either practice or play the game of golf. The Board requested comments on how access should be provided for spectators during golf tournaments and competitions. Commenters provided examples and experiences of current accessibility practices encountered at many levels of tournaments and supported allowing the tournament committees to select holes (teeing areas, fairways, and putting greens) to provide accommodations and transportation to the selected areas throughout the golf course and surrounding areas.

Response. No additional requirements have been included in the final rule for spectators with disabilities attending tournaments or competitions. Facilities hosting tournaments or competitions must comply with all the other requirements of the ADA, including the general obligation to provide an equal opportunity to individuals with disabilities to enjoy the services provided. Additionally, ADAAG requires temporary facilities used during tournaments or competitions to provide access to assembly seating areas, portable restroom facilities, concessions, and all other available amenities. Access to these temporary facilities on a golf course may be achieved through either an accessible route or golf car passage.

Section 15.4.3 Accessible Routes—Driving Ranges

This section provides that an accessible route must connect accessible teeing stations at driving ranges with accessible parking spaces and must be 48 inches minimum in width. Where handrails are provided, the accessible route must be a minimum of 60 inches in width. An exception has also been added which permits a golf car passage to be used at driving ranges instead of an accessible route.

Comment. The proposed rule did not specifically address the accessible route provided at driving ranges. A commenter stated that a person who plays from a golf car would need to practice driving a golf ball from the same position and stance used when playing the game.

Response. The final rule requires both a stand alone driving range and a driving range located at a golf course to provide an accessible route that is 48 inches wide minimum or 60 inches minimum where handrails are provided,

to connect the accessible parking spaces to required accessible teeing stations.

Section 15.4.4 Teeing Grounds

This section requires teeing grounds to comply with section 15.4.4.

Section 15.4.4.1 Number Required

This section requires that where one or two teeing grounds are provided for a hole, one teeing ground must be accessible. Where three or more teeing grounds are provided for a hole, at least two teeing grounds serving a hole must be accessible.

Comment. The proposed rule required that if two teeing grounds were provided both must be accessible. Course designers and operators expressed concerns that if only two teeing grounds are provided at a hole requiring both to be accessible was too restrictive.

Response. The final rule has been revised to require two teeing grounds to be accessible when three or more teeing grounds are provided for a hole. The Board believes that requiring two teeing grounds to be accessible when three or more are provided will provide persons with disabilities with an option to play from different tees appropriate to their skill level and also provide course operators and designers with the flexibility they requested.

Section 15.4.4.2 Forward Teeing Ground

This section requires the forward teeing ground to be accessible. The forward teeing ground need not be accessible in alterations of existing courses when terrain makes compliance infeasible.

Comment. The proposed rule sought comment on the number of accessible teeing grounds that should be required for each hole and, if more than one accessible teeing ground is provided, whether it should be the forward tee. Commenters supported the option to play from different teeing grounds appropriate to player skill levels if multiple teeing grounds are provided per hole. Additionally, golfers with disabilities overwhelmingly supported requiring the forward teeing ground to be accessible regardless of the number of teeing grounds provided.

Response. The final rule provides a choice of teeing grounds for golfers with disabilities when three or more teeing grounds are provided per hole and also provides flexibility to course designers and operators. The final rule also requires that the forward teeing ground be the accessible tee regardless of the number of teeing grounds provided per hole.

Comment. The proposed rule did not provide an exception for alterations of existing teeing grounds from making the forward tee accessible. Commenters stated that requiring access to the forward teeing ground in alterations to existing courses may be too restrictive.

Response. Some teeing grounds on existing courses may be located on steep slopes and it may not be possible to provide a golf car passage to the forward teeing ground. The final rule exempts the forward teeing ground from being accessible in alterations where compliance is not feasible due to terrain.

Section 15.4.4.3 Teeing Grounds

This section requires accessible teeing grounds to be designed and constructed to allow a golf car to enter and exit the teeing ground.

Comment. The proposed rule required teeing grounds to provide a minimum clear area 10 feet by 10 feet with a surface slope not exceeding 1:48 in all directions. Course designers and operators stated that current designs of teeing grounds provide a clear area of at least 10 feet by 10 feet. Additionally, they expressed concern about maintaining a slope no greater than 1:48, and noted that settling of the soil and drainage problems occur with such a minimal slope. Others questioned how the slope of the teeing ground should be measured.

Response. Current design and construction practices for teeing grounds provide the needed space for golf car passages. Designers currently limit the slope of the teeing grounds to provide a level surface from which golfers tee off. The maximum slopes and minimum size requirements have been deleted from the final rule. The final rule requires teeing grounds to be designed and constructed to allow a golf car to enter and exit the teeing ground.

Section 15.4.5 Teeing Stations at Driving Ranges and Practice Teeing Grounds

This section requires that where teeing stations or practice teeing grounds are provided, at least 5 percent, but not less than one, of the practice teeing grounds must be accessible. This provision applies to practice facilities adjacent to a golf course, in addition to stand-alone facilities. No substantive comments were received and no changes have been made for the final rule.

Section 15.4.6 Weather Shelters

This section requires weather shelters that are provided on a golf course to be designed and constructed to allow a golf

car to enter and exit and have a clear floor or ground space 60 inches by 96 inches. This space will allow a golf car to be driven directly into a weather shelter. No substantive comments were received and no changes have been made for the final rule.

Section 15.4.7 Golf Car Passage

This section requires openings at least 60 inches wide to be provided at intervals, not exceeding 75 yards, where curbs or other man-made barriers are provided along a golf car passage that would prohibit a golf car from entering a fairway.

Comment. The proposed rule required the 60 inch openings at intervals of 75 yards of golf car passage. Course designers and operators expressed concern that requiring openings at a fixed distance of 75 yards would be too restrictive and would not allow enough flexibility for natural characteristics of the course, hazard placement, and erosion control.

Response. The final rule requires the openings at intervals not to exceed 75 yards. These openings will provide access to the course at reasonable intervals, enabling a golfer using a golf car to play the game without extended travel distances and time requirements and also provide the flexibility the course designer and course operator need.

Section 15.4.7.1 Width

This section requires a golf car passage to be 48 inches wide minimum.

Comment. Commenters supported limited technical requirements for golf car passages. Currently there are no standards that govern the design or construction of golf car passages. Commenters felt that additional requirements would restrict designers and have the potential of altering the game.

Response. The 48 inch minimum dimension for a golf car passage is based on the standard width of gasoline or electric powered golf cars. The golf car passage may at times coincide with the golf car path, however, it is not required to include a prepared surface. The golf car passage is a continuous passage on which a motorized golf car can operate. No additional technical provisions for golf car passages have been included in the final rule.

Section 15.4.8 Putting Greens

This section requires space to allow a golf car to enter and exit the green.

Comment. Substantial comment was received on requiring putting greens and fairways to be accessible to golfers using adaptive single rider golf cars. Course

operators are concerned that allowing golf cars access to the green will cause damage to the greens and potentially cause holes to be closed for extended periods of time. Golfers with disabilities, organizations supporting golfers with disabilities, and golf car manufacturers provided information on current courses that allow for golf car passage on putting greens which showed little or no damage to the putting green surface.

Response. Single rider golf cars adapted for golfers with disabilities are available from about a dozen companies. These golf cars are generally designed to be "greens friendly" and have low ground pressure that is evenly distributed on all four tires. Some manufacturers report that the ground pressure of these golf cars is less than the ground pressure of a typically standing person and cause no turf damage even in wet conditions.

Comment. Course operators also raised operational issues such as whether they are required to make single rider adapted golf cars available for rental and whether they can restrict the use of golf cars on fairways and greens for certain weather or agronomic conditions.

Response. These issues go beyond the Board's jurisdiction and the requirements in this final rule. The Board anticipates that the Department of Justice will answer these operational issues when it amends its ADA regulations to incorporate the recreation facilities guidelines as standards.

Section 15.5 Miniature Golf

Section 15.5.1 General

This section requires newly designed or newly constructed and altered miniature golf courses to comply with section 15.5.

Section 15.5.2 Accessible Holes

This section requires at least 50 percent of all holes to be accessible and that the accessible holes be consecutive. With the reduction in the minimum number of accessible holes on a miniature golf course, the Board wants to provide a more socially integrated golfing experience for people using wheelchairs or other mobility devices. An exception also permits one break in the sequence of consecutive accessible holes, provided that the last hole on the miniature golf course is the last hole in the sequence. This exception is provided to allow some flexibility in the layout and design of a miniature golf course.

Comment. Significant comment was received from miniature golf course

owners and operators regarding the number of holes required to be accessible. The proposed rule required each hole on a miniature golf course to be accessible, with an exception for 50 percent of elevated holes. Commenters were asked to give the Board guidance on differentiating between level and elevated holes. Few comments were received on definition alternatives. Some owners and operators believed that the requirement for all holes to be accessible would significantly impact course design to the extent that the experience may be "fundamentally altered." Others cited space limitations, concerns about slowing the game down, and having the effect of "compromising the challenge of the game."

Response. The Board has significantly reduced the number of holes required to be accessible in newly constructed miniature golf courses to 50 percent of all holes.

Comment. During the comment period following the draft final rule, the Miniature Golf Association recommended that instead of making 50 percent of the holes accessible, miniature golf facilities should have the option of providing tools, equipment, or assistive devices to provide access. They specifically requested that assistive devices such as electric carts be permitted as an alternative to an accessible route. Several other commenters opposed the reduction in the number of accessible holes, expressing concerns about limiting the game for persons with disabilities to only half of the holes.

Response. The Board has maintained the requirement that a minimum of 50 percent of all holes in new construction be accessible. The final rule does not recognize the alternative use of assistive devices for providing access in new construction. Designing miniature golf course holes so electric carts can safely maneuver through the holes is likely to have as great or greater impacts than designing an accessible route. Requiring individuals with disabilities to use electric carts on miniature golf courses is also inconsistent with other provisions of the ADA which require goods, services, and facilities to be afforded in the most integrated setting appropriate.

Given the diversity of layouts and designs of miniature golf courses, the final rule does not distinguish between courses with elevated holes or those with largely level holes. The 50 percent reduction represents a compromise given the concerns presented. Other considerations relate to the accessible route connecting accessible holes. The Board has established this reduction to

give relief where courses are designed on small parcels of land with existing terrain limitations. It is recommended that all holes on a miniature golf course be made accessible where space limitations and existing steep terrain are not present.

Section 15.5.3 Accessible Route

This section requires that the accessible route must connect the course entrance with the first accessible hole and the start of play area on each accessible hole. Since accessible holes must be consecutive, this section also requires the course to be configured to allow exit from the last accessible hole to the course exit or entrance. The course must be designed so as not to require an individual to back track through other holes to exit or move around the course. Where the accessible route is located on the playing surface of the accessible hole, five exceptions are permitted and are discussed below.

Comment. Miniature golf course operators were concerned that the surface commonly used on miniature golf course holes would not meet the requirements for accessible carpet. Their concerns were centered around the thickness of the surface. ADAAG 4.5.3 includes a requirement that the maximum pile thickness must be no more than 1/2 inch and be securely attached with a firm cushion, pad, or backing. Exposed edges must be fastened to floor surfaces and must have trim along the entire length of the exposed edge.

Response. The Board has added Exception 1 which exempts carpet used on miniature golf course holes from the provisions of ADAAG 4.5.3. Surfaces provided as a part of an accessible route, whether on or off the playing surface, must comply with ADAAG 4.5.2. ADAAG 4.5.2 requires the surface to be "stable, firm, and slip resistant."

Comment. Commenters raised concern about the use of readily removable curbs permitted in the proposed rule. Operators were concerned that their removable qualities would tempt younger players to use them inappropriately. Persons with disabilities questioned who would actually move the curbs and how problems related to their use would be addressed.

Response. The final rule does not allow the use of "readily removable curbs". This option was included to allow for passage on and off the course while containing the ball while in play. As an alternative, Exception 2 has been added which permits a 1 inch curb for an opening distance of 32 inches where the accessible route intersects the

playing surface of a hole. This permits passage of wheelchairs while containing the ball within the hole.

Comment. The proposed rule permitted a maximum slope of 1:4 for a 4 inch rise where the accessible route is located on the playing surface. A few commenters questioned how close together a designer could locate these steeply sloped surfaces. They were concerned about the appropriateness where these steep slopes existed for long distances without areas to rest.

Response. Exception 3 permits a slope of 1:4 maximum for a 4 inch rise where the accessible route is located on the playing surface of a hole. Exception 4 specifically addresses the issue of landings where sloped surfaces are provided. This exception permits the landings to be 48 inches long with slopes no greater than 1:20. ADAAG 4.8.4(3) requires landings to be 48 inches by 60 inches minimum, where ramps change direction. Providing a separation or break from the steeper slopes is necessary for individuals with disabilities to safely maneuver on the hole.

Exception 5 states that where the accessible route is located on the playing surface of a hole, handrails are not required.

Section 15.5.3.2 Accessible Route—Adjacent to the Playing Surface

Where the accessible route is located adjacent to the playing surface, the requirements of 4.3 apply. This provision clarifies that the accessible route may be located on the playing surface of the accessible hole or adjacent to the hole.

Section 15.5.4 Start of Play Areas

This section requires start of play areas required to comply with 15.5.2 to have a slope not steeper than 1:48 and to be 48 inches minimum by 60 inches minimum.

Comment. The proposed rule required the minimum space for the start of play area to be 60 inches by 60 inches. Commenters questioned the need for this space and recommended a reduction where possible especially where space limitations exist. Questions were also raised regarding the appropriateness of overlapping the accessible route with the start of play area.

Response. The final rule reduces the space required since the start of play area will usually not require a person using a wheelchair or mobility aid to make a complete turn. Rather, space is necessary for positioning to take the first shot of the hole. Consistent with ADAAG, unless otherwise specified, the accessible route and the clear space

required at the start of play area are permitted to overlap.

Section 15.5.5 Golf Club Reach Range

This section requires all areas within accessible holes where golf balls rest to be within 36 inches maximum of an accessible route having a maximum slope of 1:20.

Comment. The proposed rule required that all level areas within accessible holes where golf balls rest be within 27 inches maximum of an accessible route. A few commenters questioned the appropriateness of the 27 inch dimension. They recommended an increase to include a broader range of skill levels and golf club lengths.

Response. The distance from the level areas has been increased to 36 inches to balance the impact on course design and incorporate the reach of a typical adult size golf club. This is a maximum distance from the accessible route which may be located either on the hole or adjacent to the hole. Where possible, designers should locate the accessible route as close as possible to the level areas on the course. This will improve the ability to reach the golf ball for a variety of users.

Section 15.7 Exercise Equipment and Machines, Bowling Lanes, and Shooting Facilities

Section 15.7.1 General

This section requires all newly designed or newly constructed and altered exercise equipment and machines, bowling lanes, and shooting facilities to comply with section 15.7.

Section 15.7.2 Exercise Equipment and Machines

This section requires at least one of each type of exercise equipment and machines to be provided with clear floor space complying with ADAAG 4.2.4 and be served by an accessible route. Clear floor space must be positioned for transfer or for use by an individual seated in a wheelchair. Clear floor spaces for more than one piece of equipment are permitted to overlap. Permitting clear spaces to overlap should reduce the space requirements within an exercise or health club facility.

Comment. The American Hotel and Lodging Association commented that the requirement for clear space at exercise equipment and machines created a burden for the lodging industry. Similar comments were also received from the International Health, Racquet, and Sport Club Association, who indicated that space limitations present in existing facilities will prohibit compliance with this provision.

Response. These guidelines apply only to newly constructed and altered buildings and facilities. Where exercise equipment and machines are altered or added to a facility, the provisions of 15.7.1 apply to those pieces that are altered or added. In the case of altered exercise equipment or machines, the provisions of ADAAG 4.1.6(1)(j) related to “technical infeasibility” will also apply. ADAAG 4.1.6(1)(j) permits departure from the technical provisions where existing physical or site constraints prohibit full compliance. Space limitations may prohibit full compliance with 15.7.2. In this case, designers and operators must comply to the “maximum extent feasible”.

Requirements for existing buildings and facilities are addressed in the Department of Justice regulations and are subject to the requirements for “readily achievable barrier removal” where the facility is covered by title III of the ADA. Facilities covered by title II of the ADA are subject to the requirements for “program accessibility”. See discussion in the background section of this preamble.

An appendix note is added to provide guidance on exercise equipment and machine layout to maximize space.

Comment. A few commenters requested guidance on what is intended with respect to “types” of exercise equipment and machines. Others suggested that the Board should not require access to exercise machines or equipment that require the user to stand such as tread mills or stair climbers.

Response. The final rule is not limited to exercise equipment or machines that do not require standing. Access to the various pieces of exercise equipment serves individuals who use mobility aids such as scooters and wheelchairs. Individuals with ambulatory disabilities including those using walkers, canes, and crutches will also benefit from an accessible route and clear floor space next to a treadmill or stationary bike or other exercise equipment. An appendix note provides guidance on the different types of exercise equipment and machines. It also suggests that owners and operators consider including exercise equipment and machines within their facilities that provide for upper body cardiovascular exercise. This will add to the diversity of exercise options for everyone.

With respect to the issue of “type”, a stationary bicycle would be considered one type. A rowing machine would also be considered a type. While both provide a cardiovascular exercise, they are considered two different types for purposes of these guidelines. In terms of strength training machines, a bench

press machine is considered a different type than a biceps curl machine. The requirement for providing access to each type is intended to cover the variety of strength training machines. Where operators provide a biceps curl machine and free weights, both are required to meet the provisions in this section, even though an individual may be able to work on their biceps through both types of equipment. Where the exercise equipment and machines are only different in that different manufacturers provide them, only one of each type of machine is required to meet these guidelines. For example, where two bench press machines are provided and each is manufactured by a different company, only one is required to comply.

Section 15.7.3 Bowling Lanes

This section requires that where bowling lanes are provided, at least 5 percent, but not less than one lane of each type must be accessible.

Comment. The Bowlers Proprietors Association expressed concern about requiring 5 percent of bowling lanes to be accessible. Their comments focused on the difficulty of providing ramps to gain access to bowling lanes within existing facilities. They also questioned how to apply the 5 percent minimum requirement where a bowling facility has multiple lanes.

Response. As previously indicated, these guidelines apply to newly constructed and altered facilities. When a bowling facility is altered, the provisions of 15.7.2 will apply to the lane that is undergoing an alteration and does not require all other lanes to be modified unless required by ADAAG 4.1.6 (Path of Travel). Other obligations related to existing facilities covered by titles II and III of the ADA are addressed in the Department of Justice regulations.

Where the required number of accessible elements to be provided is determined by calculations of ratios or percentages and remainders or fractions result, the next greater whole number of such elements should be provided. For example, if 18 lanes of one type are provided, one lane would be required to be accessible in new construction. If 24 bowling lanes of one type are provided in new construction, a minimum of two accessible bowling lanes would be required in new construction.

Comment. The Bowlers Proprietors Association also expressed concern about the number of accessible bowling lanes required in those facilities where different types of bowling is provided. They were also concerned about facilities that provide both ten pin and duck pin bowling. They believed that a

5 percent requirement for both types was excessive and recommended that the requirement be limited to the type that is dominant within a given facility. Further, the Bowlers Proprietors Association questioned what made a bowling lane accessible.

Response. In facilities where both ten pin and duck pin bowling are provided, the 5 percent requirement for each type will typically result in one of each type of lane being accessible.

The final rule does not include any further technical provisions for bowling lanes required to be accessible. Like other areas of sport activity, the requirement is for an accessible route to connect to the area of sport activity, in this case, the bowling lane. Specific exemptions to ADAAG 4.4 (protruding objects) and 4.5 (surfacing requirements) are applied within the area of sport activity. Therefore, bowling lanes which are necessarily waxed to allow the ball to travel, are not required to be slip resistant.

Section 15.7.4 Shooting Facilities

This section requires that where fixed firing positions are provided at a site, at least 5 percent, but not less than one, of each type of firing position must be accessible.

Comment. A few commenters questioned why the Board did not require an accessible route to the target areas as well as the fixed firing positions. Commenters also questioned the application of this section to trap and skeet facilities where the facilities are not entirely fixed. Others questioned what factors should be considered in determining the different types of firing positions.

Response. The Board has not included a requirement for an accessible route to the target areas since targets are often moveable, making it difficult to locate the accessible route effectively. There is also difficulty in defining what is considered the "target" area. Where facilities contain a combination of fixed and non-fixed elements, operators should consider the general nondiscrimination requirements of the ADA. Direction on these and other issues related to the use of shooting facilities should be obtained from the Department of Justice. Factors to be considered in determining the types of fixed firing positions include whether covering and lighting is provided, and which shooting events the fixed firing position is intended to support.

Section 15.7.4.1 Fixed Firing Positions

This section requires that accessible fixed firing positions contain a 60 inch diameter space and have a slope not

steeper than 1:48. No substantive comments were received and no changes have been made to this provision in the final rule.

Section 15.8 Swimming Pools, Wading Pools, and Spas

Section 3.5 Definitions

The final rule provides a definition for a catch pool which is defined as a pool used as a terminus for water slide flumes.

Comment. The proposed rule did not define the term catch pool. Commenters requested that catch pools be exempt since access is not required for water slides.

Response. The term "catch pool" is added to the final rule since it is used in an exception in the final rule. Exception 3 to section 15.8.1 exempts catch pools from complying with the requirements of this section, provided that an accessible route connects to the catch pool edge.

Section 15.8.1 General

This section requires newly designed or newly constructed and altered swimming pools, wading pools, and spas to comply with 15.8. An exception has been added to the final rule that provides that an accessible route is not required to serve raised diving boards or diving platforms provided that an accessible route is provided to the base of the raised diving board or platform.

Section 15.8.2 Swimming Pools

This section requires that at least two means of entry be provided for each public or common use swimming pool. A sloped entry or lift must be one of the primary means of access. The secondary means of access could include a pool lift, sloped entry, transfer wall, transfer system, or pool stairs.

Comment. The proposed rule permitted a moveable floor as a secondary means of entry. Commenters stated that even though moveable floors may have some practical applications they do not provide independent access and often place a person with a disability on display while the pool is evacuated and the floor raised to provide access. Additionally, commenters raised concerns regarding the removal of handrails and other means of egress prior to lifting the pool floor.

Response. The option of using a moveable floor as a secondary means of accessible entry in public or common use swimming pools has been deleted from the final rule.

The Board has also deleted the requirement that the second means of access not duplicate the first means of

access in larger pools in the final rule. This should give designers additional flexibility in choosing between the various means of access. An appendix note recommends that where two means of access into the water are provided, different means are recommended.

Exception 1 Small Pools With Less Than 300 Linear Feet of Pool Wall

Exception 1 permits public or common use swimming pools with less than 300 linear feet of pool wall to only provide one accessible means of entry by either a swimming pool lift or a sloped entry.

Comment. A commenter suggested that Exception 1 should be modified to refer to pool wall that is available for entry into the pool. They explained that pool walls at diving areas and pool decks where there is no available pool entry because of landscaping or adjacent structures should not be counted when determining the number of accessible means of entry required.

Response. Exception 1 is intended to provide small pools with relief from providing more than one accessible means of entry. It was not intended for large pools that could limit the locations of entry with landscaping or other structures from requiring additional accessible means of entry.

Exception 2 Pools Where Access Is Limited to One Area

Exception 2 has been added to the final rule and permits wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to only one area, to provide one accessible means of entry by either a swimming pool lift, sloped entry, or a transfer system.

Comment. Commenters from speciality pool operators and leisure river designers expressed concerns for safety, where there is wave action or moving water, when providing additional accessible means of entry in these unique water environments. Wave action pools typically provide a large area of zero grade entry, where everyone enters the water. Providing an accessible means of entry along the high walls could be very dangerous. Leisure rivers are constructed to provide a safe area where staff can assist individuals into the current at one location to control access to and from the moving water.

Response. In response to the safety concerns provided by designers and operators of these moving water experiences, only one accessible means of entry is required in the final rule, when user access is limited to one area.

Exception 3 Catch Pools

Exception 3 exempts catch pools from these requirements, provided that an accessible route connects to the catch pool edge.

Comment. The proposed rule did not include any specific requirements for access to water slides. Comments on the proposed rule and the draft final rule supported not requiring access to the top of water slides.

Response. An exception has been added to the final rule exempting water slides from accessibility. See ADAAG 4.1.1 (5) (b) (v). To be consistent with the water slide exception, the final rule also exempts the catch pool at the discharge area of a water slide from providing an accessible means of entry or exit from the catch pool, provided that an accessible route connects to the catch pool edge.

Section 15.8.3 Wading Pools

This section requires at least one accessible means of entry into each wading pool. The means of entry must be a sloped entry.

Comment. The proposed rule required the means of entry into wading pools to be either a sloped entry, transfer wall, or a transfer system. The proposed rule also sought comment on the appropriateness of providing a transfer wall or other transfer system as a means of access into a wading pool. Several commenters expressed concern about the potential dangers to children that may use the transfer walls or systems inappropriately for play or diving.

Response. The final rule limits the accessible means of entry into a wading pool to a sloped entry only. Examination of the different means of access into wading pools found zero grade entry to be the most appropriate and currently most provided means of entry.

Section 15.8.4 Spas

This section requires at least one accessible means of entry into spas. The means of entry must be a pool lift, transfer wall, or transfer system. An exception allows for five percent, but not less than one spa, where spas are provided in a cluster, to be accessible. No substantive comment was received and no changes have been made to this section in the final rule.

Section 15.8.5 Pool Lifts

This section provides the technical requirements for pool lifts.

Section 15.8.5.1 Pool Lift Location

This provision requires pool lifts to be located where the water level does not exceed 48 inches.

Comment. The proposed rule did not specify the location of a pool lift. Commenters with disabilities and individuals who work in environments where people with disabilities use pool lifts expressed concern that pool lifts may be placed in areas where the water depth would not permit assistance in the water if needed. Comments on the draft final rule supported the requirement for a pool lift to be located in a water depth of 48 inches or less whenever possible. Commenters also gave examples of when the location of a pool lift should be allowed in an area where the water depth is greater than 48 inches.

Response. The final rule requires a pool lift to be located where the water level does not exceed 48 inches. Two exceptions have been added to the final rule in response to comments received. Exception 1 permits the use of pool lifts at any location where the entire pool has a depth greater than 48 inches. Exception 2 permits pools with multiple pool lift locations to provide at least one where the water depth does not exceed 48 inches.

Section 15.8.5.2 Seat Location

This section requires the centerline of the seat, when in the raised position, to be located over the deck and 16 inches minimum from the edge of the pool. Additionally, the deck surface between the centerline of the seat and the pool edge must not have a slope greater than 1:48.

Comment. The proposed rule required the centerline of the seat, when in the raised position, to be located over the deck and 20 inches minimum from the pool edge. Comments from lift manufacturers expressed concern about the 20 inch minimum distance. They elaborated on the difficulties associated with providing a lift that places the user away from the pivot point of the lift a distance of 20 inches. Additionally, they commented that aquatic lifts with the centerline of the seat at least 20 inches away from the pool edge may not clear the footrest over the curbing or pool edge provided on some pools.

Response. Based on the concerns of commenters, the distance measured from the centerline of the lift seat to the edge of the pool has been reduced from 20 inches to 16 inches minimum. The location of the seat in relation to the edge of the pool is especially important to facilitate safe transfers. The Board is concerned about locating the seat either over the water or too close to the deck edge for safety reasons. This provision has been modified to address design limitations and incorporate the

maximum distance from the pool edge to ensure safety.

Section 15.8.5.3 Clear Deck Space

This section requires a clear deck space on the side of the seat opposite the water and parallel with the seat. The space is required to be 36 inches wide minimum and to extend forward 48 inches minimum from a line located 12 inches behind the rear edge of the seat. The clear space is specified in relationship to the seat to allow unobstructed space for either side or diagonal transfer. Additionally, the clear deck space must have a slope not greater than 1:48.

Comment. The proposed rule required the clear deck space to be a minimum of 30 inches wide. Commenters requested additional space to permit greater flexibility for transfer position preferences and the varied abilities of persons requiring the use of a pool lift. Commenters expressed a preference that the clear deck space should be required to provide a level surface from which to transfer from a mobility device to the lift seat.

Response. The final rule increases the clear deck space required on the side of the seat opposite the water to be a width of 36 inches minimum and that the clear deck space provide a surface with a slope not greater than 1:48. The additional space will facilitate the maneuvering that may be needed by a person using a mobility device preparing for a transfer to the seat of a pool lift.

Section 15.8.5.4 Seat Height

This section requires the height of a lift seat to be designed to allow a stop at 16 inches minimum to 19 inches maximum measured from the deck to the top of the seat surface when the seat is in the raised (load) position.

Comment. The proposed rule required the height of the lift seat to be 16 inches minimum to 18 inches maximum. Commenters requested a greater range of seat heights to transfer to or from when the lift is in the up position. They suggested a seat height that could accommodate the needs of users of all ages and abilities would be more beneficial.

Response. Information obtained from the Board sponsored research project supported the height requirement of a lift seat while in the upper load position to be at a height between 16 and 18 inches from the deck surface. In response to the comments received, the final rule departs slightly from the proposed rule, by permitting the lift seat to make a stop at the 16 to 19 inch height above the deck surface. The lift

could provide additional stops at various heights provided that a stop is provided between 16 and 19 inches above the surface of the deck.

Section 15.8.5.5 Seat Width

This section requires a lift seat to be 16 inches wide minimum. No substantive comment was received and no changes have been made to this section in the final rule.

Comment. The proposed rule sought information on the different types of seats that are available on pool lifts and whether a specific type should be required in the final rule. Commenters did not provide a consensus on either the type of pool lift seat or the type of materials preferred by pool lift users.

Response. The final rule does not specify the type of material or the type of seat to be provided by a pool lift. Persons with disabilities involved in the Board sponsored research project expressed interest in all types of seats. An appendix note provides additional information on pool lift seats.

Section 15.8.5.6 Footrests and Armrests

This section requires footrests to be provided and that they move in conjunction with the seat. Additionally, this provision requires that, if provided, the armrest opposite the water be removable or fold clear of the seat when the seat is in the raised (load) position.

Comment. The proposed rule requested information on the appropriateness of requiring armrests on pool lifts and on their size and location. Commenters supported requirements based on their own personal needs with no consistent guidance on the location or size of armrests on a pool lift. One commenter questioned the appropriateness of providing a footrest on a lift for entry into a spa due to the water depth in some smaller spas.

Response. An exception has been added that provides that footrests are not required on pool lifts that provide an accessible means of entry into a spa. An appendix note encourages the use of a footrest in larger spas where possible and some type of retractable leg support is recommended for pool lifts used in all spas.

Section 15.8.5.7 Operation

This section requires that a pool lift be capable of unassisted operation from both the deck and water levels. This section also requires that controls and operating mechanisms be unobstructed when a lift is in use and comply with ADAAG 4.27.4. That section requires that operating controls not require tight grasping, pinching, or twisting of the

wrist or more than 5 pounds of pressure to operate.

Comment. The proposed rule required that the lift controls and operating mechanisms may not require continuous manual pressure for operation. Commenters with disabilities supported the requirement of unassisted operation from both the deck and water levels. They reported the difficulty in finding the responsible person when lifts require assistance, especially in environments where pools are not routinely staffed. Commenters expressed concerns about getting out of the water, if assistance is required, especially where the pool is not staffed. Someone could be stranded in the water for extended periods of time awaiting assistance. Commenters suggested that pool lifts that require continuous manual pressure give the user greater control of their descent into the water and ascent back to the deck. Concern was expressed by a manufacturer of pool lifts that providing unassisted operation encourages individuals to swim alone and the potential dangers of causing injury are greatly increased when using an automatic lift without assistance.

Response. A large percentage of the respondents in the Board sponsored research project noted the importance of using a lift without assistance. Pool facility staff also indicated the importance of a device or design that could be used without pool staff assistance. While this provision requires the lift to be independently operable it does not preclude assistance from being provided. The final rule removes the requirement that pool lifts may not require continuous manual pressure for operation.

Comment. A few commenters expressed safety concerns where pool lifts are provided in pools that are unattended.

Response. Pool lifts have been commercially available for over 20 years. While the Board recognizes that inappropriate use of pool lifts may result in accident or injury, the Board is not aware of any incidents of injury or accidents involving pool lifts. The Board is also not aware of any evidence that shows that pool lifts are any less safe than other components of a pool facility, such as other means of pool entry, when they are used inappropriately. Manufacturers are also incorporating features which are intended to discourage inappropriate use, such as fold-up seats and covers.

Section 15.8.5.8 Submerged Depth

This section requires that a pool lift be designed so that the seat will

submerge to a water depth of 18 inches minimum. This depth is necessary to ensure buoyancy for the person on the lift seat once in the water. No substantive comment was received and no changes have been made to this section for the final rule.

Section 15.8.5.9 Lifting Capacity

This section requires that single person pool lifts provide a minimum weight capacity of 300 pounds. Lifts also must be capable of sustaining a static load of at least one and a half times the rated load.

Comment. The proposed rule required pool lifts to provide a minimum weight capacity of 300 pounds and be capable of sustaining a static load of at least three times the rated load. Several pool lift manufacturers supported the minimum weight requirement of 300 pounds. They questioned requiring a static load of three times the weight limit. They believed it was too excessive and would eliminate viable lifts from being provided. A commenter suggested that the static load requirement reference an international standard for lifts that require a static load of 1.6 times the weight capacity.

Response. The static load requirement has been reduced to one and a half times the weight capacity requirement.

Section 15.8.6 Sloped Entries

This section provides technical requirements for sloped entries designed to provide access into the water. Due to the similarities of this type of entry with ramps used in other buildings and facilities, existing ADAAG requirements have been referenced accordingly.

Section 15.8.6.1 Sloped Entries

This section requires sloped entries to comply with ADAAG 4.3 (Accessible Route), except for slip resistance.

Comment. Commenters questioned the ability of providing a slip resistant surface on a sloped entry that is under water.

Response. The final rule provides an exception for sloped entries from being slip resistant.

Section 15.8.6.2 Submerged Depth

This section requires sloped entries to extend to a depth of 24 to 30 inches below the stationary water level. This section also requires that where landings are required by ADAAG 4.8, at least one landing must be located between 24 and 30 inches below the stationary water level. Since wading pools are typically less than 24 to 30 inches deep, an exception provides that sloped entries are only required to

extend to the deepest part of a wading pool. No substantive comment was received and no changes have been made to this section in the final rule.

Section 15.8.6.3 Handrails

This section requires handrails that comply with ADAAG 4.8.5 on both sides of all sloped entries. The clear width between handrails must be between 33 and 38 inches. Exception 1 does not require handrail extensions to be provided at the bottom of a landing serving a sloped entry. Exception 2 does not require the clear width between handrails where a sloped entry is provided for wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to one area. Exception 3 exempts sloped entries in wading pools from providing handrails.

Comment. The proposed rule did not specifically address handrails in wading pools. Commenters expressed great concern about the potential dangers from children using handrails to play on or jump into the shallow water or the risk to other children in the wading pool.

Response. The Board is concerned about the potential dangers to children using handrails inappropriately. Exception 3 has been added to the final rule exempting wading pools from providing handrails.

Section 15.8.7 Transfer Walls

This section provides technical requirements for transfer walls.

Section 15.8.7.1 Clear Deck Space

This section requires clear deck space of 60 inches by 60 inches minimum with a slope not steeper than 1:48 to be provided at the base of a transfer wall. Where one grab bar is provided on a transfer wall, the clear deck space must be centered on the grab bar. This allows sufficient space for a transfer on either side of the grab bar. Where two grab bars are provided, the clear deck space must be centered on the clearance between the grab bars. No substantive comment was received and no changes have been made to this section for the final rule.

Section 15.8.7.2 Height

This section requires the height of transfer walls to be 16 to 19 inches measured from the deck below. The height requirement is consistent with pool lift seat heights and similarly addresses the needs of some children. The maximum height above the deck has been changed to 19 inches to be consistent with other transfer heights in ADAAG.

Section 15.8.7.3 Wall Depth and Length

This section requires the depth of a transfer wall to be 12 to 16 inches. As a minimum, the 12 inch depth of the transfer wall provides adequate space for a person to comfortably sit on the surface of the wall. The wall depth is limited to 16 inches maximum so that users are not required to traverse the wall to transfer to the water. The length of the transfer wall must be 60 inches minimum and must be centered on the clear deck space.

Section 15.8.7.4 Surface

This section requires that the surface of a transfer wall must not be sharp and must have rounded edges. Commenters overwhelmingly supported this section and no changes have been made to this section for the final rule.

Section 15.8.7.5 Grab Bars

This section requires at least one grab bar to be provided on a transfer wall. Grab bars are required to be perpendicular to the pool wall and extend the full depth of the wall. The top of the gripping surface must be 4 to 6 inches above the wall. Where two grab bars are provided, clearance between grab bars must be 24 inches minimum. Where one grab bar is provided, clearance must be 24 inches minimum on both sides of the grab bar. Grab bars must comply with ADAAG 4.26.

Comment. The proposed rule required the top of the gripping surface to be a maximum of 4 inches above the wall. Commenters expressed concern that 4 inches maximum above the wall surface, after factoring in the diameter of the grab bar, would not provide sufficient gripping space for persons transferring.

Response. The final rule provides a range from 4 to 6 inches above the wall to the top of the gripping surface. The range will provide greater flexibility and incorporate the diameter of the grab bar in providing users of all ages and abilities with an appropriate gripping surface.

Section 15.8.8 Transfer Systems

This section provides technical requirements for transfer systems used as a means of access into the water. A transfer system consists of a transfer platform, combined with a series of transfer steps that descend into the water. Users must transfer from their wheelchair or mobility device to the transfer platform and continue transferring from step to step.

Section 15.8.8.1 Transfer Platform

This section requires a transfer platform to be 19 inches deep by 24 inches wide. Transfer platforms must be provided at the head of each transfer system. No substantive comment was received and no changes have been made to this section for the final rule.

Section 15.8.8.2 Clear Deck Space

This section requires a clear deck space of 60 by 60 inches minimum with a slope not steeper than 1:48 at the base of the transfer platform. A level unobstructed space at the base of the transfer platform, centered along the 24 inch side, is necessary to facilitate a transfer from a wheelchair or mobility device. No substantive comment was received and no changes have been made to this section for the final rule.

Section 15.8.8.3 Height

This section requires the height of transfer platforms to be 16 to 19 inches measured from the deck. No substantive comment was received and no changes have been made to this section for the final rule.

Section 15.8.8.4 Transfer Steps

This section requires transfer steps to be 8 inches maximum in height. It also requires that transfer steps extend to a water depth of 18 inches minimum.

Comment. The proposed rule required transfer steps to be 7 inches maximum in height. Commenters questioned the inconsistencies between the transfer step height of 8 inches required on a play area transfer step (15.6.5.2.2) to that provided in an aquatic setting.

Response. The final rule has been changed to require an 8 inch maximum step height in aquatic settings to be consistent with the play areas transfer step (15.6.5.2.2). An appendix note has been included recommending the height of the transfer step be minimized whenever possible.

Section 15.8.8.5 Surface

This section requires that the surface of a transfer system must not be sharp and provide rounded edges. Similar to other transfer surfaces, this is necessary to reduce the potential for injury. No substantive comment was received and no changes have been made to this section in the final rule.

Section 15.8.8.6 Size

This section requires each transfer step to have a tread depth of 14 to 17 inches and a minimum tread width of 24 inches.

Comment. The proposed rule required a range for the transfer step depth from 12 to 17 inches and a tread width of 22

inches minimum. Commenters pointed out the inconsistencies between the size of the transfer step in the play areas final rule (15.6.5.2.1) and for swimming pools.

Response. In an effort to provide uniformity between the play areas transfer steps and those located at swimming pools, the final rule modifies the transfer step to incorporate a range of 14 to 17 inches in depth and a minimum width of 24 inches.

Section 15.8.8.7 Grab Bars

This section requires one grab bar to be provided on each step and the transfer platform, or a continuous grab bar serving each transfer step and the transfer platform. Where provided on each step, the top of the gripping surface must be 4 to 6 inches above each step. Where a continuous grab bar is provided, the top of the gripping surface must be 4 to 6 inches above the step nosing. Grab bars must comply with ADAAG 4.26 and be located on at least one side of the transfer system. The grab bar located at the transfer platform must not obstruct transfer.

Comment. As previously discussed in section 15.8.7.5, the proposed rule required the top of the gripping surface to be 4 inches above the wall.

Commenters expressed concern that 4 inches above the wall surface, after factoring in the diameter of the grab bar, would not provide sufficient space for persons transferring.

Response. The final rule requires the top of the gripping surface to be 4 to 6 inches above the wall. It is believed that the range will provide greater flexibility to users of all ages and abilities with an appropriate gripping surface.

Section 15.8.9 Pool Stairs

This section provides technical requirements for pool stairs used as a means of entry and exit to the water.

Section 15.8.9.1 Pool Stairs

This section requires pool stairs to comply with ADAAG 4.9 (Stairs), except as modified. ADAAG 4.9 has been referenced since stairs in pools are used in a similar manner as stairs elsewhere. No substantive comment was received and no changes have been made to this section in the final rule.

Section 15.8.9.2 Handrails

This section requires the width between handrails to be 20 to 24 inches. To reduce the potential for underwater protrusions, handrail extensions are not required at the bottom landing serving a pool stair.

Comment. The proposed rule required a 22 inch maximum width between

handrails on pool stairs. Commenters expressed concern that a maximum distance of 22 inches may be too close for people that are large in size. Commenters with mobility impairments supported the handrail distance of 22 inches for providing the needed support while entering a pool by stairs.

Response. The final rule increases the maximum width between handrails to 24 inches. Separating the handrails more than 24 inches apart would make them too far apart for a larger class of people that require the support on pool stairs.

Section 15.8.10 Water Play Components

This section requires that where water play components are provided, the provisions of 15.6 (Play Areas) and ADAAG 4.3 apply, except where modified by this section.

Comment. The proposed rule sought comment on specific features within aquatic recreation facilities where it may be technically infeasible in new construction to comply with the proposed requirements in 15.8. Manufacturers and designers of water play components expressed concerns about having to provide ramp access to elevated play structures in standing water. Many of these components are at considerable distances from the top of the water surface and ramping would be very challenging and costly. Commenters with disabilities or individuals representing individuals with disabilities expressed a great desire to have access to these unique water experiences.

Response. The final rule requires that where water play components are provided, they must comply with 15.6 (Play Areas) and ADAAG 4.3, except as modified or otherwise provided in this section. The final rule is responsive to manufacturers and designers by providing an exception to providing ramp access, while providing persons with disabilities the opportunity to enjoy this unique family oriented water experience with their family and friends. Exception 1 exempts accessible routes, clear floor spaces, and maneuvering spaces that are submerged from the requirements for cross slope, running slope, and surface. Exception 2 permits transfer systems to be used in lieu of ramps to connect elevated play components.

Regulatory Process Matters

Executive Order 12866: Regulatory Planning and Review

This final rule is a significant regulatory action under Executive Order

12866 and has been reviewed by the Office of Management and Budget. The Board has assessed the benefits and costs of the rule. The assessment has been placed in the public docket and is available for inspection. The assessment is also available on the Board's Internet site (<http://www.access-board.gov>). The assessment is summarized below:

Benefits

The benefits of the final rule are not quantifiable, but are significant and are consistent with the President's New Freedom Initiative. The primary benefit is the fulfillment of civil rights realized by individuals with disabilities. There are 52.5 million Americans with disabilities. Almost one in five adults has some type of disability. Among individuals 15 years old and over, 25 million have difficulty walking or using stairs. The final guidelines will result in newly constructed and altered recreation facilities that are accessible to individuals with disabilities and will enable them to participate in a wide range of recreational opportunities. Individuals with disabilities can also realize significant health benefits by participating in the range of recreational opportunities made accessible as a result of the final guidelines.

Costs

For each type of facility addressed by the final rule, the assessment estimates the number of existing facilities and new facilities constructed annually, identifies the requirements that have cost impacts for new construction and alterations, estimates the unit costs per facility, and calculates the total annual compliance costs. The number of small entities is reported as a percentage of the facilities. To estimate cost impacts, the assessment relies on assumptions where sufficient data is not available. The assumptions are based on interviews with professionals in the affected industries and are disclosed in the assessment. The assumptions cannot be validated and may not reflect the real world. The assumptions may result in under or overestimating the impacts of the final rule. The relevant data for each facility type is presented below.

Amusement Rides

Existing Facilities: 377 amusement parks.

New Construction: 4 new amusement parks per year.

Small Entities: 81 percent of amusement parks.

New Amusement Rides: 343 new rides per year; 68 will be platform type rides with stepped entrances.

New Construction Impacts: New platform type rides with stepped entrances will need a ramp (\$4,000 to \$6,700 unit cost) or a platform lift (\$12,000 to \$15,000 unit cost) to provide an accessible route to the load and unload area; and additional space (\$1,175 unit cost) in the load and unload area to provide wheelchair turning space and wheelchair storage space if a ride seat designed for transfer or transfer device is provided. For purposes of estimating the costs of providing access to new rides, the assessment assumes that a transfer device (\$5,000 unit cost) would be provided for all new rides. New rides will need a sign (\$100 unit cost) at the entrance of the queue or waiting line indicating the type of access provided (e.g., wheelchair access or transfer access).

Alterations Impacts: Minimal.

Total Annual Compliance Costs: \$2.5 million.

Boating Facilities

Existing Facilities: 12,000 marinas; no data on boat launch ramps.

New Construction: 240 new marinas per year.

Alterations: 600 existing marinas per year.

Small Entities: 99 percent of marinas.

New Construction Impacts: Gangways that are part of an accessible route will need to provide a 1:12 maximum slope or a gangway at least 80 feet long. The unit cost will be site specific. The assessment assumes unit costs will range from \$15,000 to \$35,000 where the maximum vertical level change is more than 2.5 feet, but less than 10 feet; and \$33,000 to \$45,000 where the maximum vertical level change is more than 10 feet. The impacts on new accessible boat slips and new accessible boarding piers at new boat launch ramps will be minimal.

Alterations Impacts: Alterations to existing boat slips are a primary function area and may trigger provision of an accessible route, unless the additional cost is disproportionate to the overall costs of the alterations or compliance is technically infeasible. The impacts on altered boat slips will be minimal.

Total Annual Compliance Costs: \$10.8 million to \$18.0 million.

Fishing Piers and Platforms

Existing Facilities: No data.

New Construction: No data.

Small Entities: No data.

New Construction Impacts: Minimal.

Alterations Impacts: Minimal.

Total Annual Compliance Costs: Minimal

Golf Courses

Existing Facilities: 17,108 golf courses.

New Construction: 377 to 524 new golf courses per year.

Small Entities: 99 percent of golf courses.

New Construction Impacts: Minimal.

Alterations Impacts: Minimal.

Total Annual Compliance Costs: Minimal.

Miniature Golf Courses

Existing Facilities: 7,500 to 10,000 miniature golf courses.

New Construction: 150 new custom design and 170 new modular miniature golf courses per year.

Small Entities: 100 percent of miniature golf courses.

New Construction Impacts: The assessment discusses potential impacts on new custom design courses (low profile courses, challenge courses, and adventure style courses) and new modular courses (indoor courses and outdoor courses). The impacts on new custom design low profile courses will be minimal. For purposes of estimating the costs for making at least 50 percent of the holes on the other custom design courses accessible, the assessment assumes a 10 percent increase in construction costs for new challenge type courses, and a 25 percent increase for new adventure style courses. New indoor modular courses may need to lease additional space to provide an accessible route for at least 50 percent of the holes, and new outdoor modular courses that are not recessed in the ground will have to provide an accessible route for at least 50 percent of the holes. The assessment assumes the additional cost for new modular courses will \$5,000 per course.

Alterations Impacts: Minimal.

Total Annual Compliance Costs: \$5.4 million.

Exercise Equipment, Bowling Lanes, and Shooting Facilities

Existing Facilities: 17,531 physical fitness facilities; 5,500 bowling centers; and 10,000 shooting facilities. No data on other facilities that provide exercise equipment.

New Construction: 800 to 1,000 new physical fitness facilities; 25 new bowling centers; and 100 new shooting facilities per year.

Small Entities: 99 percent of physical fitness facilities; and 100 percent of bowling centers and shooting facilities.

New Construction Impacts: Minimal.

Alterations Impacts: Minimal.

Total Annual Compliance Costs: Minimal.

Swimming Pools, Wading Pools, and Spas

Existing Facilities: 124,577 pools; no data on spas.

New Construction: 1,245 new pools per year; 565 new spas per year. The assessment assumes 715 new pools per year have less than 300 linear feet of pool wall and will need at least one means of accessible entry into the pool.

Small Entities: Ranges from 15 percent for private hospitals to 100 percent for camps and recreational vehicle parks.

New Construction Impacts: For new pools with less than 300 linear feet of pool wall, the assessment assumes that a pool lift will be provided (\$4,000 unit cost). For pools with 300 linear feet or more of pool wall, the assessment assumes 250 of these new pools per year will provide an accessible means of entry in the absence of the final rule and will add a pool lift (\$4,000 unit cost). The assessment assumes the other new pools with 300 linear feet or more of pool wall will provide a pool lift (\$4,000 unit cost) and pool stairs (\$2,500 unit cost). The impacts on wading pools will be minimal. The assessment assumes new spas will provide a pool lift (\$4,000 unit cost).

Alterations Impacts: Minimal.

Total Annual Compliance Costs: \$8.0 million.

Regulatory Flexibility Act

The final regulatory flexibility analysis has been performed in conjunction with the assessment of the benefits and costs of the final rule required by Executive Order 12866 and the preparation of the preamble for the final rule. The analysis is summarized below.

Need for and Objectives of Guidelines

The Access Board is required to issue accessibility guidelines under the Americans with Disabilities Act (ADA) to ensure that new construction and alterations of facilities covered by the law are readily accessible to and usable by individuals with disabilities. Recreation facilities are among the facilities covered by the ADA. Recreation facilities have unique features that are not adequately addressed by the Americans with Disabilities Act Accessibility Guidelines (ADAAG). The final rule will amend ADAAG to provide supplemental guidelines for making recreation facilities accessible.

Significant Issues Raised During Public Comment Period

The significant comments raised during the public comment period are

summarized in the preamble to the final rule, along with the Access Board's assessment of the comments and the reason for selecting the alternative adopted in the final rule. The alternatives considered in the proposed rule and the final rule, and changes made from the proposed rule for each type of recreation facility are presented in the assessment of the benefits and costs of the final rule required by Executive Order 12866.

Numbers of Small Entities Affected by Final Rule

The numbers of small entities affected by the final rule are reported under the summary of the assessment of the benefits and costs of the final rule required by Executive Order 12866.

Reporting and Recordkeeping Requirements

There are no reporting and recordkeeping requirements.

Steps Taken To Minimize Significant Economic Impact on Small Entities

The Access Board has taken steps to minimize the significant economic impact on small entities for each of the different types of recreation facilities addressed in the final rule. These steps are listed below.

- *Amusement Rides*—The final rule allows designers and operators of new amusement rides the choice of providing at least one wheelchair space, or an amusement ride seat designed for transfer, or a transfer device. The final rule limits application of the guidelines to existing rides that are altered. The final rule also allows designers and operators greater flexibility in applying ADAAG to amusement rides.

- *Boating Facilities*—The final rule permits gangways that are part of an accessible route to exceed the 1:12 maximum slope requirement for ramps where the total length of the gangways is at least 80 feet (30 feet for smaller facilities with fewer than 25 boat slips). The final rule reduces the number of boat slips required to be accessible in new construction, and modifies the requirements for accessible boat slips in alterations so no more than one boat slip is lost. The final rule also allows designers and operators greater flexibility in applying ADAAG to boating facilities.

- *Fishing Piers and Platforms*—The final rule permits gangways that are part of an accessible route to exceed the maximum 1:12 requirement for ramps where the total length of the gangways is at least 30 feet. The final rule also exempts guards that comply with certain sections of the International

Building Code from the maximum 34 inch height requirement.

- *Golf Courses*—The final rule permits a golf car passage to be provided on golf courses and driving ranges, instead of an accessible route.

- *Miniature Golf Courses*—The final rule requires at least 50 percent of holes on miniature golf courses to be accessible, and permits one break in the sequence of accessible holes provided the last hole in the sequence is the last hole on the course. The final rule also allows designers and operators greater flexibility in applying ADAAG to miniature golf courses.

- *Swimming Pools, Wading Pools, and Spas*—The final rule permits small pools with less than 300 linear feet of pool wall to provide at least one means of access into the water, and permits water play components to use transfer systems to connect elevated water play components.

Technical Assistance

The Access Board will provide technical assistance materials to help small entities understand the accessibility guidelines for recreation facilities. The Access Board also operates a toll-free technical assistance service to answer questions from the public about the guidelines.

Executive Order 13132: Federalism

The final rule adheres to the fundamental federalism principles and policy making criteria in Executive Order 13132. The final rule implements Federal civil rights legislation that was enacted pursuant to the Congress' authority to enforce the fourteenth amendment and to regulate commerce. Ensuring the civil rights of groups who have experienced irrational discrimination has long been recognized as a national issue and a proper function of the Federal government. The ADA was enacted "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities * * * and to ensure that the Federal government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities." 42 U.S.C. 12101(b)(1) and (3). The ADA recognizes the authority of State and local governments to enact and enforce laws that "provide greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter." 42 U.S.C. 12201(b). The final rule establishes minimum guidelines. States and local governments can adopt accessibility standards that provide individuals with

disabilities equal or greater access to recreation facilities.

The Access Board has consulted with State and local governments throughout the rulemaking process. The National Recreation and Park Association, States Organization for Boating Access, New Jersey Department of Community Affairs, San Francisco Department of Public Works, and the Hawaii Disability and Communication Access Board represented the interests of State and local governments on the Recreation Access Advisory Committee. State and local governments participated in the public hearings and information meetings held on the NPRM and the draft final rule, and submitted more than 70 comments. Most of the comments were centered on boating facilities. The California Department of Boating and Waterways, Oregon State Marine Board, and Michigan Department of Natural Resources were actively involved in providing information and alternative proposals for consideration during the rulemaking. Approximately 30 other State and local governments joined in supporting the

various proposals submitted by those States.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or enforce any statutory rights that prohibit discrimination on the basis of race, color, sex, national origin, age, handicap, or disability. Since the final rule is issued under the authority of the Americans with Disabilities Act, an assessment of the rule's effects on State, local, and tribal governments, and the private sector is not required by the Unfunded Mandates Reform Act.

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Incorporation by reference, Individuals with disabilities, Transportation.

Thurman M. Davis, Sr.,

Chair, Architectural and Transportation Barriers Compliance Board.

For the reasons stated in the preamble, part 1191 of title 36 of the Code of Federal Regulations is amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR Part 1191 continues to read as follows:

Authority: 42 U.S.C. 12204.

2. Appendix A to Part 1191 is amended as follows:

a. By revising the title page and pages i, ii, 1A, 2, 3, 4, 4A, 5 through 11, 58A, and 76 through 81 as set forth below.

b. By removing the blank page following the title page.

c. By adding pages 4B, 11A, 58B, and 82 through 96 as set forth below.

d. In the appendix to Appendix A by revising pages A1, A1A, A16, and A22 through A25 and adding pages A1B, A16A, and A26 through A32 as set forth below.

The additions and revisions read as follows:

Appendix A to Part 1191—Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

BILLING CODE 8150-01-P

Americans with Disabilities Act (ADA)

Accessibility Guidelines for Buildings and Facilities

**U.S. Architectural and Transportation Barriers
Compliance Board (Access Board)
1331 F Street, N.W., Suite 1000
Washington, D.C. 20004-1111
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**ADA ACCESSIBILITY GUIDELINES
FOR BUILDINGS AND FACILITIES
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2.3 Incorporation by Reference

<p>2.3 Incorporation by Reference.</p> <p>2.3.1 General. The publications listed in 2.3.2 are incorporated by reference in this document. The Director of the Federal Register has approved these materials for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the referenced publications may be inspected at the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington, DC; at the Department of Justice, Civil Rights Division, Disability Rights Section, 1425 New York Avenue, NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.</p> <p>2.3.2 Referenced Publications. The specific edition of the publications listed below are referenced in this document. Where differences occur between this document and the referenced publications, this document applies.</p> <p>2.3.2.1 American Society for Testing and Materials (ASTM) Standards. Copies of the referenced publications may be obtained from the American Society for Testing and Materials, 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428 (http://www.astm.org).</p> <p>ASTM F 1292-99 Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment (see 15.6.7.2 Ground Surfaces, Use Zones).</p> <p>ASTM F 1487-98 Standard Consumer Safety Performance Specification for Playground Equipment for Public Use (see 3.5 Definitions, Use Zone).</p> <p>ASTM F 1951-99 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment (see 15.6.7.1 Ground Surfaces, Accessibility).</p> <p>2.3.2.2 International Code Council (ICC) Codes. Copies of the referenced publications may be obtained from the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041-3401 (http://www.intlcode.org).</p>	<p>International Building Code 2000 (see 15.3.3.2 Height).</p>
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3.0 Miscellaneous Instructions and Definitions

3. MISCELLANEOUS INSTRUCTIONS AND DEFINITIONS.

3.1 Graphic Conventions. Graphic conventions are shown in Table 1. Dimensions that are not marked minimum or maximum are absolute, unless otherwise indicated in the text or captions.

3.2 Dimensional Tolerances. All dimensions are subject to conventional building industry tolerances for field conditions.

3.3 Notes. The text of these guidelines does not contain notes or footnotes. Additional information, explanations, and advisory materials are located in the Appendix.

3.4 General Terminology.

comply with. Meet one or more specifications of *these guidelines*.

if, if ... then. Denotes a specification that applies only when the conditions described are present.

may. Denotes an option or alternative.

shall. Denotes a mandatory specification or requirement.

should. Denotes an advisory specification or recommendation.

3.5 Definitions.

Access Aisle. An accessible pedestrian space between elements, such as parking spaces, seating, and desks, that provides clearances appropriate for use of the elements.

Accessible. Describes a site, building, facility, or portion thereof that complies with *these guidelines*.

Accessible Element. An *element* specified by *these guidelines* (for example, telephone, controls, and the like).

Accessible Route. A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, *crosswalks at vehicular ways*, walks, ramps, and lifts.

Accessible Space. Space that complies with *these guidelines*.

Adaptability. The ability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of *individuals with or without disabilities* or to accommodate the needs of persons with different types or degrees of disability.

Addition. An *expansion, extension, or increase in the gross floor area of a building or facility*.

Administrative Authority. A governmental agency that adopts or enforces regulations and *guidelines* for the design, construction, or *alteration* of buildings and facilities.

Alteration. An *alteration is a change to a building or facility that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.*

Amusement Attraction. Any facility, or portion of a facility, located within an amusement park or theme park which provides amusement without

3.5 Definitions

the use of an amusement device. Examples include, but are not limited to, fun houses, barrels, and other attractions without seats.

Amusement Ride. *A system that moves persons through a fixed course within a defined area for the purpose of amusement.*

Amusement Ride Seat. *A seat that is built-in or mechanically fastened to an amusement ride intended to be occupied by one or more passengers.*

Area of Rescue Assistance. *An area, which has direct access to an exit, where people who are unable to use stairs may remain temporarily in safety to await further instructions or assistance during emergency evacuation.*

Area of Sport Activity. *That portion of a room or space where the play or practice of a sport occurs.*

Assembly Area. *A room or space accommodating a group of individuals for recreational, educational, political, social, civic, or amusement purposes, or for the consumption of food and drink.*

Automatic Door. *A door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch (see power-assisted door).*

Boarding Pier. *A portion of a pier where a boat is temporarily secured for the purpose of embarking or disembarking.*

Boat Launch Ramp. *A sloped surface designed for launching and retrieving trailered boats and other water craft to and from a body of water.*

Boat Slip. *That portion of a pier, main pier, finger pier, or float where a boat is moored for the purpose of berthing, embarking, or disembarking.*

Building. *Any structure used and intended for supporting or sheltering any use or occupancy.*

Catch Pool. *A pool or designated section of a pool used as a terminus for water slide flumes.*

Circulation Path. *An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.*

Clear. *Unobstructed.*

Clear Floor Space. *The minimum unobstructed floor or ground space required to accommodate a single, stationary wheelchair and occupant.*

Closed Circuit Telephone. *A telephone with dedicated line(s) such as a house phone, courtesy phone or phone that must be used to gain entrance to a facility.*

Common Use. *Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, occupants of a homeless shelter, the occupants of an office building, or the guests of such occupants).*

Cross Slope. *The slope that is perpendicular to the direction of travel (see running slope).*

Curb Ramp. *A short ramp cutting through a curb or built up to it.*

Detectable Warning. *A standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired people of hazards on a circulation path.*

Egress, Means of. *A continuous and unobstructed way of exit travel from any point in a building or facility to a public way. A means of egress comprises vertical and horizontal travel and may include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, horizontal exits, courts and yards. An accessible means of egress is one that complies with these guidelines and does not include stairs, steps, or escalators. Areas of rescue assistance or evacuation elevators*

3.5 Definitions

may be included as part of accessible means of egress.

Element. An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, or water closet.

Elevated Play Component. A play component that is approached above or below grade and that is part of a composite play structure consisting of two or more play components attached or functionally linked to create an integrated unit providing more than one play activity.

Entrance. Any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s) and the hardware of the entry door(s) or gate(s).

Facility. All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

Gangway. A variable-sloped pedestrian walkway that links a fixed structure or land with a floating structure. Gangways which connect to vessels are not included.

Golf Car Passage. A continuous passage on which a motorized golf car can operate.

Ground Floor. Any occupiable floor less than one story above or below grade with direct access to grade. A building or facility always has at least one ground floor and may have more than one ground floor as where a split level entrance has been provided or where a building is built into a hillside.

Ground Level Play Component. A play component that is approached and exited at the ground level.

Mezzanine or Mezzanine Floor. That portion of a story which is an intermediate floor level placed within the story and having occupiable space above and below its floor.

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

Multifamily Dwelling. Any building containing more than two dwelling units.

Occupiable. A room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes, or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation.

Operable Part. A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, push button, handle).

Path of Travel. (Reserved).

Play Area. A portion of a site containing play components designed and constructed for children.

Play Component. An element intended to generate specific opportunities for play, socialization, or learning. Play components may be manufactured or natural, and may be stand alone or part of a composite play structure.

Power-assisted Door. A door used for human passage with a mechanism that helps to open the door, or relieves the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

Private Facility. A place of public accommodation or a commercial facility subject to title III of the ADA and 28 CFR part 36 or a transportation facility subject to title III of the ADA and 49 CFR 37.45.

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Public Facility. *A facility or portion of a facility constructed by, on behalf of, or for the use of a public entity subject to title II of the ADA and 28 CFR part 35 or to title II of the ADA and 49 CFR 37.41 or 37.43.*

Public Use. Describes interior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.

Ramp. A walking surface which has a running slope greater than 1:20.

Running Slope. The slope that is parallel to the direction of travel (see cross slope).

Service Entrance. An entrance intended primarily for delivery of goods or services.

Signage. *Displayed verbal, symbolic, tactile, and pictorial information.*

Site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

Site Improvement. Landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

Sleeping Accommodations. Rooms in which people sleep; for example, dormitory and hotel or motel guest rooms or suites.

Soft Contained Play Structure. *A play structure made up of one or more components where the user enters a fully enclosed play environment that utilizes pliable materials (e.g., plastic, netting, fabric).*

Space. *A definable area, e.g., room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.*

Story. *That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of these guidelines. There may be more than one*

floor level within a story as in the case of a mezzanine or mezzanines.

Structural Frame. The structural frame shall be considered to be the columns and the girders, beams, trusses and spandrels having direct connections to the columns and all other members which are essential to the stability of the building as a whole.

TDD. *(Telecommunication Devices for the Deaf). See text telephone.*

TTY (Tele-Typewriter). *See text telephone.*

Tactile. Describes an object that can be perceived using the sense of touch.

Technically Infeasible. *See 4.1.6(1)(j) EXCEPTION.*

Teeing Ground. *In golf, the starting place for the hole to be played.*

Text Telephone (TTY). *Machinery or equipment that employs interactive text based communications through the transmission of coded signals across the standard telephone network. Text telephones can include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. Text telephones are also called TTYs, an abbreviation for tele-typewriter.*

Transient Lodging.* *A building, facility, or portion thereof, excluding inpatient medical care facilities and residential facilities, that contains sleeping accommodations. Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories.*

Transfer Device. *Equipment designed to facilitate the transfer of a person from a wheelchair or other mobility device to and from an amusement ride seat.*

Transition Plate. *A sloping pedestrian walking surface located at the end(s) of a gangway.*

3.5 Definitions

Use Zone. *The ground level area beneath and immediately adjacent to a play structure or equipment that is designated by ASTM F 1487 Standard Consumer Safety Performance Specification for Playground Equipment for Public Use (incorporated by reference, see 2.3.2) for unrestricted circulation around the equipment and on whose surface it is predicted that a user would land when falling from or exiting the equipment.*

Vehicular Way. A route intended for vehicular traffic, such as a street, driveway, or parking lot.

Walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

4.0 Accessible Elements and Spaces: Scope and Technical Requirements

Note: Sections 4.1.1 through 4.1.7 are different from ANSI A117.1 in their entirety and are printed in standard type (ANSI A117.1 does not include scoping provisions).

4. ACCESSIBLE ELEMENTS AND SPACES: SCOPE AND TECHNICAL REQUIREMENTS.

4.1 Minimum Requirements

4.1.1* Application.

(1) General. All areas of newly designed or newly constructed buildings and facilities and altered portions of existing buildings and facilities shall comply with section 4, unless otherwise provided in this section or as modified in a special application section.

(2) Application Based on Building Use. Special application sections provide additional requirements based on building use. When a building or facility contains more than one use covered by a special application section, each portion shall comply with the requirements for that use.

(3)* Areas Used Only by Employees as Work Areas. Areas that are used only as work areas shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. These guidelines do not require that any areas used only as work areas be constructed to permit maneuvering within the work area or be constructed or equipped (i.e., with racks or shelves) to be accessible.

(4) Temporary Structures. These guidelines cover temporary buildings or facilities as well as permanent facilities. Temporary buildings and facilities are not of permanent construction but are extensively used or are essential for public use for a period of time. Examples of temporary buildings or facilities covered by these guidelines include, but are not limited to: reviewing stands, temporary classrooms, bleacher areas, exhibit

areas, temporary banking facilities, temporary health screening services, or temporary safe pedestrian passageways around a construction site. Structures, sites and equipment directly associated with the actual processes of construction, such as scaffolding, bridging, materials hoists, or construction trailers are not included.

(5) General Exceptions.

(a) In new construction, a person or entity is not required to meet fully the requirements of these guidelines where that person or entity can demonstrate that it is structurally impracticable to do so. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features. If full compliance with the requirements of these guidelines is structurally impracticable, a person or entity shall comply with the requirements to the extent it is not structurally impracticable. Any portion of the building or facility which can be made accessible shall comply to the extent that it is not structurally impracticable.

(b) Accessibility is not required to or in:

(i) raised areas used primarily for purposes of security or life or fire safety, including, but not limited to, observation or lookout galleries, prison guard towers, fire towers, or fixed life guard stands;

(ii) non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, tunnels, or freight (non-passenger) elevators, and frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment; such spaces may include, but are not limited to, elevator pits, elevator penthouses, piping or equipment catwalks, water or sewage treatment pump rooms and stations, electric substations and transformer vaults, and highway and tunnel utility facilities;

(iii) single occupant structures accessed only by a passageway that is below grade or that is

4.1.2 Accessible Sites and Exterior Facilities: New Construction

elevated above standard curb height, including, but not limited to, toll booths accessed from underground tunnels;

(iv) raised structures used solely for refereeing, judging, or scoring a sport;

(v) water slides;

(vi) animal containment areas that are not for public use; or

(vii) raised boxing or wrestling rings.

4.1.2 Accessible Sites and Exterior Facilities: New Construction. An accessible site shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall be provided within the boundary of the site from public transportation stops, accessible parking spaces, passenger loading zones if provided, and public streets or sidewalks, to an accessible building entrance.

(2) (a) At least one accessible route complying with 4.3 shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site.

(b)* Court Sports: An accessible route complying with 4.3 shall directly connect both sides of the court in court sports.

(3) All objects that protrude from surfaces or posts into circulation paths shall comply with 4.4.

EXCEPTION: The requirements of 4.4 shall not apply within an area of sport activity.

(4) Ground surfaces along accessible routes and in accessible spaces shall comply with 4.5.

EXCEPTION 1*: The requirements of 4.5 shall not apply within an area of sport activity.

EXCEPTION 2*: Animal containment areas designed and constructed for public use shall not be required to provide stable, firm, and slip resistant ground and floor surfaces and shall not be required to comply with 4.5.2.

(5) (a) If parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces complying with 4.6 shall be provided in each such parking area in conformance with the table below. Spaces required by the table need not be provided in the particular lot. They may be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience is ensured.

TOTAL PARKING IN LOT	REQUIRED MINIMUM NUMBER OF ACCESSIBLE SPACES
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1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20 plus 1 for each 100 over 1000

Except as provided in (b), access aisles adjacent to accessible spaces shall be 60 in (1525 mm) wide minimum.

(b) One in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 in (2440 mm) wide minimum and shall be designated "van accessible" as required by 4.6.4. The vertical clearance at such spaces shall comply with 4.6.5. All such spaces may be grouped on one level of a parking structure.

EXCEPTION: Provision of all required parking spaces in conformance with "Universal Parking Design" (see appendix A4.6.3) is permitted.

(c) If passenger loading zones are provided, then at least one passenger loading zone shall comply with 4.6.6.

(d) At facilities providing medical care and other services for persons with mobility

4.1.3 Accessible Buildings: New Construction

impairments, parking spaces complying with 4.6 shall be provided in accordance with 4.1.2(5)(a) except as follows:

- (i) Outpatient units and facilities: 10 percent of the total number of parking spaces provided serving each such outpatient unit or facility;
- (ii) Units and facilities that specialize in treatment or services for persons with mobility impairments: 20 percent of the total number of parking spaces provided serving each such unit or facility.
- (e)* Valet parking: Valet parking facilities shall provide a passenger loading zone complying with 4.6.6 located on an accessible route to the entrance of the facility. Paragraphs 5(a), 5(b), and 5(d) of this section do not apply to valet parking facilities.

(6) If toilet facilities are provided on a site, then each such public or common use toilet facility shall comply with 4.22. If bathing facilities are provided on a site, then each such public or common use bathing facility shall comply with 4.23.

For single user portable toilet or bathing units clustered at a single location, at least five percent but no less than one toilet unit or bathing unit complying with 4.22 or 4.23 shall be installed at each cluster whenever typical inaccessible units are provided. Accessible units shall be identified by the International Symbol of Accessibility.

EXCEPTION: Portable toilet units at construction sites used exclusively by construction personnel are not required to comply with 4.1.2(6).

(7) Building Signage. Signs which designate permanent rooms and spaces shall comply with 4.30.1, 4.30.4, 4.30.5 and 4.30.6. Other signs which provide direction to, or information about, functional spaces of the building shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5. Elements and spaces of accessible facilities which shall be identified by the International Symbol of

Accessibility and which shall comply with 4.30.7 are:

- (a) Parking spaces designated as reserved for individuals with disabilities;
- (b) Accessible passenger loading zones;
- (c) Accessible entrances when not all are accessible (inaccessible entrances shall have directional signage to indicate the route to the nearest accessible entrance);
- (d) Accessible toilet and bathing facilities when not all are accessible.

4.1.3 Accessible Buildings: New Construction. Accessible buildings and facilities shall meet the following minimum requirements:

(1) (a) At least one accessible route complying with 4.3 shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility.

(b)* Court Sports: An accessible route complying with 4.3 shall directly connect both sides of the court in court sports.

(2) All objects that overhang or protrude into circulation paths shall comply with 4.4.

EXCEPTION: The requirements of 4.4 shall not apply within an area of sport activity.

(3) Ground and floor surfaces along accessible routes and in accessible rooms and spaces shall comply with 4.5.

EXCEPTION 1*: The requirements of 4.5 shall not apply within an area of sport activity.

EXCEPTION 2*: Animal containment areas designed and constructed for public use shall not be required to provide stable, firm, and slip resistant ground and floor surfaces and shall not be required to comply with 4.5.2.

(4) Interior and exterior stairs connecting levels that are not connected by an elevator, ramp, or

4.1.3 Accessible Buildings: New Construction

other accessible means of vertical access shall comply with 4.9.

(5)* One passenger elevator complying with 4.10 shall serve each level, including mezzanines, in all multi-story buildings and facilities unless exempted below. If more than one elevator is provided, each passenger elevator shall comply with 4.10.

EXCEPTION 1: Elevators are not required in:

(a) private facilities that are less than three stories or that have less than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the Attorney General; or

(b) public facilities that are less than three stories and that are not open to the general public if the story above or below the accessible ground floor houses no more than five persons and is less than 500 square feet. Examples may include, but are not limited to, drawbridge towers and boat traffic towers, lock and dam control stations, and train dispatching towers.

The elevator exemptions set forth in paragraphs (a) and (b) do not obviate or limit in any way the obligation to comply with the other accessibility requirements established in section 4.1.3. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible ground floor. In new construction, if a building or facility is eligible for exemption but a passenger elevator is nonetheless planned, that elevator shall meet the requirements of 4.10 and shall serve each level in the building. A passenger elevator that provides service from a garage to only one level of a building or facility is not required to serve other levels.

EXCEPTION 2: Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks are exempted from this requirement.

EXCEPTION 3: Accessible ramps complying with 4.8 may be used in lieu of an elevator.

EXCEPTION 4: Platform lifts (wheelchair lifts) complying with 4.11 of this guideline and applicable State or local codes may be used in lieu of an elevator only under the following conditions:

(a) To provide an accessible route to a performing area in an assembly occupancy.

(b) To comply with the wheelchair viewing position line-of-sight and dispersion requirements of 4.33.3.

(c) To provide access to incidental occupiable spaces and rooms which are not open to the general public and which house no more than five persons, including but not limited to equipment control rooms and projection booths.

(d) To provide access where existing site constraints or other constraints make use of a ramp or an elevator infeasible.

(e) To provide access to raised judges' benches, clerks' stations, speakers' platforms, jury boxes and witness stands or to depressed areas such as the well of a court.

(f)* To provide access to player seating areas serving an area of sport activity.

EXCEPTION 5: Elevators located in air traffic control towers are not required to serve the cab and the floor immediately below the cab.

(6) Windows: (Reserved).

(7) Doors:

(a) At each accessible entrance to a building or facility, at least one door shall comply with 4.13.

(b) Within a building or facility, at least one door at each accessible space shall comply with 4.13.

(c) Each door that is an element of an accessible route shall comply with 4.13.

4.1.3 Accessible Buildings: New Construction

(d) Each door required by 4.3.10, Egress, shall comply with 4.13.

(8)* The requirements in (a) and (b) below shall be satisfied independently:

(a)(i) At least 50 percent of all public entrances (excluding those in (b) below) shall comply with 4.14. At least one must be a ground floor entrance. Public entrances are any entrances that are not loading or service entrances.

(ii) Accessible public entrances must be provided in a number at least equivalent to the number of exits required by the applicable building or fire codes. (This paragraph does not require an increase in the total number of public entrances planned for a facility.)

(iii) An accessible public entrance must be provided to each tenancy in a facility (for example, individual stores in a strip shopping center).

(iv) In detention and correctional facilities subject to section 12, public entrances that are secured shall be accessible as required by 12.2.1.

One entrance may be considered as meeting more than one of the requirements in (a). Where feasible, accessible public entrances shall be the entrances used by the majority of people visiting or working in the building.

(b)(i) In addition, if direct access is provided for pedestrians from an enclosed parking garage to the building, at least one direct entrance from the garage to the building must be accessible.

(ii) If access is provided for pedestrians from a pedestrian tunnel or elevated walkway, one entrance to the building from each tunnel or walkway must be accessible.

(iii) In judicial, legislative, and regulatory facilities subject to section 11, restricted and secured entrances shall be accessible in the number required by 11.1.1.

One entrance may be considered as meeting more than one of the requirements in (b).

Because entrances also serve as emergency exits whose proximity to all parts of buildings and facilities is essential, it is preferable that all entrances be accessible.

(c) If the only entrance to a building, or tenancy in a facility, is a service entrance, that entrance shall be accessible.

(d) Entrances which are not accessible shall have directional signage complying with 4.30.1, 4.30.2, 4.30.3, and 4.30.5, which indicates the location of the nearest accessible entrance.

(9)* In buildings or facilities, or portions of buildings or facilities, required to be accessible, accessible means of egress shall be provided in the same number as required for exits by local building/life safety regulations. Where a required exit from an occupiable level above or below a level of accessible exit discharge is not accessible, an area of rescue assistance shall be provided on each such level (in a number equal to that of inaccessible required exits). Areas of rescue assistance shall comply with 4.3.11. A horizontal exit, meeting the requirements of local building/life safety regulations, shall satisfy the requirement for an area of rescue assistance.

EXCEPTION: Areas of rescue assistance are not required in buildings or facilities having a supervised automatic sprinkler system.

(10)* Drinking Fountains:

(a) Where only one drinking fountain is provided on a floor there shall be a drinking fountain which is accessible to individuals who use wheelchairs in accordance with 4.15 and one accessible to those who have difficulty bending or stooping. (This can be accommodated by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler; or by such other means as would achieve the required accessibility for each group on each floor.)

4.1.3 Accessible Buildings: New Construction

(b) Where more than one drinking fountain or water cooler is provided on a floor, 50% of those provided shall comply with 4.15 and shall be on an accessible route.

(11) Toilet Facilities: If toilet rooms are provided, then each public and common use toilet room shall comply with 4.22. Other toilet rooms provided for the use of occupants of specific spaces (i.e., a private toilet room for the occupant of a private office) shall be adaptable. If bathing rooms are provided, then each public and common use bathroom shall comply with 4.23. Accessible toilet rooms and bathing facilities shall be on an accessible route.

(12) Storage, Shelving and Display Units:

(a) If fixed or built-in storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions required by 4.25.

(b) Shelves or display units allowing self-service by customers in mercantile occupancies shall be located on an accessible route complying with 4.3. Requirements for accessible reach range do not apply.

(c)* Where lockers are provided in accessible spaces, at least 5 percent, but not less than one, of each type of locker shall comply with 4.25.

(13) Controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements (for example, light switches and dispenser controls) shall comply with 4.27.

EXCEPTION: The requirements of 4.27 shall not apply to exercise machines.

(14) If emergency warning systems are provided, then they shall include both audible alarms and visual alarms complying with 4.28. Sleeping accommodations required to comply with 9.3 shall have an alarm system complying

with 4.28. Emergency warning systems in medical care facilities may be modified to suit standard health care alarm design practice.

(15) Detectable warnings shall be provided at locations as specified in 4.29.

(16) Building Signage:

(a) Signs which designate permanent rooms and spaces shall comply with 4.30.1, 4.30.4, 4.30.5 and 4.30.6.

(b) Other signs which provide direction to or information about functional spaces of the building shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5.

EXCEPTION: Building directories, menus, and all other signs which are temporary are not required to comply.

(17) Public Telephones:

(a) If public pay telephones, public closed circuit telephones, or other public telephones are provided, then they shall comply with 4.31.2 through 4.31.8 to the extent required by the following table:

Number of each type of telephone provided on each floor	Number of telephones required to comply with 4.31.2 through 4.31.8¹
1 or more single unit	1 per floor
1 bank ²	1 per floor
2 or more banks ²	1 per bank. Accessible unit may be installed as a single unit in proximity (either visible or with signage) to the bank. At least one public telephone per floor shall meet the requirements for a forward reach telephone ³

¹ Additional public telephones may be installed at any height. Unless otherwise specified, accessible

4.1.3 Accessible Buildings: New Construction

telephones may be either forward or side reach telephones.

² A bank consists of two or more adjacent public telephones, often installed as a unit.

³ EXCEPTION: For exterior installations only, if dial tone first service is available, then a side reach telephone may be installed instead of the required forward reach telephone.

(b)* All telephones required to be accessible and complying with 4.31.2 through 4.31.8 shall be equipped with a volume control. In addition, 25 percent, but never less than one, of all other public telephones provided shall be equipped with a volume control and shall be dispersed among all types of public telephones, including closed circuit telephones, throughout the building or facility. Signage complying with applicable provisions of 4.30.7 shall be provided.

(c) The following shall be provided in accordance with 4.31.9:

(i) If four or more public pay telephones (including both interior and exterior telephones) are provided at a site of a private facility, and at least one is in an interior location, then at least one interior public text telephone (TTY) shall be provided. If an interior public pay telephone is provided in a public use area in a building of a public facility, at least one interior public text telephone (TTY) shall be provided in the building in a public use area.

(ii) If an interior public pay telephone is provided in a private facility that is a stadium or arena, a convention center, a hotel with a convention center, or a covered mall, at least one interior public text telephone (TTY) shall be provided in the facility. In stadiums, arenas and convention centers which are public facilities, at least one public text telephone (TTY) shall be provided on each floor level having at least one interior public pay telephone.

(iii) If a public pay telephone is located in or adjacent to a hospital emergency room, hospital recovery room, or hospital waiting room,

one public text telephone (TTY) shall be provided at each such location.

(iv) If an interior public pay telephone is provided in the secured area of a detention or correctional facility subject to section 12, then at least one public text telephone (TTY) shall also be provided in at least one secured area. Secured areas are those areas used only by detainees or inmates and security personnel.

(d) Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet in compliance with 4.31.9(2).

EXCEPTION: This requirement does not apply to the secured areas of detention or correctional facilities where shelves and outlets are prohibited for purposes of security or safety.

(18) If fixed or built-in seating or tables (including, but not limited to, study carrels and student laboratory stations), are provided in accessible public or common use areas, at least five percent (5%), but not less than one, of the fixed or built-in seating areas or tables shall comply with 4.32. An accessible route shall lead to and through such fixed or built-in seating areas, or tables.

(19)* Assembly Areas:

(a) In places of assembly with fixed seating accessible wheelchair locations shall comply with 4.33.2, 4.33.3, and 4.33.4 and shall be provided consistent with the following table:

Capacity of Seating in Assembly Areas	Number of Required Wheelchair Locations
4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6 plus 1 additional space for each total seating capacity increase of 100

4.1.5 Accessible Buildings: Additions

In addition, one percent, but not less than one, of all fixed seats shall be aisle seats with no armrests on the aisle side, or removable or folding armrests on the aisle side. Each such seat shall be identified by a sign or marker. Signage notifying patrons of the availability of such seats shall be posted at the ticket office. Aisle seats are not required to comply with 4.33.4.

(b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movie theaters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with applicable provisions of 4.30 shall be installed to notify patrons of the availability of a listening system.

(c) Where a team or player seating area contains fixed seats and serves an area of sport activity, the seating area shall contain the number of wheelchair spaces required by 4.1.3(19)(a), but not less than one wheelchair space. Wheelchair spaces shall comply with 4.33.2, 4.33.3, 4.33.4, and 4.33.5.

EXCEPTION 1: Wheelchair spaces in team or player seating areas shall not be required to provide a choice of admission price or lines of sight comparable to those for members of the general public.

EXCEPTION 2: This provision shall not apply to team or player seating areas serving bowling lanes not required to be accessible by 15.7.2.

(20) Where automated teller machines (ATMs) are provided, each ATM shall comply with the

requirements of 4.34 except where two or more are provided at a location, then only one must comply.

EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.27.2, 4.27.3 and 4.34.3.

(21) Where dressing, fitting, or locker rooms are provided, the rooms shall comply with 4.35.

EXCEPTION: Where dressing, fitting, or locker rooms are provided in a cluster, at least 5 percent, but not less than one, of the rooms for each type of use in each cluster shall comply with 4.35.

(22) Where saunas or steam rooms are provided, the rooms shall comply with 4.36.

EXCEPTION: Where saunas or steam rooms are provided in a cluster, at least 5 percent, but not less than one, of the rooms for each type of use in each cluster shall comply with 4.36.

4.1.4 (Reserved)

4.1.5 Accessible Buildings: Additions. Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of 4.1.1 to 4.1.3, Minimum Requirements (for New Construction) and the applicable technical specifications of section 4 and the special application sections. Each addition that affects or could affect the usability of an area containing a primary function shall comply with 4.1.6(2).

4.35 Dressing, Fitting, and Locker Rooms

4.34.5 Equipment for Persons with Vision Impairments. Instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments.

4.35 Dressing, Fitting, and Locker Rooms.

4.35.1 General. Dressing, fitting, and locker rooms required to be accessible by 4.1 shall comply with 4.35 and shall be on an accessible route.

4.35.2 Clear Floor Space. A clear floor space allowing a person using a wheelchair to make a 180-degree turn shall be provided in every accessible dressing room entered through a swinging or sliding door. No door shall swing into any part of the turning space. Turning space shall not be required in a private dressing room entered through a curtained opening at least 32 in (815 mm) wide if clear floor space complying with section 4.2 renders the dressing room usable by a person using a wheelchair.

4.35.3 Doors. All doors to accessible dressing rooms shall be in compliance with section 4.13.

4.35.4 Bench. A bench complying with 4.37 shall be provided within the room.

4.35.5 Mirror. Where mirrors are provided in dressing rooms of the same use, then in an accessible dressing room, a full-length mirror, measuring at least 18 in wide by 54 in high (460 mm by 1370 mm), shall be mounted in a position affording a view to a person on the bench as well as to a person in a standing position.

4.36 Saunas and Steam Rooms.

4.36.1 General. Saunas and steam rooms required to be accessible by 4.1 shall comply with 4.36.

4.36.2* Wheelchair Turning Space. A wheelchair turning space complying with 4.2.3 shall be provided within the room.

EXCEPTION: Wheelchair turning space shall be permitted to be obstructed by readily removable seats.

4.36.3 Sauna and Steam Room Bench. Where seating is provided, at least one bench shall be provided and shall comply with 4.37.

4.36.4 Door Swing. Doors shall not swing into any part of the clear floor or ground space required at a bench complying with 4.37.

4.37 Benches.

4.37.1 General. Benches required to be accessible by 4.1 shall comply with 4.37.

4.37.2 Clear Floor or Ground Space. Clear floor or ground space complying with 4.2.4 shall be provided and shall be positioned for parallel approach to a short end of a bench seat.

EXCEPTION: Clear floor or ground space required by 4.37.2 shall be permitted to be obstructed by readily removable seats in saunas and steam rooms.

4.37.3* Size. Benches shall be fixed and shall have seats that are 20 inches (510 mm) minimum to 24 inches (610 mm) maximum in depth and 42 inches (1065 mm) minimum in length (see Fig. 47).

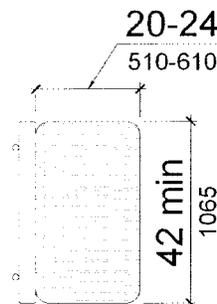


Fig. 47
Size of Bench

4.37 Benches

4.37.4 Back Support. Benches shall have back support that is 42 inches (1065 mm) minimum in length and that extends from a point 2 inches (51 mm) maximum above the seat to a point 18 inches (455 mm) minimum above the seat (see Fig. 48).

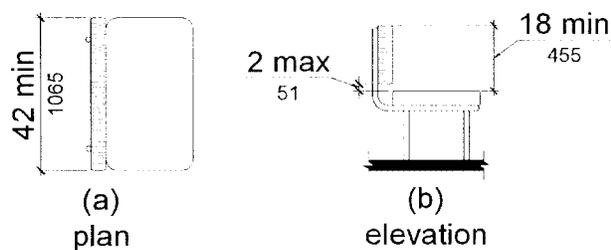


Fig. 48
Bench Back Support

4.37.5 Seat Height. Bench seats shall be 17 inches (430 mm) minimum to 19 inches (485 mm) maximum above the floor or ground.

4.37.6 Structural Strength. Allowable stresses shall not be exceeded for materials used when a vertical or horizontal force of 250 lbs. (1112 N) is applied at any point on the seat, fastener, mounting device, or supporting structure.

4.37.7 Wet Locations. The surface of benches installed in wet locations shall be slip-resistant and shall not accumulate water.

12.6 Visible Alarms and Telephones

back support (e.g., attachment to wall). The structural strength of the bench attachments shall comply with 4.26.3.

(7) Storage. Fixed or built-in storage facilities, such as cabinets, shelves, closets, and drawers, shall contain storage space complying with 4.25.

(8) Controls. All controls intended for operation by inmates shall comply with 4.27.

(9) Accommodations for persons with hearing impairments required by 12.4.3 and complying with 12.6 shall be provided in accessible cells or rooms.

12.6 Visible Alarms and Telephones. Where audible emergency warning systems are provided to serve the occupants of holding or housing cells or rooms, visual alarms complying with 4.28.4 shall be provided. Where permanently installed telephones are provided within holding or housing cells or rooms, they shall have volume controls complying with 4.31.5.

EXCEPTION: Visual alarms are not required where inmates or detainees are not allowed independent means of egress.

**13. RESIDENTIAL HOUSING.
(Reserved).**

**14. PUBLIC RIGHTS-OF-WAY.
(Reserved).**

15. RECREATION FACILITIES.

Newly designed or newly constructed and altered recreation facilities shall comply with the applicable requirements of section 4 and the special application sections, except as modified or otherwise provided in this section.

15.1* Amusement Rides.

15.1.1 General. Newly designed or newly constructed and altered amusement rides shall comply with 15.1.

EXCEPTION 1*: Mobile or portable amusement rides shall not be required to comply with 15.1.

EXCEPTION 2*: Amusement rides which are controlled or operated by the rider shall be required to comply only with 15.1.4 and 15.1.5.

EXCEPTION 3*: Amusement rides designed primarily for children, where children are assisted on and off the ride by an adult, shall be required to comply only with 15.1.4 and 15.1.5.

EXCEPTION 4: Amusement rides without amusement ride seats shall be required to comply only with 15.1.4 and 15.1.5.

15.1.2* Alterations to Amusement Rides. A modification to an existing amusement ride is an alteration subject to 15.1 if one or more of the following conditions apply:

(1) The amusement ride's structural or operational characteristics are changed to the extent that the ride's performance differs from that specified by the manufacturer or the original design criteria; or

(2) The load and unload area of the amusement ride is newly designed and constructed.

15.1.3 Number Required. Each amusement ride shall provide at least one wheelchair space complying with 15.1.7, or at least one amusement ride seat designed for transfer complying with 15.1.8, or at least one transfer device complying with 15.1.9.

15.1.4* Accessible Route. When in the load and unload position, amusement rides required to comply with 15.1 shall be served by an accessible route complying with 4.3. Any part of an accessible route serving amusement rides with a slope greater than 1:20 shall be considered a ramp and shall comply with 4.8.

15.1 Amusement Rides

EXCEPTION 1: The maximum slope specified in 4.8.2 shall not apply in the load and unload areas or on the amusement ride where compliance is structurally or operationally infeasible, provided that the slope of the ramp shall not exceed 1:8.

EXCEPTION 2: Handrails shall not be required in the load and unload areas or on the amusement ride where compliance is structurally or operationally infeasible.

EXCEPTION 3: Limited-use/limited-application elevators and platform lifts complying with 4.11 shall be permitted to be part of an accessible route serving the load and unload area.

15.1.5 Load and Unload Areas. Load and unload areas serving amusement rides required to comply with 15.1 shall provide a maneuvering space complying with 4.2.3. The maneuvering space shall have a slope not steeper than 1:48.

15.1.6 Signage. Signage shall be provided at the entrance of the queue or waiting line for each amusement ride to identify the type of access provided. Where an accessible unload area also serves as the accessible load area, signage shall be provided at the entrance to the queue or waiting line indicating the location of the accessible load and unload area.

15.1.7 Amusement Rides with Wheelchair Spaces. Amusement rides with wheelchair spaces shall comply with 15.1.7.

15.1.7.1 Floor or Ground Surface. The floor or ground surface of wheelchair spaces shall comply with 15.1.7.1.

15.1.7.1.1 Slope. The floor or ground surface of wheelchair spaces shall have a slope not steeper than 1:48 when in the load and unload position and shall be stable and firm.

15.1.7.1.2* Gaps. Floors of amusement rides with wheelchair spaces and floors of load and unload areas shall be coordinated so that, when the amusement rides are at rest in the load and unload position, the vertical difference between the floors shall be within plus or minus 5/8 inches

(16 mm) and the horizontal gap shall be no greater than 3 inches (75 mm) under normal passenger load conditions.

EXCEPTION: Where compliance is not operationally or structurally feasible, ramps, bridge plates, or similar devices complying with the applicable requirements of 36 CFR 1192.83(c) shall be provided.

15.1.7.2 Clearances. Clearances for wheelchair spaces shall comply with 15.1.7.2.

EXCEPTION 1: Where provided, securement devices shall be permitted to overlap required clearances.

EXCEPTION 2: Wheelchair spaces shall be permitted to be mechanically or manually repositioned.

EXCEPTION 3*: Wheelchair spaces shall not be required to comply with 4.4.2.

15.1.7.2.1 Width and Length. Wheelchair spaces shall provide a clear width of 30 inches (760 mm) minimum and a clear length of 48 inches (1220 mm) minimum measured to 9 inches (230 mm) minimum above the floor surface.

15.1.7.2.2* Wheelchair Spaces - Side Entry. Where the wheelchair space can be entered only from the side, the ride shall be designed to permit sufficient maneuvering space for individuals using a wheelchair or mobility device to enter and exit the ride.

15.1.7.2.3 Protrusions in Wheelchair Spaces. Objects are permitted to protrude a distance of 6 inches (150 mm) maximum along the front of the wheelchair space where located 9 inches (230 mm) minimum and 27 inches (685 mm) maximum above the floor or ground surface of the wheelchair space. Objects are permitted to protrude a distance of 25 inches (635 mm) maximum along the front of the wheelchair space, where located more than 27 inches (685 mm) above the floor or ground surface of the wheelchair space (see Fig. 58).

15.1 Amusement Rides

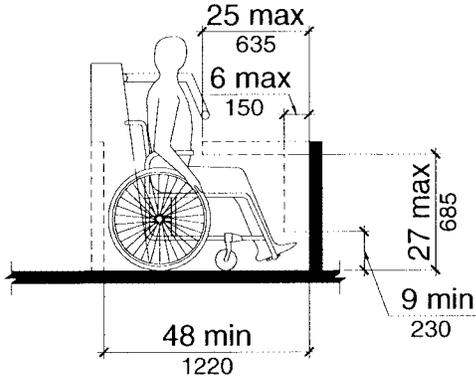


Fig. 58
Protrusions in Wheelchair Spaces

15.1.7.3 Openings. Where openings are provided to access wheelchair spaces on amusement rides, the entry shall provide a 32 inch (815 mm) minimum clear opening.

15.1.7.4 Approach. One side of the wheelchair space shall adjoin an accessible route.

15.1.7.5 Companion Seats. Where the interior width of the amusement ride is greater than 53 inches (1346 mm), seating is provided for more than one rider, and the wheelchair is not required to be centered within the amusement ride, a companion seat shall be provided for each wheelchair space.

15.1.7.5.1 Shoulder-to-Shoulder Seating. Where an amusement ride provides shoulder-to-shoulder seating, companion seats shall be shoulder-to-shoulder with the adjacent wheelchair space.

EXCEPTION: Where shoulder-to-shoulder companion seating is not operationally or structurally feasible, compliance with this provision shall be required to the maximum extent feasible.

15.1.8* Amusement Ride Seats Designed for Transfer. Amusement ride seats designed for transfer shall comply with 15.1.8 when positioned for loading and unloading.

15.1.8.1 Clear Floor or Ground Space. Clear floor or ground space complying with 4.2.4 shall be provided in the load and unload area adjacent to the amusement ride seats designed for transfer.

15.1.8.2 Transfer Height. The height of the amusement ride seats shall be 14 inches (355 mm) minimum to 24 inches (610mm) maximum measured above the load and unload surface.

15.1.8.3 Transfer Entry. Where openings are provided to transfer to amusement ride seats, the space shall be designed to provide clearance for transfer from a wheelchair or mobility device to the amusement ride seat.

15.1.8.4 Wheelchair Storage Space. Wheelchair storage spaces complying with 4.2.4 shall be provided in or adjacent to unload areas for each required amusement ride seat designed for transfer and shall not overlap any required means of egress or accessible route.

15.1.9* Transfer Devices for Use with Amusement Rides. Transfer devices for use with amusement rides shall comply with 15.1.9 when positioned for loading and unloading.

15.1.9.1 Clear Floor or Ground Space. Clear floor or ground space complying with 4.2.4 shall be provided in the load and unload area adjacent to the transfer devices.

15.1.9.2 Transfer Height. The height of the transfer device seats shall be 14 inches (355 mm) minimum to 24 inches (610 mm) maximum measured above the load and unload surface.

15.1.9.3 Wheelchair Storage Space. Wheelchair storage spaces complying with 4.2.4 shall be provided in or adjacent to unload areas for each required transfer device and shall not overlap any required means of egress or accessible route.

15.2 Boating Facilities

15.2 Boating Facilities.

15.2.1 General. Newly designed or newly constructed and altered boating facilities shall comply with 15.2.

15.2.2* Accessible Route. Accessible routes, including gangways that are part of accessible routes, shall comply with 4.3.

EXCEPTION 1: Where an existing gangway or series of gangways is replaced or altered, an increase in the length of the gangway is not required to comply with 15.2.2, unless required by 4.1.6(2).

EXCEPTION 2: The maximum rise specified in 4.8.2 shall not apply to gangways.

EXCEPTION 3: Where the total length of the gangway or series of gangways serving as part of a required accessible route is at least 80 feet (24 m), the maximum slope specified in 4.8.2 shall not apply to the gangways.

EXCEPTION 4: In facilities containing fewer than 25 boat slips and where the total length of the gangways or series of gangways serving as part of a required accessible route is at least 30 feet (9140 mm), the maximum slope specified in 4.8.2 shall not apply to the gangways.

EXCEPTION 5: Where gangways connect to transition plates, landings specified by 4.8.4 shall not be required.

EXCEPTION 6: Where gangways and transition plates connect and are required to have handrails, handrail extensions specified by 4.8.5 shall not be required. Where handrail extensions are provided on gangways or transition plates, such extensions are not required to be parallel with the ground or floor surface.

EXCEPTION 7: The cross slope of gangways, transition plates, and floating piers that are part of an accessible route shall be 1:50 maximum measured in the static position.

EXCEPTION 8: Limited-use/limited-application elevators or platform lifts complying with 4.11 shall be permitted in lieu of gangways complying with 4.3.

15.2.3* Boat Slips: Minimum Number. Where boat slips are provided, boat slips complying with 15.2.5 shall be provided in accordance with Table 15.2.3. Where the number of boat slips is not identified, each 40 feet (12 m) of boat slip edge provided along the perimeter of the pier shall be counted as one boat slip for the purpose of this section.

Table 15.2.3

Total Boat Slips in Facility	Minimum Number of Required Accessible Boat Slips
1 to 25	1
26 to 50	2
51 to 100	3
101 to 150	4
151 to 300	5
301 to 400	6
401 to 500	7
501 to 600	8
601 to 700	9
701 to 800	10
801 to 900	11
901 to 1000	12
1001 and over	12 plus 1 for each 100 or fraction thereof over 1000

15.2.3.1* Dispersion. Accessible boat slips shall be dispersed throughout the various types of slips provided. This provision does not require an increase in the minimum number of boat slips required to be accessible.

15.2.4* Boarding Piers at Boat Launch Ramps. Where boarding piers are provided at boat launch ramps, at least 5 percent, but not less than one of the boarding piers shall comply with 15.2.4 and shall be served by an accessible route complying with 4.3.

15.2 Boating Facilities

EXCEPTION 1: Accessible routes serving floating boarding piers shall be permitted to use exceptions 1, 2, 5, 6, 7, and 8 in 15.2.2.

EXCEPTION 2: Where the total length of the gangway or series of gangways serving as part of a required accessible route is at least 30 feet (9140 mm), the maximum slope specified by 4.8.2 shall not apply to the gangways.

EXCEPTION 3: Where the accessible route serving a floating boarding pier or skid pier is located within a boat launch ramp, the portion of the accessible route located within the boat launch ramp shall not be required to comply with 4.8.

15.2.4.1* Boarding Pier Clearances. The entire length of the piers shall comply with 15.2.5.

15.2.5* Accessible Boat Slips. Accessible boat slips shall comply with 15.2.5.

15.2.5.1 Clearances. Accessible boat slips shall be served by clear pier space 60 inches (1525 mm) wide minimum and at least as long as the accessible boat slips. Every 10 feet (3050 mm) maximum of linear pier edge serving the accessible boat slips shall contain at least one continuous clear opening 60 inches (1525 mm) minimum in width (see Fig. 59).

EXCEPTION 1: The width of the clear pier space shall be permitted to be 36 inches (915 mm) minimum for a length of 24 inches (610 mm) maximum, provided that multiple 36 inch (915 mm) wide segments are separated by segments that are 60 inches (1525 mm) minimum clear in width and 60 inches (1525 mm) minimum clear in length (see Fig. 60).

EXCEPTION 2: Edge protection 4 inches (100 mm) high maximum and 2 inches (51 mm) deep maximum shall be permitted at the continuous clear openings (see Fig. 61).

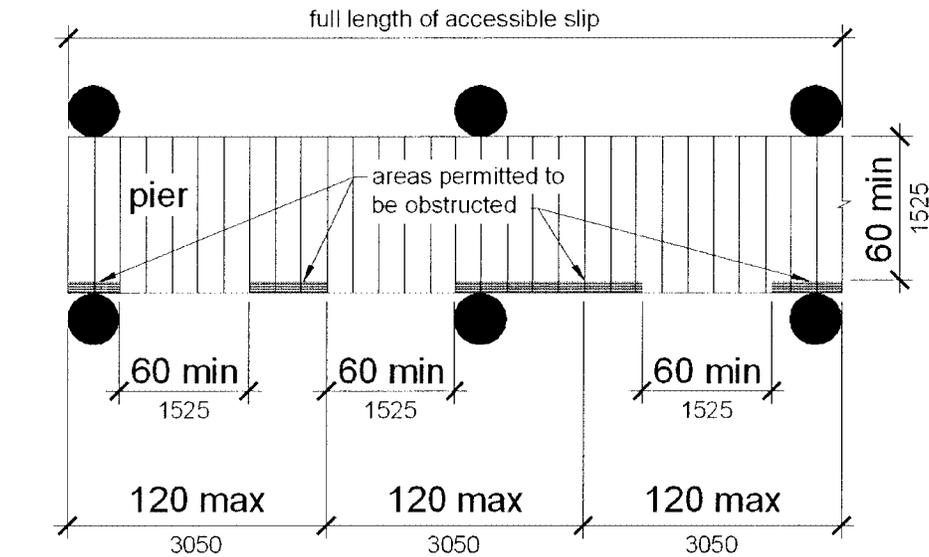


Fig. 59
Pier Clearances

15.3 Fishing Piers and Platforms

EXCEPTION 3*: In alterations to existing facilities, clear pier space shall be permitted to be located perpendicular to the boat slip and shall extend the width of the boat slip, where the facility has at least one boat slip complying with 15.2.5, and further compliance with 15.2.5 would result in a reduction in the number of boat slips available or result in a reduction of the widths of existing slips.

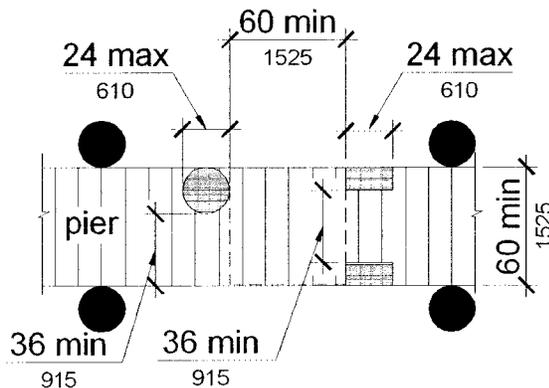


Fig. 60
Pier Clear Space Reduction

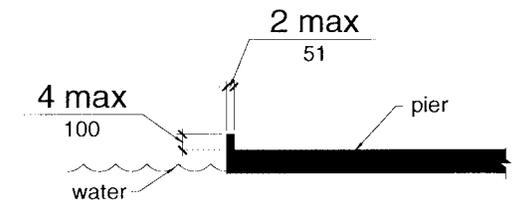


Fig. 61
Edge Protection at Pier

15.2.5.2 Cleats and Other Boat Securement Devices. Cleats and other boat securement devices shall not be required to comply with 4.27.3.

15.3 Fishing Piers and Platforms.

15.3.1 General. Newly designed or newly constructed and altered fishing piers and platforms shall comply with 15.3.

15.3.2 Accessible Route. Accessible routes, including gangways that are part of accessible routes, serving fishing piers and platforms shall comply with 4.3.

EXCEPTION 1: Accessible routes serving floating fishing piers and platforms shall be permitted to use exceptions 1, 2, 5, 6, 7, and 8 in 15.2.2.

EXCEPTION 2*: Where the total length of the gangway or series of gangways serving as part of a required accessible route is at least 30 feet (9140 mm), the maximum slope specified by 4.8.2 shall not apply to the gangways.

15.3.3 Railings. Where railings, guards, or handrails are provided, they shall comply with 15.3.3.

15.3.3.1* Edge Protection. Edge protection shall be provided and shall extend 2 inches (51 mm) minimum above the ground or deck surface.

EXCEPTION: Where the railing, guard, or handrail is 34 inches (865 mm) or less above the ground or deck surface, edge protection shall not be required if the deck surface extends 12 inches (305 mm) minimum beyond the inside face of the railing. Toe clearance shall be 9 inches (230 mm) minimum above the ground or deck surface beyond the railing. Toe clearance shall be 30 inches (760 mm) minimum wide (see Fig. 62).

15.3.3.2 Height. At least 25 percent of the railings, guards, or handrails shall be 34 inches (865 mm) maximum above the ground or deck surface.

EXCEPTION: This provision shall not apply to that portion of a fishing pier or platform where a guard which complies with sections 1003.2.12.1 (Height) and 1003.2.12.2 (Opening limitations) of the International Building Code (incorporated by reference, see 2.3.2) is provided.

15.4 Golf

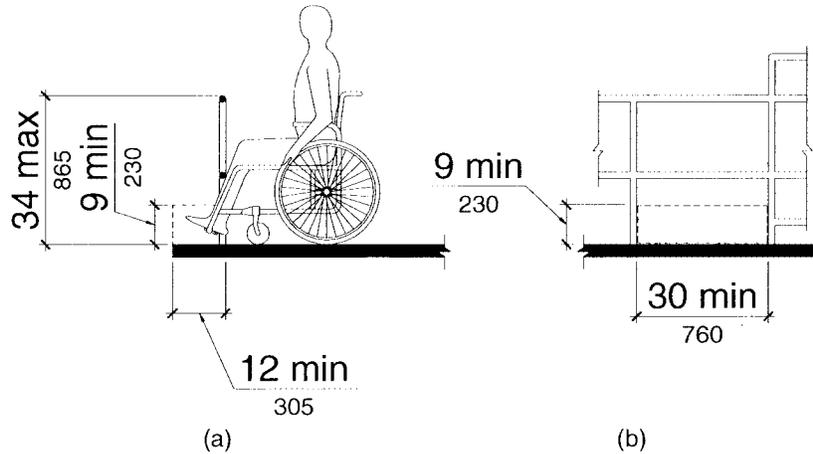


Fig. 62
Edge Protection at Fishing Piers

15.3.3.3* Dispersion. Railings required to comply with 15.3.3.2 shall be dispersed throughout a fishing pier or platform.

15.3.4 Clear Floor or Ground Space. At least one clear floor or ground space complying with 4.2.4 shall be provided where the railing height required by 15.3.3.2 is located. Where no railings are provided, at least one clear floor or ground space complying with 4.2.4 shall be provided.

15.3.5 Maneuvering Space. At least one maneuvering space complying with 4.2.3 shall be provided on the fishing pier or platform.

15.4 Golf.

15.4.1 General. Newly designed or newly constructed and altered golf courses, driving ranges, practice putting greens, and practice teeing grounds shall comply with 15.4.

15.4.2* Accessible Route - Golf Course. An accessible route shall connect accessible elements and spaces within the boundary of the golf course.

In addition, an accessible route shall connect the golf car rental area, bag drop areas, practice putting greens, accessible practice teeing grounds, course toilet rooms, and course weather shelters. The accessible route required by this section shall be 48 inches (1220 mm) minimum wide. Where handrails are provided, the accessible route shall be 60 inches (1525 mm) minimum wide.

EXCEPTION 1: A golf car passage complying with 15.4.7 shall be permitted in lieu of all or part of an accessible route required by 15.4.2.

EXCEPTION 2: The handrail requirements of 4.8.5 shall not apply to an accessible route located within the boundary of a golf course.

15.4.3* Accessible Route - Driving Ranges. An accessible route shall connect accessible teeing stations at driving ranges with accessible parking spaces and shall be 48 inches (1220 mm) wide minimum. Where handrails are provided, the accessible route shall be 60 inches (1525 mm) wide minimum.

15.5 Miniature Golf

EXCEPTION: A golf car passage complying with 15.4.7 shall be permitted in lieu of all or part of an accessible route required by 15.4.3.

15.4.4 Teeing Grounds. Teeing grounds shall comply with 15.4.4.

15.4.4.1 Number Required. Where one or two teeing grounds are provided for a hole, at least one teeing ground serving the hole shall comply with 15.4.4.3. Where three or more teeing grounds are provided for a hole, at least two teeing grounds shall comply with 15.4.4.3.

15.4.4.2 Forward Teeing Ground. The forward teeing ground shall be accessible.

EXCEPTION: In alterations, the forward teeing ground shall not be required to be accessible where compliance is not feasible due to terrain.

15.4.4.3 Teeing Grounds. Teeing grounds required by 15.4.4.1 and 15.4.4.2 shall be designed and constructed so that a golf car can enter and exit the teeing ground.

15.4.5 Teeing Stations at Driving Ranges and Practice Teeing Grounds. Where teeing stations or practice teeing grounds are provided, at least 5 percent of the practice teeing stations or practice teeing grounds, but not less than one, shall comply with 15.4.4.3.

15.4.6 Weather Shelters. Where weather shelters are provided on a golf course, each weather shelter shall have a clear floor or ground space 60 inches (1525 mm) minimum by 96 inches (2440 mm) minimum and shall be designed and constructed so that a golf car can enter and exit.

15.4.7 Golf Car Passage. Where curbs or other constructed barriers are provided along a golf car passage to prohibit golf cars from entering a fairway, openings at least 60 inches (1525 mm) wide shall be provided at intervals not to exceed 75 yds (69 m).

15.4.7.1 Width. The golf car passage shall be 48 inches (1220 mm) minimum wide.

15.4.8 Putting Greens. Each putting green shall be designed and constructed so that a golf car can enter and exit the putting green.

15.5* Miniature Golf.

15.5.1 General. Newly designed or newly constructed and altered miniature golf courses shall comply with 15.5.

15.5.2 Accessible Holes. At least fifty percent of holes on a miniature golf course shall comply with 15.5.3 through 15.5.5 and shall be consecutive.

EXCEPTION: One break in the sequence of consecutive accessible holes shall be permitted, provided that the last hole on a miniature golf course is the last hole in the sequence.

15.5.3* Accessible Route. An accessible route complying with 4.3 shall connect the course entrance with the first accessible hole and the start of play area on each accessible hole. The course shall be configured to allow exit from the last accessible hole to the course exit or entrance and shall not require travel back through other holes.

15.5.3.1 Accessible Route - Located On the Playing Surface. Where the accessible route is located on the playing surface of the accessible hole, exceptions 1-5 shall be permitted.

EXCEPTION 1: Where carpet is provided, the requirements of 4.5.3 shall not apply.

EXCEPTION 2: Where the accessible route intersects the playing surface of a hole, a 1 inch (26 mm) maximum curb shall be permitted for a width of 32 inches (815 mm) minimum.

EXCEPTION 3: A slope of 1:4 maximum for a 4 inch (100 mm) maximum rise shall be permitted.

EXCEPTION 4: Landings required by 4.8.4 shall be permitted to be 48 inches (1220 mm) in length minimum. Landing size required by 4.8.4(3) shall be permitted to be 48 inches (1220 mm) minimum by 60 inches (1525 mm) minimum.

15.6 Play Areas

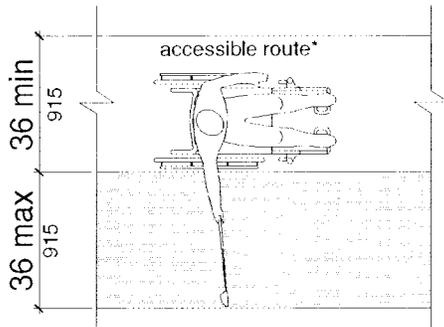
Landing slopes shall be permitted to be 1:20 maximum.

EXCEPTION 5: Handrail requirements of 4.8.5 shall not apply.

15.5.3.2 Accessible Route - Adjacent to the Playing Surface. Where the accessible route is located adjacent to the playing surface, the requirements of 4.3 shall apply.

15.5.4 Start of Play Areas. Start of play areas at holes required to comply with 15.5.2 shall have a slope not steeper than 1:48 and shall be 48 inches (1220 mm) minimum by 60 inches (1525 mm) minimum.

15.5.5* Golf Club Reach Range. All areas within accessible holes where golf balls rest shall be within 36 inches (915 mm) maximum of an accessible route having a maximum slope of 1:20 for 48 inches (1220 mm) in length (see Fig. 63).



*Note: 1:20 maximum slope

Fig. 63
Golf Club Reach Range

15.6 Play Areas.

15.6.1* General. Newly designed and newly constructed play areas for children ages 2 and over and altered portions of existing play areas shall comply with the applicable provisions of section 4, except as modified or otherwise provided by this section. Where separate play

areas are provided within a site for specified age groups, each play area shall comply with this section. Where play areas are designed or constructed in phases, this section shall be applied so that when each successive addition is completed, the entire play area complies with all the applicable provisions of this section.

EXCEPTION 1: Play areas located in family child care facilities where the proprietor actually resides shall not be required to comply with 15.6.

EXCEPTION 2: Where play components are relocated in existing play areas for the purpose of creating safe use zones, 15.6 shall not apply, provided that the ground surface is not changed or extended for more than one use zone.

EXCEPTION 3: Where play components are altered and the ground surface is not altered, the ground surface shall not be required to comply with 15.6.7, unless required by 4.1.6(2).

EXCEPTION 4: The provisions of 15.6.1 through 15.6.7 shall not apply to amusement attractions.

EXCEPTION 5: Compliance with 4.4 shall not be required within the boundary of the play area.

EXCEPTION 6: Stairs shall not be required to comply with 4.9.

15.6.2* Ground Level Play Components.

Ground level play components shall be provided in the number and types required by 15.6.2.1 and 15.6.2.2. Ground level play components that are provided to comply with 15.6.2.1 shall be permitted to satisfy the number required by 15.6.2.2, provided that the minimum required types of play components are provided. Where more than one ground level play component required by 15.6.2.1 and 15.6.2.2 is provided, the play components shall be integrated in the play area.

15.6.2.1 General. Where ground level play components are provided, at least one of each type provided shall be located on an accessible route complying with 15.6.4 and shall comply with 15.6.6.

15.6 Play Areas

15.6.2.2 Additional Number and Types. Where elevated play components are provided, ground level play components shall be provided in accordance with Table 15.6.2.2. Ground level play components required by 15.6.2.2 shall be located on an accessible route complying with 15.6.4 and shall comply with 15.6.6.

EXCEPTION: If at least 50 percent of the elevated play components are connected by a ramp, and if at least 3 of the elevated play components connected by the ramp are different types of play components, 15.6.2.2 shall not apply.

15.6.3* Elevated Play Components. Where elevated play components are provided, at least 50 percent shall be located on an accessible route complying with 15.6.4. Elevated play components connected by a ramp shall comply with 15.6.6.

15.6.4* Accessible Routes. At least one accessible route complying with 4.3, as modified by 15.6.4, shall be provided.

EXCEPTION 1: Transfer systems complying with 15.6.5 shall be permitted to connect elevated play components, except where 20 or more elevated play components are provided, no more than 25 percent of the elevated play components shall be permitted to be connected by transfer systems.

EXCEPTION 2: Where transfer systems are provided, an elevated play component shall be permitted to connect to another elevated play component in lieu of an accessible route.

EXCEPTION 3: Platform lifts (wheelchair lifts) complying with 4.11 and applicable State or local codes shall be permitted to be used as part of an accessible route.

Table 15.6.2.2 Number and Types of Ground Level Play Components Required to be on Accessible Route

Number of Elevated Play Components Provided	Minimum Number of Ground Level Play Components Required to be on Accessible Route	Minimum Number of Different Types of Ground Level Play Components Required to be on Accessible Route
1	Not applicable	Not applicable
2 to 4	1	1
5 to 7	2	2
8 to 10	3	3
11 to 13	4	3
14 to 16	5	3
17 to 19	6	3
20 to 22	7	4
23 to 25	8	4
More than 25	8 plus 1 for each additional 3 over 25, or fraction thereof	5

15.6 Play Areas

15.6.4.1 Location. Accessible routes shall be located within the boundary of the play area and shall connect ground level play components as required by 15.6.2.1 and 15.6.2.2 and elevated play components as required by 15.6.3, including entry and exit points of the play components.

15.6.4.2 Protrusions. Objects shall not protrude into ground level accessible routes at or below 80 in (2030 mm) above the ground or floor surface.

15.6.4.3 Clear Width. The clear width of accessible routes within play areas shall comply with 15.6.4.3.

15.6.4.3.1 Ground Level. The clear width of accessible routes at ground level shall be 60 in (1525 mm) minimum.

EXCEPTION 1: In play areas less than 1,000 square feet, the clear width of accessible routes shall be permitted to be 44 in (1120 mm) minimum, provided that at least one turning space complying with 4.2.3 is provided where the restricted accessible route exceeds 30 feet (9.14 m) in length.

EXCEPTION 2: The clear width of accessible routes shall be permitted to be 36 in (915 mm) minimum for a distance of 60 in (1525 mm) maximum, provided that multiple reduced width segments are separated by segments that are 60 in (1525 mm) minimum in width and 60 in (1525 mm) minimum in length.

15.6.4.3.2 Elevated. The clear width of accessible routes connecting elevated play components shall be 36 in (915 mm).

EXCEPTION 1: The clear width of accessible routes connecting elevated play components shall be permitted to be reduced to 32 in (815 mm) minimum for a distance of 24 in (610 mm) maximum provided that reduced width segments are separated by segments that are 48 in (1220 mm) minimum in length and 36 in (915 mm) minimum in width.

EXCEPTION 2: The clear width of transfer systems connecting elevated play components

shall be permitted to be 24 in (610 mm) minimum.

15.6.4.4 Ramp Slope and Rise. Any part of an accessible route with a slope greater than 1:20 shall be considered a ramp and shall comply with 4.8, as modified by 15.6.4.4.

15.6.4.4.1 Ground Level. The maximum slope for ramps connecting ground level play components within the boundary of a play area shall be 1:16.

15.6.4.4.2 Elevated. Where a ramp connects elevated play components, the maximum rise of any ramp run shall be 12 in (305 mm).

15.6.4.5 Handrails. Where required on ramps, handrails shall comply with 4.8.5, as modified by 15.6.4.5.

EXCEPTION 1: Handrails shall not be required at ramps located within ground level use zones.

EXCEPTION 2: Handrail extensions shall not be required.

15.6.4.5.1 Handrail Gripping Surface. Handrails shall have a diameter or width of 0.95 in (24.1 mm) minimum to 1.55 in (39.4 mm) maximum, or the shape shall provide an equivalent gripping surface.

15.6.4.5.2 Handrail Height. The top of handrail gripping surfaces shall be 20 in (510 mm) minimum to 28 in (710 mm) maximum above the ramp surface.

15.6.5* Transfer Systems. Where transfer systems are provided to connect elevated play components, the transfer systems shall comply with 15.6.5.

15.6.5.1 Transfer Platforms. Transfer platforms complying with 15.6.5.1 shall be provided where transfer is intended to be from a wheelchair or other mobility device (see Fig. 64).

15.6 Play Areas

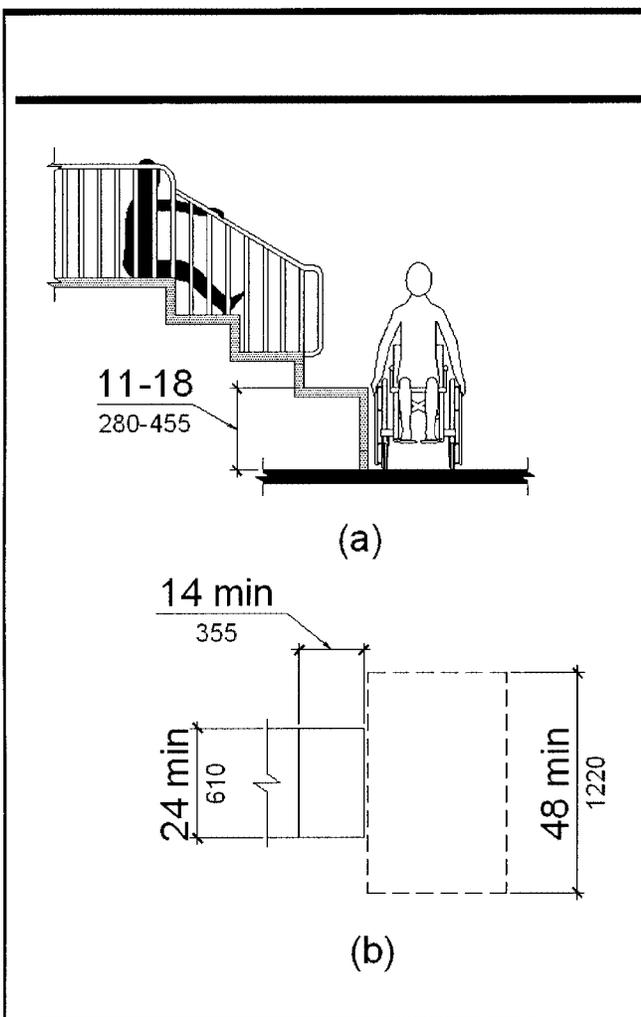


Fig. 64

15.6.5.1.1 Size. Platforms shall have a level surface 14 in (355 mm) minimum in depth and 24 in (610 mm) minimum in width.

15.6.5.1.2 Height. Platform surfaces shall be 11 in (280 mm) minimum to 18 in (455 mm) maximum above the ground or floor surface.

15.6.5.1.3 Transfer Space. A level space complying with 4.2.4 shall be centered on the 48 in (1220 mm) long dimension parallel to the 24 in (610 mm) minimum long unobstructed side of the transfer platform.

15.6.5.1.4 Transfer Supports. A means of support for transferring shall be provided.

15.6.5.2 Transfer Steps. Transfer steps complying with 15.6.5.2 shall be provided where movement is intended from a transfer platform to a level with elevated play components required to be located on an accessible route (see Fig. 65).

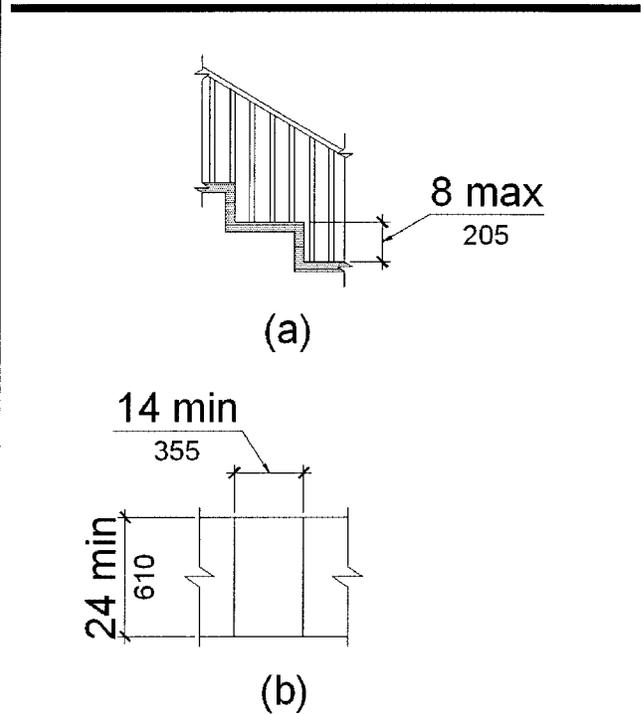


Fig. 65

15.6.5.2.1 Size. Transfer steps shall have a level surface 14 in (355 mm) minimum in depth and 24 in (610 mm) minimum in width.

15.6.5.2.2 Height. Each transfer step shall be 8 in (205 mm) maximum high.

15.6.5.2.3 Transfer Supports. A means of support for transferring shall be provided.

15.6.6* Play Components. Ground level play components located on accessible routes and

15.7 Exercise Equipment and Machines

elevated play components connected by ramps shall comply with 15.6.6.

15.6.6.1 Maneuvering Space. Maneuvering space complying with 4.2.3 shall be provided on the same level as the play components. Maneuvering space shall have a slope not steeper than 1:48 in all directions. The maneuvering space required for a swing shall be located immediately adjacent to the swing.

15.6.6.2 Clear Floor or Ground Space. Clear floor or ground space shall be provided at the play components and shall be 30 in (760 mm) by 48 in (1220 mm) minimum. Clear floor or ground space shall have a slope not steeper than 1:48 in all directions.

15.6.6.3 Play Tables: Height and Clearances. Where play tables are provided, knee clearance 24 in (610 mm) high minimum, 17 in deep (430 mm) minimum, and 30 in (760 mm) wide minimum shall be provided. The tops of rims, curbs, or other obstructions shall be 31 in (785 mm) high maximum.

EXCEPTION: Play tables designed or constructed primarily for children ages 5 and under shall not be required to provide knee clearance if the clear floor or ground space required by 15.6.6.2 is arranged for a parallel approach and if the rim surface is 31 in (785 mm) high maximum.

15.6.6.4 Entry Points and Seats: Height. Where a play component requires transfer to the entry point or seat, the entry point or seat shall be 11 in (280 mm) minimum and 24 in (610 mm) maximum above the clear floor or ground space.

EXCEPTION: The entry point of a slide shall not be required to comply with 15.6.6.4.

15.6.6.5 Transfer Supports. Where a play component requires transfer to the entry point or seat, a means of support for transferring shall be provided.

15.6.7* Ground Surfaces. Ground surfaces along accessible routes, clear floor or ground

spaces, and maneuvering spaces within play areas shall comply with 4.5.1 and 15.6.7.

15.6.7.1 Accessibility. Ground surfaces shall comply with ASTM F 1951 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment (incorporated by reference, see 2.3.2). Ground surfaces shall be inspected and maintained regularly and frequently to ensure continued compliance with ASTM F 1951.

15.6.7.2 Use Zones. If located within use zones, ground surfaces shall comply with ASTM F 1292 Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment (incorporated by reference, see 2.3.2).

15.6.8 Soft Contained Play Structures. Soft contained play structures shall comply with 15.6.8.

15.6.8.1 Accessible Routes to Entry Points. Where three or fewer entry points are provided, at least one entry point shall be located on an accessible route. Where four or more entry points are provided, at least two entry points shall be located on an accessible route. Accessible routes shall comply with 4.3.

EXCEPTION: Transfer systems complying with 15.6.5 or platform lifts (wheelchair lifts) complying with 4.11 and applicable State or local codes shall be permitted to be used as part of an accessible route.

15.7 Exercise Equipment and Machines, Bowling Lanes, and Shooting Facilities.

15.7.1 General. Newly designed or newly constructed and altered exercise equipment and machines, bowling lanes, and shooting facilities shall comply with 15.7.

15.7.2* Exercise Equipment and Machines. At least one of each type of exercise equipment and machines shall be provided with clear floor or ground space complying with 4.2.4 and shall be served by an accessible route. Clear floor or ground space shall be positioned for transfer or

15.8 Swimming Pools, Wading Pools, and Spas

for use by an individual seated in a wheelchair. Clear floor or ground spaces for more than one piece of equipment shall be permitted to overlap .

15.7.3 Bowling Lanes. Where bowling lanes are provided, at least 5 percent, but not less than one of each type of lane shall be served by an accessible route.

15.7.4* Shooting Facilities. Where fixed firing positions are provided at a site, at least 5 percent, but not less than one, of each type of firing position shall comply with 15.7.4.1.

15.7.4.1 Fixed Firing Position. Fixed firing positions shall contain a 60 inch (1525 mm) diameter space and shall have a slope not steeper than 1:48.

15.8 Swimming Pools, Wading Pools, and Spas.

15.8.1 General. Newly designed or newly constructed and altered swimming pools, wading pools, and spas shall comply with 15.8.

EXCEPTION: An accessible route shall not be required to serve raised diving boards or diving platforms.

15.8.2* Swimming Pools. At least two accessible means of entry shall be provided for each public use and common use swimming pool. The primary means of entry shall comply with 15.8.5 (Swimming Pool Lifts) or 15.8.6 (Sloped Entries). The secondary means of entry shall comply with one of the following: 15.8.5 (Swimming Pool Lifts), 15.8.6 (Sloped Entries), 15.8.7 (Transfer Walls), 15.8.8 (Transfer Systems), or 15.8.9 (Pool Stairs).

EXCEPTION 1*: Where a swimming pool has less than 300 linear feet (91 m) of swimming pool wall, at least one accessible means of entry shall be provided and shall comply with 15.8.5 (Swimming Pool Lifts) or 15.8.6 (Sloped Entries).

EXCEPTION 2: Wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to one area, shall provide at least one accessible means of entry that complies with

15.8.5 (Swimming Pool Lifts), 15.8.6 (Sloped Entries), or 15.8.8 (Transfer Systems).

EXCEPTION 3: Catch pools shall be required only to be served by an accessible route that connects to the pool edge.

15.8.3 Wading Pools. At least one accessible means of entry complying with 15.8.6 (Sloped Entries) shall be provided for each wading pool.

15.8.4 Spas. At least one accessible means of entry complying with 15.8.5 (Swimming Pool Lifts), 15.8.7 (Transfer Walls), or 15.8.8 (Transfer Systems) shall be provided for each spa.

EXCEPTION: Where spas are provided in a cluster, 5 percent, but not less than one, in each cluster shall be accessible.

15.8.5* Pool Lifts. Pool lifts shall comply with 15.8.5.

15.8.5.1 Pool Lift Location. Pool lifts shall be located where the water level does not exceed 48 inches (1220 mm).

EXCEPTION 1: Where the entire pool depth is greater than 48 inches (1220 mm), 15.8.5.1 shall not apply.

EXCEPTION 2: Where multiple pool lift locations are provided, no more than one shall be required to be located in an area where the water level does not exceed 48 inches (1220 mm).

15.8.5.2 Seat Location. In the raised position, the centerline of the seat shall be located over the deck and 16 inches (405 mm) minimum from the edge of the pool. The deck surface between the centerline of the seat and the pool edge shall have a slope not greater than 1:48 (see Fig. 68).

15.8 Swimming Pools, Wading Pools, and Spas



Fig. 68
Pool Lift Seat Location

15.8.5.3 Clear Deck Space. On the side of the seat opposite the water, a clear deck space shall be provided parallel with the seat. The space shall be 36 inches (915 mm) wide minimum and shall extend forward 48 inches (1220 mm) minimum from a line located 12 inches (305 mm) behind the rear edge of the seat. The clear deck space shall have a slope not greater than 1:48 (see Fig. 69).

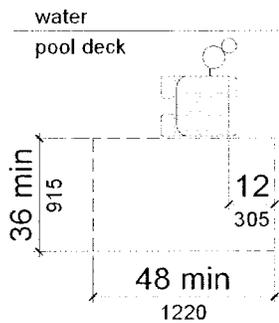


Fig. 69
Clear Deck Space at Pool Lifts

15.8.5.4 Seat Height. The height of the lift seat shall be designed to allow a stop at 16 inches (405 mm) minimum to 19 inches (485 mm) maximum measured from the deck to the top of the seat

surface when in the raised (load) position (see Fig. 70).

15.8.5.5 Seat Width. The seat shall be 16 inches (405 mm) minimum wide.

15.8.5.6* Footrests and Armrests. Footrests shall be provided and shall move with the seat. If provided, armrests positioned opposite the water shall be removable or shall fold clear of the seat when the seat is in the raised (load) position.

EXCEPTION: Footrests shall not be required on pool lifts provided in spas.

15.8.5.7* Operation. The lift shall be capable of unassisted operation from both the deck and water levels. Controls and operating mechanisms shall be unobstructed when the lift is in use and shall comply with 4.27.4.

15.8.5.8 Submerged Depth. The lift shall be designed so that the seat will submerge to a water depth of 18 inches (455 mm) minimum below the stationary water level (see Fig. 71).

15.8.5.9* Lifting Capacity. Single person pool lifts shall have a minimum weight capacity of 300 lbs. (136 kg) and be capable of sustaining a static load of at least one and a half times the rated load.

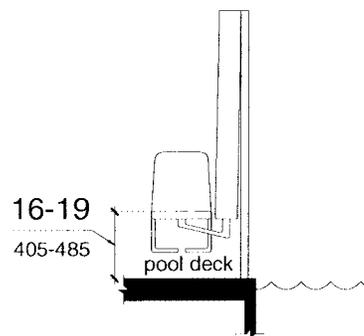


Fig. 70
Pool Lift Seat Height

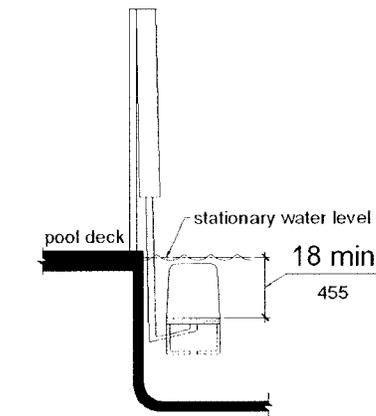
15.8 Swimming Pools, Wading Pools, and Spas

Fig 71
Pool Lift Submerged Depth

15.8.6 Sloped Entries. Sloped entries designed to provide access into the water shall comply with 15.8.6.

15.8.6.1* Sloped Entries. Sloped entries shall comply with 4.3, except as modified below.

EXCEPTION: Where sloped entries are provided, the surfaces shall not be required to be slip resistant.

15.8.6.2 Submerged Depth. Sloped entries shall extend to a depth of 24 inches (610 mm)

minimum to 30 inches (760 mm) maximum below the stationary water level. Where landings are required by 4.8, at least one landing shall be located 24 inches (610 mm) minimum to 30 inches (760 mm) maximum below the stationary water level (see Fig. 72).

EXCEPTION: In wading pools, the sloped entry and landings, if provided, shall extend to the deepest part of the wading pool.

15.8.6.3* Handrails. Handrails shall be provided on both sides of the sloped entry and shall comply with 4.8.5. The clear width between handrails shall be 33 inches (840 mm) minimum and 38 inches (965 mm) maximum (see Fig. 73).

EXCEPTION 1: Handrail extensions specified by 4.8.5 shall not be required at the bottom landing serving a sloped entry.

EXCEPTION 2: Where a sloped entry is provided for wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to one area, the required clear width between handrails shall not apply.

EXCEPTION 3: The handrail requirements of 4.8.5 and 15.8.6.3 shall not be required on sloped entries in wading pools.

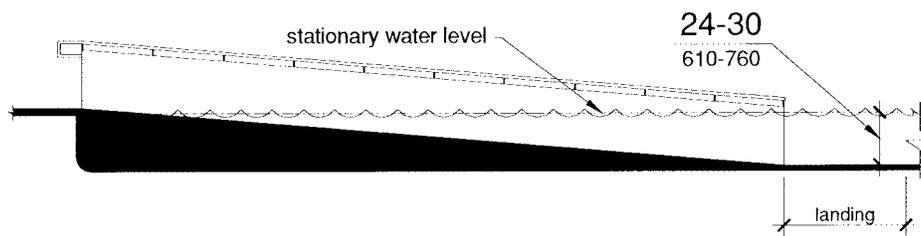


Fig. 72
Sloped Entry Submerged Depth

15.8 Swimming Pools, Wading Pools, and Spas

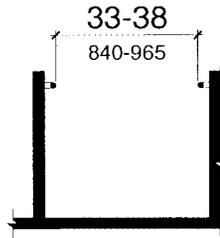


Fig. 73
Sloped Entry Handrails

15.8.7 Transfer Walls. Transfer walls shall comply with 15.8.7.

15.8.7.1 Clear Deck Space. A clear deck space of 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum with a slope not steeper

than 1:48 shall be provided at the base of the transfer wall. Where one grab bar is provided, the clear deck space shall be centered on the grab bar. Where two grab bars are provided, the clear deck space shall be centered on the clearance between the grab bars (see Fig. 74).

15.8.7.2 Height. The height of the transfer wall shall be 16 inches (405 mm) minimum to 19 inches (485 mm) maximum measured from the deck (see Fig. 75).

15.8.7.3 Wall Depth and Length. The depth of the transfer wall shall be 12 inches (305 mm) minimum to 16 inches (405 mm) maximum. The length of the transfer wall shall be 60 inches (1525 mm) minimum and shall be centered on the clear deck space (see Fig. 76).

15.8.7.4 Surface. Surfaces of transfer walls shall not be sharp and shall have rounded edges.

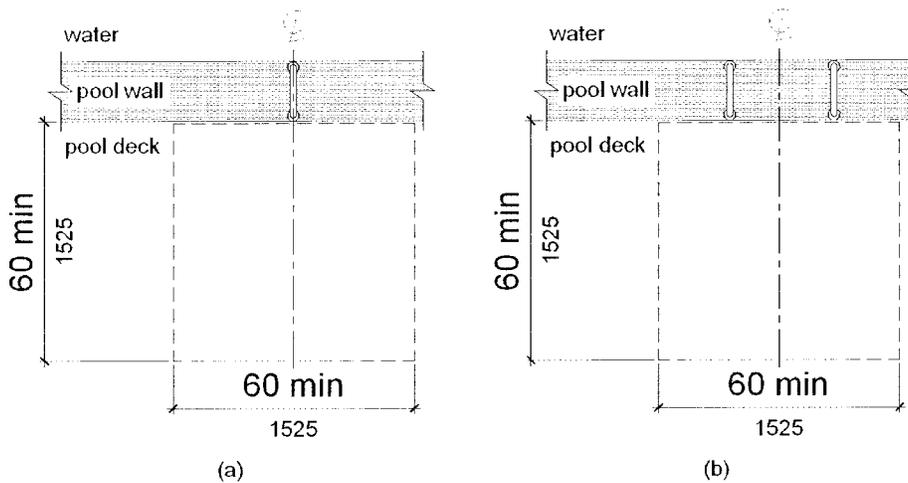


Fig. 74
Clear Deck Space at Transfer Walls

15.8 Swimming Pools, Wading Pools, and Spas

15.8.7.5 Grab Bars. At least one grab bar shall be provided on the transfer wall. Grab bars shall be perpendicular to the pool wall and shall extend the full depth of the transfer wall. The top of the gripping surface shall be 4 inches (100 mm) minimum and 6 inches (150 mm) maximum above walls. Where one grab bar is provided, clearance shall be 24 inches (610 mm) minimum on both sides of the grab bar. Where two grab bars are provided, clearance between grab bars

shall be 24 inches (610 mm) minimum. Grab bars shall comply with 4.26 (see Fig. 77).

15.8.8 Transfer Systems. Transfer systems shall comply with 15.8.8.

15.8.8.1 Transfer Platform. A transfer platform 19 inches (485 mm) minimum clear depth by 24 inches (610 mm) minimum clear width shall be provided at the head of each transfer system (see Fig. 78).



Fig. 75
Transfer Wall Height

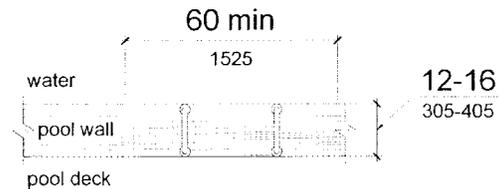


Fig. 76
Transfer Wall Depth and Length

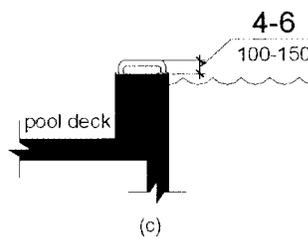
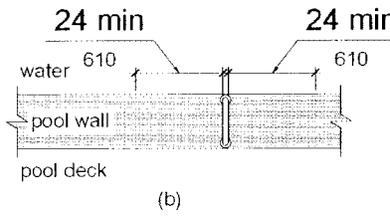
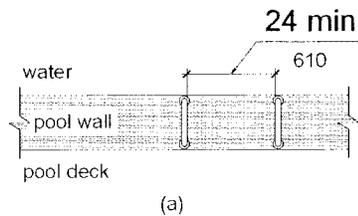


Fig. 77
Grab Bars at Transfer Walls

15.8 Swimming Pools, Wading Pools, and Spas

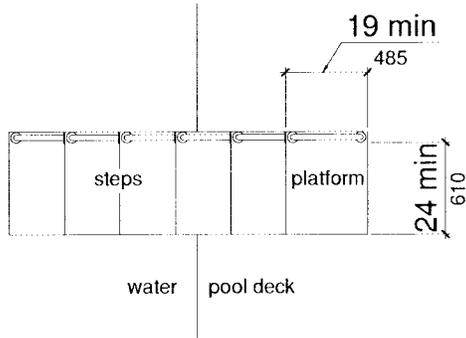


Fig. 78
Transfer System Platform

15.8.8.2 Clear Deck Space. A clear deck space of 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum with a slope not steeper than 1:48 shall be provided at the base of the

transfer platform surface and shall be centered along a 24 inch (610 mm) minimum unobstructed side of the transfer platform (see Fig. 79).

15.8.8.3 Height. The height of the transfer platform shall comply with 15.8.7.2.

15.8.8.4* Transfer Steps. Transfer step height shall be 8 inches (205 mm) maximum. Transfer steps shall extend to a water depth of 18 inches (455 mm) minimum below the stationary water level (see Fig. 80).

15.8.8.5 Surface. The surface of the transfer system shall not be sharp and shall have rounded edges.

15.8.8.6 Size. Each transfer step shall have a tread clear depth of 14 inches (355 mm) minimum and 17 inches (430 mm) maximum and shall have a tread clear width of 24 inches (610 mm) minimum (see Fig. 81).

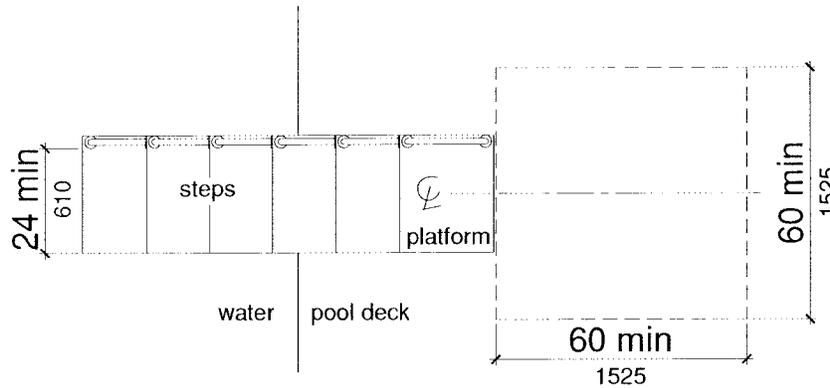


Fig. 79
Clear Deck Space at Transfer Systems

15.8 Swimming Pools, Wading Pools, and Spas

15.8.8.7* Grab Bars. At least one grab bar on each transfer step and the transfer platform, or a continuous grab bar serving each transfer step and the transfer platform, shall be provided. Where provided, the top of the gripping surface shall be 4 inches (100 mm) minimum and 6 inches (150 mm) maximum above each step and transfer platform. Where a continuous grab bar is

provided, the top of the gripping surface shall be 4 inches (100 mm) minimum and 6 inches (150 mm) maximum above the step nosing and transfer platform. Grab bars shall comply with 4.26 and be located on at least one side of the transfer system. The grab bar located at the transfer platform shall not obstruct transfer (see Fig. 82).

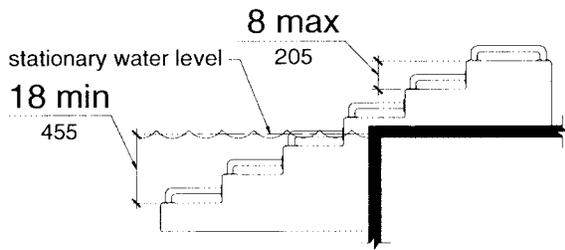


Fig. 80
Transfer System Steps

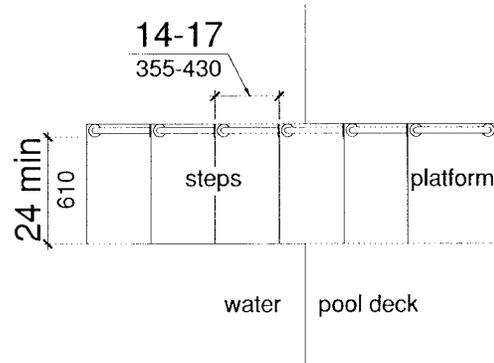


Fig. 81
Size of Transfer System Steps

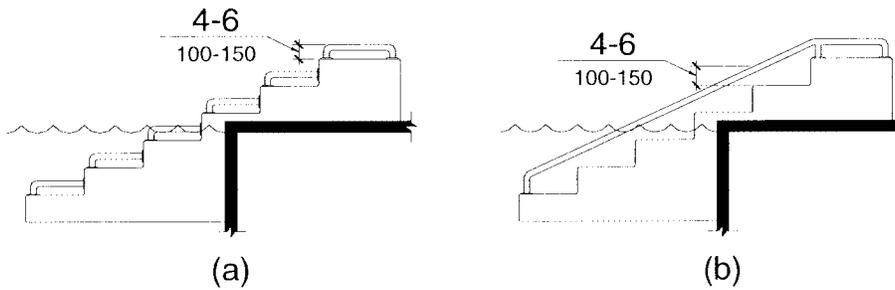


Fig. 82
Grab Bars at Transfer Systems

15.8 Swimming Pools, Wading Pools, and Spas

15.8.9 Pool Stairs. Pool stairs shall comply with 15.8.9.

15.8.9.1 Pool Stairs. Pool stairs shall comply with 4.9, except as modified below.

15.8.9.2 Handrails. The width between handrails shall be 20 inches (510 mm) minimum and 24 inches (610 mm) maximum. Handrail extensions required by 4.9.4 shall not be required at the bottom landing serving a pool stair.

15.8.10* Water Play Components. Where water play components are provided, the provisions of 15.6 and 4.3 shall apply, except as modified or otherwise provided in this section.

EXCEPTION 1: Where the surface of the accessible route, clear floor or ground spaces and maneuvering spaces connecting play components is submerged, the provisions of 15.6 and 4.3 for cross slope, running slope, and surface shall not apply.

EXCEPTION 2: Transfer systems complying with 15.6.5 shall be permitted to be used in lieu of ramps to connect elevated play components.

APPENDIX

APPENDIX

This appendix contains materials of an advisory nature and provides additional information that should help the reader to understand the minimum requirements of the guidelines or to design buildings or facilities for greater accessibility. The paragraph numbers correspond to the sections or paragraphs of the guideline to which the material relates and are therefore not consecutive (for example, A4.2.1 contains additional information relevant to 4.2.1). Sections of the guidelines for which additional material appears in this appendix have been indicated by an asterisk. Nothing in this appendix shall in any way obviate any obligation to comply with the requirements of the guidelines itself.

A2.0 General.

A2.2 Equivalent Facilitation. Specific examples of equivalent facilitation are found in the following sections:

- | | |
|-------------|--|
| 4.1.6(3)(c) | Elevators in Alterations |
| 4.31.9 | Text Telephones |
| 7.2 | Sales and Service Counters, Teller Windows, Information Counters |
| 9.1.4 | Classes of Sleeping Accommodations |
| 9.2.2(6)(d) | Requirements for Accessible Units, Sleeping Rooms, and Suites |

A3.0 Miscellaneous Instructions and Definitions.**A3.5 Definitions.**

Transient Lodging. The Department of Justice's policy and rules further define what is covered as transient lodging.

A4.0 Accessible Elements and Spaces: Scope and Technical Requirements.**A4.1.1 Application.**

A4.1.1(3) Areas Used Only by Employees as Work Areas. Where there are a series of individual work stations of the same type (e.g., laboratories, service counters, ticket booths), 5%, but not less

than one, of each type of work station should be constructed so that an individual with disabilities can maneuver within the work stations. Rooms housing individual offices in a typical office building must meet the requirements of the guidelines concerning doors, accessible routes, etc. but do not need to allow for maneuvering space around individual desks. Modifications required to permit maneuvering within the work area may be accomplished as a reasonable accommodation to individual employees with disabilities under Title I of the ADA.

Consideration should also be given to placing shelves in employee work areas at a convenient height for accessibility or installing commercially available shelving that is adjustable so that reasonable accommodations can be made in the future.

If work stations are made accessible they should comply with the applicable provisions of 4.2 through 4.35.

A4.1.2 Accessible Sites and Exterior Facilities: New Construction.

A4.1.2(2)(b) Court Sports: The accessible route must be direct and connect both sides of the court without requiring players on one side of the court to traverse through or around another court to get to the other side of the court.

A4.1.2(4) Exception 1. An accessible route is required to connect to the boundary of the area of sport activity. The term "area of sport activity" distinguishes that portion of a room or space where the play or practice of a sport occurs from adjacent areas. Examples of areas of sport activity include: basketball courts, baseball fields, running tracks, bowling lanes, skating rinks, and the area surrounding a piece of gymnastic equipment. While the size of an area of sport activity may vary from sport to sport, each includes only the space needed to play. The following example is provided for additional clarification.

Example. Boundary lines define the field where a football game is played. A safety border is also provided around the field. The game may

A4.1.3 Accessible Buildings: New Construction

temporarily be played in the space between the boundary lines and the safety border when players are pushed out of bounds or momentum carries them forward while receiving a pass. In the game of football, the space between the boundary line and the safety border is used to play the game. This space and the football field are included in the area of sport activity.

A4.1.2(4) Exception 2. Public circulation routes where animals may also travel, such as in petting zoos and passageways alongside animal pens in State fairs, are not eligible for the exception.

A4.1.2(5)(e) Valet parking is not always usable by individuals with disabilities. For instance, an individual may use a type of vehicle controls that render the regular controls inoperable or the driver's seat in a van may be removed. In these situations, another person cannot park the vehicle. It is recommended that some self-parking spaces be provided at valet parking facilities for individuals whose vehicles cannot be parked by another person and that such spaces be located on an accessible route to the entrance of the facility.

A4.1.3 Accessible Buildings: New Construction.

4.1.3(1)(b) Court Sports: The accessible route must be direct and connect both sides of the court without requiring players on one side of the court to traverse through or around another court to get to the other side of the court.

4.1.3(3) Exception 1. An accessible route is required to connect to the boundary of the area of sport activity. The term "area of sport activity" distinguishes that portion of a room or space where the play or practice of a sport occurs from adjacent areas. Examples of areas of sport activity include: basketball courts, baseball fields, running tracks, bowling lanes, skating rinks, and the area surrounding a piece of fixed gymnastic equipment. While the size of an area of sport activity may vary from sport to sport, each includes only the space needed to play. The following example is provided for additional clarification.

Example. Boundary lines define the field where a football game is played. A safety border is also provided around the field. The game may temporarily be played in the space between the boundary lines and the safety border when players are pushed out of bounds or momentum carries them forward while receiving a pass. In the game of football, the space between the boundary line and the safety border is used to play the game. This space and the football field are included in the area of sport activity.

4.1.3(3) Exception 2. Public circulation routes where animals may also travel, such as in petting zoos and passageways alongside animal pens in State fairs, are not eligible for the exception.

A4.1.3(5) Only passenger elevators are covered by the accessibility provisions of 4.10. Materials and equipment hoists, freight elevators not intended for passenger use, dumbwaiters, and construction elevators are not covered by these guidelines. If a building is exempt from the elevator requirement, it is not necessary to provide a platform lift or other means of vertical access in lieu of an elevator.

Under Exception 4, platform lifts are allowed where existing conditions make it impractical to install a ramp or elevator. Such conditions generally occur where it is essential to provide access to small raised or lowered areas where space may not be available for a ramp. Examples include, but are not limited to, raised pharmacy platforms, commercial offices raised above a sales floor, or radio and news booths.

While the use of platform lifts is allowed, ramps are recommended to provide access to player seating areas serving an area of sport activity.

A4.1.3(9) Supervised automatic sprinkler systems have built in signals for monitoring features of the system such as the opening and closing of water control valves, the power supplies for needed pumps, water tank levels, and for indicating conditions that will impair the satisfactory operation of the sprinkler system. Because of these monitoring features, supervised automatic sprinkler systems have a high level of

A4.1.3 Accessible Buildings: New Construction

satisfactory performance and response to fire conditions.

A4.1.3(10) If an odd number of drinking fountains is provided on a floor, the requirement in 4.1.3(10)(b) may be met by rounding down the odd number to an even number and calculating 50% of the even number. When more than one drinking fountain on a floor is required to comply with 4.15, those fountains should be dispersed to allow wheelchair users convenient access. For example, in a large facility such as a convention center that has water fountains at several locations on a floor, the accessible water fountains should be located so that wheelchair users do not have to travel a greater distance than other people to use a drinking fountain.

A4.1.3(12)(c) Different types of lockers may include full-size and half-size lockers, as well as those specifically designed for storage of various sports equipment.

A4.33.6 Placement of Listening Systems

within the seating area are provided. This will allow choice in viewing and price categories.

Building and life safety codes set minimum distances between rows of fixed seats with consideration of the number of seats in a row, the exit aisle width and arrangement, and the location of exit doors. "Continental" seating, with a greater number of seats per row and a commensurate increase in row spacing and exit doors, facilitates emergency egress for all people and increases ease of access to mid-row seats especially for people who walk with difficulty. Consideration of this positive attribute of "continental" seating should be included along with all other factors in the design of fixed seating areas.

Removable armrests are recommended on fixed companion seats provided in assembly areas in amusement facilities. This provides the option for an individual using a wheelchair or other mobility device to transfer into a seat where motion and other effects may be provided as part of the amusement experience.

A4.33.6 Placement of Listening Systems. A distance of 50 ft (15 m) allows a person to distinguish performers' facial expressions.

A4.33.7 Types of Listening Systems. An assistive listening system appropriate for an assembly area for a group of persons or where the specific individuals are not known in advance, such as a playhouse, lecture hall or movie theater, may be different from the system appropriate for a particular individual provided as an auxiliary aid or as part of a reasonable accommodation. The appropriate device for an individual is the type that individual can use, whereas the appropriate system for an assembly area will necessarily be geared toward the "average" or aggregate needs of various individuals. A listening system that can be used from any seat in a seating area is the most flexible way to meet this specification. Earphone jacks with variable volume controls can benefit only people who have slight hearing loss and do not help people who use hearing aids. At the present time, magnetic induction loops are the most feasible type of

listening system for people who use hearing aids equipped with "T-coils," but people without hearing aids or those with hearing aids not equipped with inductive pick-ups cannot use them without special receivers. Radio frequency systems can be extremely effective and inexpensive. People without hearing aids can use them, but people with hearing aids need a special receiver to use them as they are presently designed. If hearing aids had a jack to allow a bypass of microphones, then radio frequency systems would be suitable for people with and without hearing aids. The Department of Justice's regulations implementing titles II and III of the ADA require public entities and public accommodations to provide appropriate auxiliary aids and services to ensure effective communication. See 28 CFR 35.160, 28 CFR 35.164, and 28 CFR 36.303. Where assistive listening systems are used to provide effective communication, the Department of Justice considers it essential that a portion of receivers be compatible with hearing aids.

Some listening systems may be subject to interference from other equipment and feedback from hearing aids of people who are using the systems. Such interference can be controlled by careful engineering design that anticipates feedback sources in the surrounding area.

Table A2, shows some of the advantages and disadvantages of different types of assistive listening systems. In addition, the Access Board has published a pamphlet on Assistive Listening Systems which lists demonstration centers across the country where technical assistance can be obtained in selecting and installing appropriate systems. The state of New York has also adopted a detailed technical specification which may be useful.

A4.36.2 Saunas and Steam Rooms. A 60-inch turning diameter space or a T-shaped space is required within the sauna or steam room. Removable benches or seats are permitted to obstruct the 60-inch or T-shaped space.

A5.0 Restaurants and Cafeterias

A4.37.3 Benches. Back support may be achieved through locating benches adjacent to walls or by other designs that will meet the minimum dimensions specified.

A5.0 Restaurants and Cafeterias.

A5.1 General. Dining counters (where there is no service) are typically found in small carry-out restaurants, bakeries, or coffee shops and may only be a narrow eating surface attached to a wall. This section requires that where such a dining counter is provided, a portion of the counter shall be at the required accessible height.

A7.0 Business, Mercantile and Civic.

A7.2(3)(iii) Counter or Teller Windows with Partitions. Methods of facilitating voice communication may include grilles, slats, talk-through baffles, and other devices mounted directly into the partition which users can speak directly into for effective communication. These methods are required to be designed or placed so that they are accessible to a person who is standing or seated. However, if the counter is only used by persons in a seated position, then a method of facilitating communication which is accessible to standing persons would not be necessary.

A15.0 Recreation Facilities**A15.0 Recreation Facilities.**

Unless otherwise modified in Section 4 or specifically addressed in section 15, all other ADAAG provisions apply for the design and construction of recreation facilities and elements. The provisions in this section apply wherever these elements are provided. For example, office buildings may contain a room with exercise equipment and these sections therefore apply.

A15.1 Amusement Rides.

These guidelines apply to newly designed or newly constructed amusement rides. A custom designed and constructed ride is new upon its "first use," which is the first time amusement park patrons take the ride. With respect to amusement rides purchased from other entities, "new" refers to the first permanent installation of the ride, whether it is used "off the shelf" or it is modified before it is installed. Where amusement rides are moved after several seasons to another area of the park or to another park, the ride would not be considered newly designed or newly constructed.

Amusement rides designed primarily for children, amusement rides that are controlled or operated by the rider, and amusement rides without seats, are not required to provide wheelchair spaces, transfer seats, or transfer systems, and need not meet the signage requirements in 15.1.6. The load and unload areas of these rides must, however, be on an accessible route and must provide maneuvering space under 15.1.4 and 15.1.5.

The scoping and technical provisions of the guidelines were developed to address common amusement rides. There will be other amusement attractions that have unique designs and features which are not adequately addressed by the guidelines. In those situations, the guidelines are to be applied to the extent possible.

An accessible route must be provided to these areas. Where an attraction or ride has unique features for which there are no applicable scoping provisions, then a reasonable number, but at least one, of the features must be located on an

accessible route. Where there are appropriate technical provisions, they must be applied to the elements that are covered by the scoping provisions. Where an attraction has unique designs for which the technical provisions are not appropriate, the operators of those attractions are still subject to all the other requirements of the ADA, including program accessibility, barrier removal and the general obligation to provide individuals with disabilities an equal opportunity to enjoy the goods and services provided by their facilities. An example of an amusement ride not specifically addressed by the guidelines includes "virtual reality" rides where the device does not move through a fixed course within a defined area.

A15.1 Exception 1. Mobile or temporary rides are those set up for short periods of time such as traveling carnivals, State and county fairs, and festivals. The amusement rides that are covered by section 15.1 are ones that are not regularly assembled and disassembled.

A15.1 Exception 2. The exception does not apply to those rides where patrons may cause the ride to make incidental movements, but where the patron otherwise has no control over the ride.

A15.1 Exception 3. The exception is limited to those rides designed "primarily" for children, where children are assisted on and off the ride by an adult. This exception is limited to those rides designed for children and not for the occasional adult user. An accessible route to and maneuvering space in the load and unload area will provide access for adults and family members assisting children on and off these rides.

A15.1.2 Alterations to Amusement Rides.

Routine maintenance, painting, and changing of theme boards are examples of activities that do not constitute an alteration subject to section 15.1.2. Where existing amusement rides are moved and not altered, section 15.1 does not apply unless the load and unload area of the amusement ride is newly designed and constructed. If a load or unload area is altered, the alteration provisions of ADAAG 4.1.6 must be applied to the altered area.

A15.1 Amusement Rides

A15.1.4 Accessible Route. Steeper slopes are permitted (not to exceed 1:8) where the accessible route connects to the amusement ride in the load and unload position. This is permitted only where compliance with 4.8.2 (maximum slope 1:12) is "structurally or operationally infeasible". In most cases, this will be limited to areas where the accessible route leads directly to the amusement ride and where there are space limitations on the ride, not the queue line. Where possible, the least possible slope should be used on the accessible route that serves the amusement ride.

A15.1.7.1.2 Amusement Rides with Wheelchair Spaces. 36 CFR 1192.83(c) ADA Accessibility Guidelines for Transportation Vehicles - Light Rail Vehicles and Systems - Mobility Aid Accessibility is available at www.access-board.gov/transit/html/vguide.htm#LRVM. It references provisions for bridge plates and ramps used for gaps between wheelchair spaces and floors of load and unload areas.

A15.1.7.2 Exception 3. This exception for protruding objects applies to the ride devices, not to circulation areas or accessible routes in the queue lines or the load and unload areas.

A15.1.7.2.2 Wheelchair Spaces - Side Entry. Under certain circumstances, a 32-inch clear opening will not provide sufficient width to accommodate a turn into an amusement ride. The amount of clear space needed within the ride, and the size and position of the opening are interrelated. Additional space for maneuvering and a wider door will be needed where a side opening is centered on the ride. For example, where a 42-inch opening is provided, a minimum clear space of 60 inches in length and 36 inches in depth is needed (see Fig. A9). This is necessary to ensure adequate space for maneuvering. For additional guidance refer to Figure 3 (Wheelchair Turning Space) and Figure 4 (Minimum Clear Floor Space for Wheelchairs) on minimum space requirements.

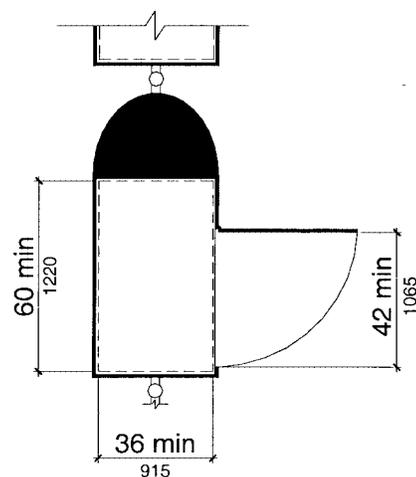


Fig. A9
Wheelchair Spaces - Side Entry

A15.1.8 Amusement Ride Seats Designed for Transfer. There are many different ways that individuals transfer to and from their wheelchairs or mobility devices. The proximity of the clear floor or ground space next to an element and the height of the element one is transferring to are both critical for a safe and independent transfer. Providing additional clear floor or ground space both in front of and diagonally to the element will provide flexibility and increased usability for a more diverse population of individuals with disabilities. Ride seats designed for transfer should involve only one transfer. Where possible, designers are encouraged to locate the ride seat no higher than 17 to 19 inches above the load and unload surface. Where greater distances are required for transfers, consideration should be given to providing gripping surfaces, seat padding, and avoiding sharp or protruding objects in the path of transfer to better facilitate the transfer process.

A15.1.9 Transfer Devices for Use with Amusement Rides. Transfer devices for use with

A15.2 Boating Facilities

amusement rides should permit individuals to make independent transfers to and from their wheelchairs or mobility devices. There are a variety of transfer devices available that could be adapted to provide access onto an amusement ride. Examples of devices that may provide for transfers include, but are not limited to, transfer systems (see 15.8.8), lifts, mechanized seats, and other custom designed systems. Operators and designers have flexibility in developing designs that will facilitate individuals to transfer onto amusement rides. These systems or devices should be designed to be reliable and sturdy. A transfer board, for example, would not be sufficient because it will not provide enough support or stability and may cause injury.

Designs which limit the number of transfers required from one's wheelchair or mobility device to the ride seat are encouraged. When using a transfer device to access an amusement ride, the least amount of transfers for the least amount of distance is desired. Where possible, designers are encouraged to locate the transfer device seat no higher than 17 to 19 inches above the load and unload surface. Where greater distances are required for transfers, consideration should be given to providing gripping surfaces, seat padding, and avoiding sharp or protruding objects in the path of transfer to better facilitate the transfer process. Where a series of transfers are required to reach the amusement ride seat, each vertical transfer should not exceed 8 inches.

As discussed with amusement rides seats designed for transfer, there are many different ways that individuals transfer to and from their wheelchairs or mobility devices. The proximity of the clear floor or ground space next to an element and the height of the element one is transferring to are both critical for a safe and independent transfer. Providing additional clear floor or ground space both in front of and diagonally to the element will provide flexibility and increased usability for a more diverse population of individuals with disabilities.

A15.2 Boating Facilities.

A15.2.2 Accessible Route. The following two examples apply exceptions two and three.

Example 1. Boat slips which are required to be accessible are provided at a floating pier. The vertical distance an accessible route must travel to the pier when the water is at its lowest level is six feet, although the water level only fluctuates three feet. To comply with exceptions 2 and 3, at least one design solution would provide a gangway at least 72.25 feet long which ensures the slope does not exceed 1:12.

Example 2. A gangway is provided to a floating pier which is required to be on an accessible route. The vertical distance is 10 feet between the elevation where the gangway departs the landside connection and the elevation of the pier surface at the lowest water level. Exceptions 2 and 3, which modify 4.8.2, permit the gangway to be at least 80 feet long. Another design solution would be to have two 40-foot continuous gangways joined together at a float, where the float (as the water level falls) will stop dropping at an elevation five feet below the landside connection.

A15.2.3 Boat Slips: Minimum Number.

Accessible boat slips are not "reserved" for persons with disabilities in the same manner as accessible vehicle parking spaces. Rather, accessible boat slip use is comparable to accessible hotel rooms. The Department of Justice is responsible for addressing operational issues relating to the use of accessible facilities and elements. The Department of Justice currently advises that hotels should hold accessible rooms for persons with disabilities until all other rooms are filled. At that point, accessible rooms can be open for general use on a first come, first serve basis.

The following two examples apply to a boating facility with a single non-demarkated pier.

Example 1. A site contains a new boating facility which consists of a single 60-foot pier. Boats are only moored parallel with the pier on both sides to allow occupants to embark or disembark.

A15.2 Boating Facilities

Since the number of slips cannot be identified, section 15.2.3 requires each 40 feet of boat slip edge to be counted as one slip for purposes of determining the number of slips available and determines the number required to be accessible. The 120 feet of boat slip edge at the pier would equate with 3 boat slips. Table 15.2.3 would require 1 slip to be accessible and comply with 15.2.5. Section 15.2.5 (excluding the exceptions within the section) requires a clear pier space 60 inches wide minimum extending the length of the slip. In this example, because the pier is at least 40 feet long, the accessible slip must contain a clear pier space at least 40 feet long which has a minimum width of 60 inches.

Example 2. A new boating facility consisting of a single pier 25 feet long and 3 feet wide is being planned for a site. The design intends to allow boats to moor and occupants to embark and disembark on both sides, and at one end. As the number of boat slips cannot be identified, applying section 15.2.3 would translate to 53 feet of boat slip edge at the pier. This equates with two slips. Table 15.2.5 would require 1 slip to be accessible. To comply with 15.2.5 (excluding the exceptions within the section), the width of the pier must be increased to 60 inches. Neither 15.2.3 or 15.2.5 requires the pier length to be increased to 40 feet.

A15.2.3.1 Dispersion. Types of boat slips are based on the size of the boat slips; whether single berths or double berths, shallow water or deep water, transient or longer-term lease, covered or uncovered; and whether slips are equipped with features such as telephone, water, electricity and cable connections. The term "boat slip" is intended to cover any pier area where recreational boats embark or disembark, unless classified as a launch ramp boarding pier. For example, a fuel pier may contain boat slips, and this type of short term slip would be included in determining compliance with 15.2.3.1.

A15.2.4 Boarding Piers at Boat Launch Ramps. The following two examples apply to a boat launch ramp boarding pier.

Example 1. A chain of floats is provided on a launch ramp to be used as a boarding pier which is required to be accessible by 15.2.4. At high water, the entire chain is floating and a transition plate connects the first float to the surface of the launch ramp. As the water level decreases, segments of the chain end up resting on the launch ramp surface, matching the slope of the launch ramp. As water levels drop, segments function also as gangways because one end of a segment is resting on the launch ramp surface and the other end is connecting to another floating segment in the chain.

Under ADAAG 4.1.2(2), an accessible route must serve the last float because it would function as the boarding pier at the lowest water level. Under exception 3 in 15.2.4, each float is not required to comply with ADAAG 4.8, but must meet all other requirements in ADAAG 4.3, unless exempted by exception 1 in 15.2.4. In this example, because the entire chain also functions as a boarding pier, the entire chain must comply with the requirements of 15.2.5, including the 60-inch minimum clear pier width provision.

Example 2. A non-floating boarding pier supported by piles divides a launching area into two launch ramps and is required to be accessible. Under ADAAG 4.1.2(2), an accessible route must connect the boarding pier with other accessible buildings, facilities, elements, and spaces on the site. Although the boarding pier is located within a launch ramp, because the pier is not a floating pier or a skid pier, none of the exceptions in 15.2.4 apply. To comply with ADAAG 4.3, either the accessible route must run down the launch ramp or the fixed boarding pier could be relocated to the side of the two launch ramps. The second option leaves the slope of the launch ramps unchanged, because the accessible route runs outside the launch ramps.

A15.2.4.1 Boarding Pier Clearances. The guidelines do not establish a minimum length for accessible boarding piers at boat launch ramps. The accessible boarding pier would have a length which is at least equal to other boarding piers provided at the facility. If no other boarding pier

A15.3 Fishing Piers and Platforms

is provided, the pier would have a length equal to what would have been provided if no access requirements applied. The entire length of accessible boarding piers would be required to comply with the same technical provisions that apply to accessible boat slips. For example, at a launch ramp, if a 20-foot long accessible boarding pier is provided, the entire 20 feet must comply with the pier clearance requirements in 15.2.5. Likewise, if a 60-foot long accessible boarding pier is provided, the pier clearance requirements in 15.2.5 would apply to the entire 60 feet.

A15.2.5 Accessible Boat Slips. Although the minimum width of the clear pier space is 60 inches, it is recommended that piers be wider than 60 inches to improve the safety for persons with disabilities, particularly on floating piers.

A15.2.5.1 Clearances, Exception 3. Where the conditions in exception 3 are satisfied, existing facilities are only required to have one accessible boat slip with a pier clearance which runs the length of the slip. All other accessible slips are allowed to have the required pier clearance at the head of the slip. Under this exception, at piers with perpendicular boat slips, the width of most "finger piers" will remain unchanged. However, where mooring systems for floating piers are replaced as part of pier alteration projects, an opportunity may exist for increasing accessibility. Piers may be reconfigured to allow an increase in the number of wider finger piers, and serve as accessible boat slips.

A15.3 Fishing Piers and Platforms.

A15.3.3.1 Edge Protection. Edge protection is required only where railings, guards, or handrails are provided on a fishing pier or platform. Edge protection will prevent wheelchairs or other mobility devices from slipping off the fishing pier or platform. Extending the deck of the fishing pier or platform 12 inches where the 34-inch high railing is provided is an alternative design, permitting individuals using a wheelchair or other mobility device to pull into a clear space and move beyond the face of the railing. In such a design, edge protection is not required.

A15.3.2 Accessible Route, Exception 2. For example, to provide access to an accessible floating fishing pier, a gangway is used. The vertical distance is 60 inches between the elevation that the gangway departs the landside connection and the elevation of the pier surface at the lowest water level. Exception 2 permits the use of a gangway at least 30 feet long, or a series of connecting gangways with a total length of at least 30 feet. The length of transition plates would not be included in determining if the gangway(s) meet the requirements of the exception.

A15.3.3.3 Dispersion. Portions of the railings that are lowered to provide fishing opportunities for persons with disabilities must be located in a variety of locations on the fishing pier or platform to give people a variety of locations to fish. Different fishing locations may provide varying water depths, shade (at certain times of the day), vegetation, and proximity to the shoreline or bank.

A15.4 Golf.

A15.4.2 Accessible Routes. The accessible route or golf car passage must serve accessible elements and spaces located within the boundary of a golf course. The 48-inch minimum width for the accessible route is necessary to ensure passage of a golf car on either the accessible route or the golf car passage. This is important where the accessible route is used to connect the golf car rental area, bag drop areas, practice putting greens, accessible practice teeing grounds, course toilet rooms, and course weather shelters. These are areas outside the boundary of the golf course, but are areas where an individual using an adapted golf car may travel. A golf car passage may not be substituted for other accessible routes, required by ADAAG 4.1.2, located outside the boundary of the course. For example, an accessible route connecting an accessible parking space to the entrance of a golf course clubhouse is not covered by this provision.

A15.4.3 Accessible Route - Driving Ranges. Both a stand alone driving range or a driving range next to a golf course must provide an

A15.5 Miniature Golf

accessible route or golf car passage that connects accessible teeing stations with accessible parking spaces. The accessible route must be a minimum width of 48 inches; 60 inches if handrails are provided. The additional width permits the use of a golf car on the accessible route. Providing a golf car passage will permit a person that uses a golf car to practice driving a golf ball from the same position and stance used when playing the game. Additionally, the space required for a person using a golf car to enter and exit the teeing stations required to be accessible should be considered.

A15.5 Miniature Golf.

Where possible, providing access to all holes on a miniature golf course is recommended. If a course is designed with the minimum 50 percent accessible holes, designers or operators are encouraged to select holes which provide for an equivalent experience to the maximum extent possible. Accessible holes are required to be consecutive with one break permitted, if the last hole on the course is in the sequence.

A15.5.3 Accessible Route. Where only the minimum 50 percent of the holes are accessible, an accessible route from the last accessible hole to the course exit or entrance must not require travel back through other holes. In some cases, this may require an additional route. Other options include increasing the number of accessible holes in a way that limits the distance needed to connect the last accessible hole with the course exit or entrance. In any case, careful consideration to the layout of the course will be important to minimize space impacts.

The 1-inch curb for a 32-inch minimum opening can be located in an area where the ball is less likely to ricochet. Where the accessible route on the hole is provided, steeper slopes are permitted for a limited distance. A landing or level area must separate each of these steeper sloping segments. This will provide a resting area between the steeper segments.

A15.5.5 Golf Club Reach Range. Accessible holes on a miniature golf course may be provided with an accessible route leading through the hole

or with the accessible route next to the hole. Where the accessible route is provided adjacent to the hole, the route must be located within the golf club reach range. This allows individuals sufficient space and reach to play the game outside of the hole. Where possible, the distance between the level areas and the accessible route should be as close as possible, affording more opportunities for play.

A15.6 Play Areas.

A15.6.1 General. This section is to be applied during the design, construction, and alteration of play areas for children ages 2 and over. Play areas are the portion of a site where play components are provided. This section does not apply to other portions of a site where elements such as sports fields, picnic areas, or other gathering areas are provided. Those areas are addressed by other sections of ADAAG. Play areas may be located on exterior sites or within a building. Where separate play areas are provided within a site for children in specified age groups (e.g., preschool (ages 2 to 5) and school age (ages 5 to 12)), each play area must comply with this section. Where play areas are provided for the same age group on a site but are geographically separated (e.g., one is located next to a picnic area and another is located next to a softball field), they are considered separate play areas and each play area must comply with this section.

A15.6.2 Ground Level Play Components. A ground level play component is a play component approached and exited at the ground level. Examples of ground level play components include spring rockers, swings, diggers, and stand alone slides. When distinguishing between the different types of ground level play components, consider the general experience provided by the play component. Examples of different types of experiences include, but are not limited to, rocking, swinging, climbing, spinning, and sliding. A spiral slide may provide a slightly different experience from a straight slide, but sliding is the general experience and therefore a spiral slide is not considered a different type of play component than a straight slide.

A15.6 Play Areas

The number of ground level play components is not dependent on the number of children who can play on the play component. A large seesaw designed to accommodate ten children at once is considered one ground level play component.

Where a large play area includes two or more composite play structures designed for the same age group, the total number of elevated play components on all the composite play structures must be added to determine the additional number and types of ground level play components that must be provided on an accessible route, and the type of accessible route (e.g., ramps or transfer systems) that must be provided to the elevated play components.

Ground level play components accessed by children with disabilities must be integrated in the play area. Designers should consider the optimal layout of ground level play components accessed by children with disabilities to foster interaction and socialization among all children. Grouping all ground level play components accessed by children with disabilities in one location is not considered integrated.

A15.6.3 Elevated Play Components. Elevated play components are approached above or below grade and are part of a composite play structure. A double or triple slide that is part of a composite play structure is one elevated play component. For purposes of this section, ramps, transfer systems, steps, decks, and roofs are not considered elevated play components. These elements are generally used to link other elements on a composite play structure. Although socialization and pretend play can occur on these elements, they are not primarily intended for play. Some play components that are attached to a composite play structure can be approached or exited at the ground level or above grade from a platform or deck. For example, a climber attached to a composite play structure can be approached or exited at the ground level or above grade from a platform or deck on a composite play structure. Play components that are attached to a composite play structure and can be approached from a platform or deck (e.g.,

climbers and overhead play components), are considered elevated play components. These play components are not considered ground level play components also, and do not count toward the requirements in 15.6.2 regarding the number of ground level play components that must be located on an accessible route.

A15.6.4 Accessible Routes. Accessible routes within the boundary of the play area must comply with 15.6.4. Accessible routes connecting the play area to parking, drinking fountains, and other elements on a site must comply with 4.3. Accessible routes provide children who use wheelchairs or other mobility devices the opportunity to access play components. Accessible routes should coincide with the general circulation path used within the play area. Careful placement and consideration of the layout of accessible routes will enhance the ability of children with disabilities to socialize and interact with other children.

Where possible, designers and operators are encouraged to provide wider ground level accessible routes within the play area or consider designing the entire ground surface to be accessible. Providing more accessible spaces will enhance the integration of all children within the play area and provide access to more play components. A maximum slope of 1:16 is required for ground level ramps; however, a lesser slope will enhance access for those children who have difficulty negotiating the 1:16 maximum slope. Handrails are not required on ramps located within ground level use zones.

Where a stand alone slide is provided, an accessible route must connect the base of the stairs at the entry point, and the exit point of the slide. A ramp or transfer system to the top of the slide is not required. Where a sand box is provided, an accessible route must connect to the border of the sand box. Accessibility to the sand box would be enhanced by providing a transfer system into the sand or by providing a raised sand table with knee clearance complying with 15.6.6.3.

A15.6 Play Areas

Elevated accessible routes must connect the entry and exit points of at least 50 percent of elevated play components. Ramps are preferred over transfer systems since not all children who use wheelchairs or other mobility devices may be able to use or may choose not to use transfer systems. Where ramps connect elevated play components, the maximum rise of any ramp run is limited to 12 inches. Where possible, designers and operators are encouraged to provide ramps with a lesser slope than the 1:12 maximum. Berms or sculpted dirt may be used to provide elevation and may be part of an accessible route to composite play structures.

Platform lifts complying with 4.11 and applicable State and local codes are permitted as a part of an accessible route. Because lifts must be independently operable, operators should carefully consider the appropriateness of their use in unsupervised settings.

A15.6.5 Transfer Systems. Transfer systems are a means of accessing composite play structures. Transfer systems generally include a transfer platform and a series of transfer steps. Children who use wheelchairs or other mobility devices transfer from their wheelchair or mobility devices onto the transfer platform and lift themselves up or down the transfer steps and scoot along the decks or platforms to access elevated play components. Some children may be unable or may choose not to use transfer systems. Where transfer systems are provided, consideration should be given to the distance between the transfer system and the elevated play components. Moving between a transfer platform and a series of transfer steps requires extensive exertion for some children. Designers should minimize the distance between the points where a

child transfers from a wheelchair or mobility device and where the elevated play components are located. Where elevated play components are used to connect to another elevated play component in lieu of an accessible route, careful consideration should be used in the selection of the play components used for this purpose. Transfer supports are required on transfer platforms and transfer steps to assist children when transferring. Some examples of supports include a rope loop, a loop type handle, a slot in the edge of a flat horizontal or vertical member, poles or bars, or D rings on the corner posts.

A15.6.6 Play Components. Clear floor or ground spaces, maneuvering spaces, and accessible routes may overlap within play areas. A specific location has not been designated for the clear floor or ground spaces or maneuvering spaces, except swings, because each play component may require that the spaces be placed in a unique location. Where play components include a seat or entry point, designs that provide for an unobstructed transfer from a wheelchair or other mobility device are recommended. This will enhance the ability of children with disabilities to independently use the play component.

When designing play components with manipulative or interactive features, consider appropriate reach ranges for children seated in wheelchairs. The following table provides guidance on reach ranges for children seated in wheelchairs. These dimensions apply to either forward or side reaches. The reach ranges are appropriate for use with those play components that children seated in wheelchairs may access and reach. Where transfer systems provide access to elevated play components, the reach ranges are not appropriate.

Children's Reach Ranges

Forward or Side Reach	Ages 3 and 4	Ages 5 through 8	Ages 9 through 12
High (maximum)	36 in (915 mm)	40 in (1015 mm)	44 in (1120 mm)
Low (minimum)	20 in (510 mm)	18 in (455 mm)	16 in (405 mm)

A15.7 Exercise Equipment and Machines

Where a climber is located on a ground level accessible route, some of the climbing rings should be within the reach ranges. A careful balance of providing access to play components but not eliminating the challenge and nature of the activity is encouraged.

A15.6.7 Ground Surfaces. Ground surfaces along clear floor or ground spaces, maneuvering spaces, and accessible routes must comply with the ASTM F 1951 Standard Specification for Determination of Accessibility to Surface Systems Under and Around Playground Equipment. The ASTM F 1951 standard is available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, telephone (610) 832-9585. The ASTM F 1951 standard may be ordered online from ASTM (<http://www.astm.org>). The ASTM F 1951 standard determines the accessibility of a surface by measuring the work required to propel a wheelchair across the surface. The standard includes tests of effort for both straight ahead and turning movement, using a force wheel on a rehabilitation wheelchair as the measuring device. To meet the standard, the force required must be less than that required to propel the wheelchair up a ramp with a 1:14 slope. When evaluating ground surfaces, operators should request information about compliance with the ASTM F 1951 standard.

Ground surfaces must be inspected and maintained regularly and frequently to ensure continued compliance with the ASTM F 1951 standard. The type of surface material selected and play area use levels will determine the frequency of inspection and maintenance activities.

When using a combination of surface materials, careful design is necessary to provide appropriate transitions between the surfaces. Where a rubber surface is installed on top of asphalt to provide impact attenuation, the edges of the rubber surface may create a change in level between the adjoining ground surfaces. Where the change in level is greater than ½ inch, a sloped surface with a maximum slope of 1:12 must be provided.

Products are commercially available that provide a 1:12 slope at transitions. Transitions are also necessary where the combination of surface materials include loose fill products. Where edging is used to prevent the loose surface from moving onto the firmer surface, the edging may create a tripping hazard. Where possible, the transition should be designed to allow for a smooth and gradual transition between the two surfaces.

A15.7 Exercise Equipment and Machines, Bowling Lanes, and Shooting Facilities.**A15.7.2 Exercise Equipment and Machines.**

Fitness facilities often provide a range of choices of exercise equipment. At least one of each type of exercise equipment and machine must be served by an accessible route. Most strength training equipment and machines are considered different types. For example, a bench press machine is considered a different type than a biceps curl machine. The requirement for providing access to each type is intended to cover the variety of strength training machines. Where operators provide a biceps curl machine and free weights, both are required to meet the provisions in this section, even though an individual may be able to work on their biceps through both types of equipment. Where the exercise equipment and machines provided are only different in that different manufacturers provide them, only one of each type of machine is required to meet these guidelines. For example, where two bench press machines are provided and each is manufactured by a different company, only one is required to comply.

Similarly, there are many types of cardiovascular exercise machines, such as stationary bicycles, rowing machines, stair climbers, and treadmills. Each machine provides a cardiovascular exercise and is considered a different type for purposes of these guidelines.

One clear floor or ground space is permitted to be shared between two pieces of exercise equipment. Designers should carefully consider layout

A15.8 Swimming Pools, Wading Pools, and Spas

options to maximize space such as connecting ends of the row and center aisle spaces.

The position of the clear floor space may vary greatly depending on the use of the equipment or machine. For example, to make a shoulder press accessible, clear floor space next to the seat would be appropriate to allow for transfer. Clear floor space for a bench press machine designed for use by an individual seated in a wheelchair, however, will most likely be centered on the operating mechanisms.

Designers and operators are encouraged to select exercise equipment and machines that provide fitness opportunities for persons with lower body extremity disabilities. Upper body exercise equipment and machines that offer either cardiovascular or strength training will enhance fitness opportunities for persons with disabilities from a wheelchair or mobility device. Examples include: equipment or machines that provide arm ergometry, free weights, and weighted pulley systems that are usable from a wheelchair or mobility device.

A15.7.4. Shooting Facilities. Examples of different types of firing positions include, but are not limited to: positions having different admission prices, positions with or without weather covering or lighting, and positions supporting different shooting events such as argon, muzzle loading rifle, small bore rifle, high power rifle, bull's eye pistol, action pistol, silhouette, trap, skeet, and archery (bow and crossbow).

A15.8 Swimming Pools, Wading Pools, and Spas.

A15.8.2 Swimming Pools. Where more than one means of access is provided into the water, it is recommended that the means be different. Providing different means of access will better serve the varying needs of people with disabilities in getting into and out of a swimming pool. It is also recommended that where two or more means of access are provided, they not be provided in the same location in the pool. Different locations will

provide increased options for entry and exit, especially in larger pools.

A15.8.2 Swimming Pools, Exception 1. Pool walls at diving areas and areas along pool walls where there is no pool entry because of landscaping or adjacent structures should be counted when determining the number of accessible means of entry required.

A15.8.5 Pool Lifts. There are a variety of seats available on pool lifts ranging from sling seats to those that are preformed or molded. Pool lift seats with backs will enable a larger population of persons with disabilities to use the lift. Pool lift seats that consist of materials that resist corrosion and provide a firm base to transfer will be usable by a wider range of people with disabilities. Additional options such as armrests, head rests, seat belts, and leg support will enhance accessibility and better accommodate people with a wide range of disabilities.

A15.8.5.6 Footrests and Armrests. Footrests are encouraged on lifts used in larger spas, where the foot well water depth is 34 inches or greater. Providing footrests, especially ones that support the entire foot, will facilitate safe and independent transfers by a larger population of persons with disabilities.

A15.8.5.7 Operation. Pool lifts must be capable of unassisted operation from both the deck and water levels. This will permit a person to call the pool lift when the pool lift is in the opposite position. It is extremely important for a person who is swimming alone to be able to call the pool lift when it is in the up position so he or she will not be stranded in the water for extended periods of time awaiting assistance. The requirement for a pool lift to be independently operable does not preclude assistance from being provided.

A15.8.5.9 Lifting Capacity. Single person pool lifts must be capable of supporting a minimum weight of 300 pounds and sustaining a static load of at least one and a half times the rated load. Pool lifts should be provided that meet the needs of the population it is serving. Providing a pool lift

A15.8 Swimming Pools, Wading Pools and Spas

with a weight capacity greater than 300 pounds may be advisable.

A15.8.6.1 Sloped Entries. Personal wheelchairs and mobility devices may not be appropriate for submerging in water. Some may have batteries, motors, and electrical systems that when submerged in water may cause damage to the personal mobility device or wheelchair or may contaminate the pool water. Providing an aquatic wheelchair made of non-corrosive materials and designed for access into the water will protect the water from contamination and avoid damage to personal wheelchairs or other mobility aids.

A15.8.6.3 Handrails. Handrails on both sides of a sloped entry provides stability to both persons with mobility impairments and persons using wheelchairs. For safety reasons, a single handrail is permitted on sloped entries provided at wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to one area.

A15.8.8.4 Transfer Steps. Where possible, the height of the transfer step should be as minimal as possible. This will decrease the distance an individual is required to lift up or move down to reach the next step to gain access.

A15.8.8.7 Grab Bars. Pool operators have the choice of providing a grab bar on one side of each step and transfer platform or a continuous grab bar on one side serving each transfer step and the transfer platform. If provided on each step, the top of the gripping surface must be 4 to 6 inches above each step. Where a continuous grab bar is provided, the top of the gripping surface must be 4 to 6 inches above the step nosing. Each type has its advantages. A continuous handrail allows the person that is transferring to maintain a constant grip on the handrail while moving up or down the transfer steps. Grab bars provided on each step provide the gripping surface parallel to each step rather than on a diagonal.

A15.8.10 Water Play Components. Personal wheelchairs and mobility devices may not be appropriate for submerging in water when accessing play components located in water.

Some may have batteries, motors, and electrical systems that when submerged in water may cause damage to the personal mobility device or wheelchair or may contaminate the water. Providing an aquatic wheelchair made of non-corrosive materials and designed for access into the water will protect the water from contamination and avoid damage to personal wheelchairs.

**ARCHITECTURAL AND
TRANSPORTATION BARRIERS
COMPLIANCE BOARD**

36 CFR Parts 1190 and 1191

[Docket No. 02-2]

RIN 3014-AA20

**Americans With Disabilities Act (ADA)
Accessibility Guidelines for Buildings
and Facilities; Architectural Barriers
Act (ABA) Accessibility Guidelines;
Recreation Facilities**

AGENCY: Architectural and
Transportation Barriers Compliance
Board.

ACTION: Supplemental notice of
proposed rulemaking.

SUMMARY: The Architectural and
Transportation Barriers Compliance
Board (Access Board) has issued final
rules to supplement the accessibility
guidelines for buildings and facilities
covered by the Americans With
Disabilities Act by adding provisions for
recreation facilities. The Access Board
proposes to make the provisions in
these final rules also apply to federally
financed facilities covered by the
Architectural Barriers Act. This action
would make the accessibility guidelines
for recreation facilities covered by these
laws consistent and ensure that
individuals with disabilities are
provided the same level of access to
recreation facilities operated by Federal
agencies, as is provided by State and
local governments and private entities.

DATES: Comments must be received by
October 3, 2002.

ADDRESSES: Comments should be sent to
the Office of Technical and
Informational Services, Architectural
and Transportation Barriers Compliance
Board, 1331 F Street NW., suite 1000,
Washington, DC 20004-1111. E-mail
comments should be sent to
greenwell@access-board.gov. Comments
sent by e-mail will be considered only
if they contain the full name and
address of the sender in the text.
Comments will be available for
inspection at the above address from 9
a.m. to 5 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT:
Peggy Greenwell, Office of Technical

and Information Services, Architectural
and Transportation Barriers Compliance
Board, 1331 F Street, NW., suite 1000,
Washington DC 20004-1111. Telephone
number (202) 272-0017 (voice); (202)
272-0082 (TTY). Electronic mail
address: greenwell@access-board.gov.

SUPPLEMENTARY INFORMATION: In 1999,
the Access Board issued a notice of
proposed rulemaking to revise and
update the accessibility guidelines for
buildings and facilities covered by the
Americans with Disabilities Act (ADA)
and the Architectural Barriers Act
(ABA). 64 FR 62248 (November
16, 1999). One of the purposes of the
rulemaking is to make the ADA and
ABA accessibility guidelines more
consistent. The Access Board plans to
issue a final rule to revise and update
the ADA and ABA accessibility
guidelines later this year.

The Access Board conducted separate
rulemakings to supplement the ADA
accessibility guidelines by adding
provisions for play areas and other
recreation facilities. A final rule adding
provisions for play areas was issued in
2000. 65 FR 62498 (October 18, 2000).

A final rule adding provisions for
other recreation facilities, including
amusement rides, boating facilities,
fishing piers and platforms, golf courses
and driving ranges, miniature golf,
exercise equipment, bowling lanes,
shooting facilities, swimming pools,
wading pools, and spas, is issued
elsewhere in today's **Federal Register**.
The final rule issued in today's **Federal
Register** also reprints the provisions for
play areas that were issued in 2000. The
Access Board will incorporate the
provisions for play areas and the other
recreation facilities in the final rule to
revise and update the ADA and ABA
accessibility guidelines when it is
issued later this year.

When the notice of proposed
rulemaking for the other recreation
facilities was issued, the notice stated
that the Access Board would take action
in the future to make the provisions
applicable to federally financed
facilities covered by the ABA, and
encouraged Federal agencies and other
interested persons to comment on the
provisions as they relate to those
facilities. 64 FR 37327 (July 9, 1999).
Federal agencies commented on the

notice. Although the notice of proposed
rulemaking for play areas did not refer
to federally financed facilities covered
by the ABA, Federal agencies which
operate child care centers and schools
that may construct or alter play areas are
members of the Access Board and
participated in the rulemaking. 63 FR
24080 (April 30, 1998).

The purpose of this notice is to inform
the public that the Access Board
proposes to make the provisions in the
final rules for play areas and other
recreation facilities apply to federally
financed facilities covered by the ABA.
As indicated above, the provisions for
play areas and other recreation facilities
will be incorporated in the final rule to
revise and update the ADA and ABA
guidelines when issued later this year.

This final rules for play areas and
other recreation facilities are significant
regulatory actions under Executive
Order 12866 and have been reviewed by
the Office of Management and Budget.
The Access Board assessed the benefits
and costs of the final rules. The
assessments have been placed in the
public docket and are available for
inspection. The assessments are also
available on the Board's Internet site
(<http://www.access-board.gov>).

This action will affect Federal
agencies which operate child care
centers and schools that may construct
or alter play areas, and Federal agencies
that construct or alter other recreation
facilities covered by the final rules. To
the extent data was available on play
areas and other recreation facilities
constructed or altered by Federal
agencies, it was included in the
assessments.

The Access Board prepared initial and
final regulatory flexibility analyses for
the proposed and final rules for play
areas and other recreation facilities. As
indicated above, this action will affect
Federal agencies and does not require
the preparation of any additional
analyses under the Regulatory
Flexibility Act.

Thurman M. Davis, Sr.,

*Chair, Architectural and Transportation
Barriers Compliance Board.*

[FR Doc. 02-21806 Filed 8-30-02; 8:45 am]

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Federal Register

**Tuesday,
September 3, 2002**

Part III

Department of Justice

Office of Justice Programs

**Victims of Crime Act (VOCA) Victim
Assistance Grant Program; Notice**

DEPARTMENT OF JUSTICE**Office of Justice Programs****[OJP(OJP)-1350]****Victims of Crime Act (VOCA) Victim Assistance Grant Program****AGENCY:** Office for Victims of Crime, Office of Justice Programs, Justice.**ACTION:** Proposed revised program guidelines and request for comments.

SUMMARY: The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), United States Department of Justice (DOJ), is publishing Proposed Revised Program Guidelines to implement the Victim Assistance Grant Program as authorized by the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10601, *et seq.*, hereafter referred to as VOCA. These Proposed Revised Program Guidelines propose changes to the Final VOCA Victim Assistance Program Guidelines, published in 1997 (1997 Guidelines).

Solicitation of Comments: The public is invited to provide comments about these Proposed Revised Program Guidelines. All comments must be sent to Toni L. Thomas, Acting Director, State Compensation and Assistance Division, Office for Victims of Crime. Comments may be sent via conventional mail to 810 Seventh Street, NW., Washington, DC 20531; by Fax to (202) 305-2440; or via e-mail to: toni@ojp.usdoj.gov. Comments must be received no later than October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Toni L. Thomas, Acting Director, State Compensation and Assistance Division, 810 Seventh Street, NW., Washington, DC 20531; telephone number (202) 307-5983. (This is not a toll-free number.) E-mail address: toni@ojp.usdoj.gov.

SUPPLEMENTARY INFORMATION: VOCA provides federal financial assistance to states for the purpose of compensating and assisting victims of crime, funding training and technical assistance, providing services to victims of federal crimes and providing funding and services for victims of terrorism or mass violence. These Proposed Revised Program Guidelines provide information specifically for the administration and implementation of the VOCA victim assistance grant program as authorized in section 1404 of VOCA, Public Law 98-473, as amended, codified at 42 U.S.C. 10603.

Compliance with Federal Administrative Requirements: The Office of Justice Programs, Office for Victims of Crime, in conjunction with the Office of Legal Policy, DOJ, and the

Office of Information and Regulatory Affairs, and the Office for Management and Budget (OMB), has determined that these Proposed Program Guidelines do not represent a significant regulatory action for the purposes of Executive Order 12866 and, accordingly, these Proposed Revised Program Guidelines were not reviewed by OMB.

In addition, these Proposed Revised Program Guidelines will not have a significant economic impact on a substantial number of small entities; therefore, an analysis of the impact of these rules on such entities is not required by the Regulatory Flexibility Act, codified at 5 U.S.C. 601, *et seq.*

The program reporting requirements described in these Proposed Revised Program Guidelines have been approved by OMB as required under the Paperwork Reduction Act, 44 U.S.C. 3504(h). (OMB Approval Number 1121-0014).

Discussion of Proposed Changes to the Victims of Crime Act Victim Assistance Final Program Guidelines (1997)

Background. Changes contained in these Proposed Revised Program Guidelines are based on experience gained, legal opinions rendered, and developments in the criminal justice and victims services fields since the 1997 Guidelines were published. These changes are in accordance with the Victims of Crime Act (VOCA), as amended.

Following is a summary of legislative changes, formatting changes, identification of information incorporated by reference, and substantive grant program and policy modifications.

A. Legislative Changes

1. *Child Abuse Prevention and Treatment Enforcement Act.* This Act amended VOCA to allow for an increase in funds set aside for child abuse victims from \$10 million up to \$20 million. This occurs in any fiscal year in which Crime Victim Fund deposits are greater than the amount deposited in Fiscal Year 1998. An amount equal to 50 percent of the increase plus the base amount of \$10 million is available for this purpose. This applies regardless of whether there is a cap on the amount of money made available from the Fund for VOCA purposes.

2. *Consolidated Appropriations Acts of Fiscal Year 1997, 2000, and 2001.* VOCA and the underlying distribution formula were amended to provide funds for victim assistance personnel in the Federal Criminal Justice System. Currently these funds are earmarked for United States Attorneys Offices and the

Federal Bureau of Investigation. In addition, these funds support the maintenance of the Federal Victim Notification System. These earmarks come under congressionally mandated caps on the amount of money available for expenditure under the Crime Victim Fund. (See section II.A.2.)

3. *Victims of Trafficking and Violence Protection Act of 2000.* This Act:

a. Provided aid for victims of terrorism and expanded OVC's authority to respond to incidents of terrorism outside the United States and of terrorism and mass violence occurring within the United States;

b. Authorized the OVC Director to deposit deobligated dollars from other funded program areas into the Antiterrorism Emergency Reserve;

c. Expanded the list of eligible applicants for the Antiterrorism Emergency Reserve dollars for incidents of terrorism outside the U.S. to include not only states and United States Attorneys' Offices but also victim service organizations, and public agencies (including Federal, State, or local governments), and non-governmental organizations that provide assistance to victims of crime for provision of emergency relief including crisis response efforts, assistance, training and technical assistance and ongoing assistance including during any investigation and prosecution (42 U.S.C. 10603b(a));

d. Expanded the range of support provided to victims of terrorism and mass violence beyond emergency relief to include crisis response efforts, assistance, training and technical assistance and ongoing assistance, including during any investigation or prosecution.

e. Authorized use of the Antiterrorism Emergency Reserve to establish an International Terrorism Victim Compensation Program; and

f. Established policy on international trafficking in persons and provided access to services and special immigration status for victims of severe forms of trafficking.

OVC has published separate guidelines titled *Antiterrorism Emergency Assistance Program for Terrorism and Mass Violence Crimes* to provide information on accessing the Antiterrorism Emergency Reserve. OVC is also establishing separate Guidelines for the International Terrorism Victim Compensation Program.

4. *The Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism Act of 2001 (from here on known as the USA Patriot Act of 2001).* This Act:

a. Authorizes receipt of gifts, bequests, or other donations to the Crime Victim Fund from private entities or individuals;

b. Redistributes the percentage amount available for programs; *i.e.*, crime victim compensation and victim assistance are reduced from 48.5 percent to 47.5 percent for each program and OVC discretionary program increase from 3 percent to 5 percent;

c. Authorizes the OVC Director to set aside up to \$50 million from the amounts transferred to the Fund in response to airline hijackings and terrorist acts of September 11, 2001, as an Antiterrorism Emergency Reserve and allows the Director to replenish any amounts expended from the reserve in a subsequent year by setting aside up to 5 percent of amounts remaining in the fund after distributing amounts authorized for The Children's Justice Act, the Federal criminal justice system, and OVC formula and discretionary grant programs;

d. Restricts use of the Antiterrorism Emergency Reserve to supplemental grants to address terrorism or mass violence within and outside the United States and to fund the International Terrorism Victim Compensation Program;

e. Increases in Fiscal Year 2003 the percentage reimbursement to state compensation programs from 40 percent to 60 percent of payments made from state funding sources in Fiscal Year 2000;

f. Clarifies that the United States Virgin Islands is an eligible recipient of VOCA compensation and assistance formula grants;

g. Establishes that Federal Government agencies performing local law enforcement functions in the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands are eligible to receive VOCA victim assistance funding and to receive OVC discretionary funding;

h. Authorizes the OVC Director to use discretionary funds for program evaluation, compliance efforts, fellowships and clinical internships;

i. Expands the list of eligible applicants for funding in response to terrorism or mass violence within the United States to include not only states and the United States Attorneys Offices but also victim service organizations, public agencies (federal, state, local) and non-governmental organizations that provide assistance to crime victims; and amends the definition of terrorism to include mass destruction.

B. Formatting Changes

Technical revisions to these Proposed Revised Program Guidelines do not affect policy or implementation of VOCA victim assistance programs. These revisions reorganize information for ease of reference and use. For example, the 1997 Guidelines included definitions in relevant places in the body of the document. These Proposed Revised Program Guidelines centralize definitions at the beginning of the document to eliminate scanning the full set of Guidelines to find a particular definition.

C. Incorporation by Reference

The 1997 Guidelines included certain financial, civil rights, application, and award policies that affect all OJP grants. As these policies changed, the Guidelines became outdated. To assure that state grantees and subgrantees have current information, these Proposed Revised Program Guidelines incorporate by reference the following:

1. *OJP Financial Guide*, effective edition. The 1997 Guidelines included financial requirements that come under the responsibility of the OJP Office of the Comptroller (OC). These Proposed Program Guidelines require states and subgrantees to comply with the *OJP Financial Guide*, effective edition, and do not duplicate the contents of that guide. (section II.) The *OJP Financial Guide* is available on the OJP home page at <http://www.ojp.usdoj.gov/FinGuide/>.

2. Non Discrimination. The 1997 Guidelines included nondiscrimination requirements that come under the responsibility of the OJP Office of Civil Rights (OCR) which reviews and approves compliance during the grant award process. Only the VOCA statutory requirements are found in these Proposed Revised Program Guidelines. (See section IV.B.7.) These Proposed Revised Program Guidelines require compliance with other civil rights mandates but do not duplicate the materials published by the OCR.

3. Application Requirements and Other Federal Requirements. The application package for VOCA victim assistance grants contain the requisite forms, assurances, and certifications that the states must agree to in applying for and accepting VOCA funds. These Proposed Revised Program Guidelines require completion and compliance with the contents of the application package, but do not duplicate discussion of those requirements. (See section VI.)

D. Proposed Substantive Changes and Clarifications to the 1997 Guidelines

1. Strategic Planning. The Proposed Revised Program Guidelines encourage state strategic planning for the delivery of crime victim services. This planning would include conducting needs assessments, taking into consideration the multiple funding sources for services, developing a comprehensive victim assistance response to crime victims, and establishing funding priorities. In this planning process, state grantees are encouraged to plan for development and expansion of services to victim populations not previously served, including victims of cybercrime and economic crime; victims with special needs such as elders, persons with disabilities, and victims with limited English proficiency; victims living in areas with high rates of crime such as certain urban, rural, low-income neighborhoods, and Indian Country; and other categories of victims identified as underserved by the state grantee. (See section II.D.1. and 2.)

2. Mass Violence and Terrorism. These Proposed Revised Program Guidelines encourage state VOCA organizations to become involved with criminal crisis response planning activities by working with the state's designated emergency preparedness organizations, with local governments, with the crime victim compensation program, with victim assistance, and other relief agencies and organizations. This involvement is expected to result in appropriate, quality, and timely victim services responses in the aftermath of terrorism or mass violence crimes. (section III.)

3. Training Funds. The 1997 Guidelines allowed state grantees to retain up to 1 percent of their awards with a 20% match for statewide or regional training. The Proposed Revised Program Guidelines would allow up to 5 percent for this purpose with no match requirement. (section VII.)

4. New Programs. VOCA requires those programs without a demonstrated history of providing victim services (when applying for VOCA funds) to assure that they have substantial financial support from sources other than the Crime Victims Fund. To meet this mandate, the 1997 Guidelines required new programs to demonstrate that 25–50 percent of their financial support came from non-federal sources. These Proposed Revised Program Guidelines require that other sources of funding be only non-VOCA, which is consistent with the VOCA statute. This will allow new programs with other federal funding, but with limited state,

local, or private funding, to apply for VOCA victim assistance grant funds. This does not allow these programs to use VOCA victim assistance funds to supplant other federal funding and does not allow for use of federal funding as match except as described in the *OJP Financial Guide*, effective edition. (See section VIII.A.3.) In addition, the Proposed Revised Program Guidelines specify that the non-VOCA share must be at least 35% in order to assure substantial financial support from other sources and encourage the start up of new programs to serve crime victims. (See section VIII.A.3.)

5. Fees for Service and Program Income. These Proposed Revised Program Guidelines discourage but do not prohibit subgrantee programs from charging fees and thus generating program income. In instances where the VOCA grantee determines that more victims would be served or services enhanced when VOCA and other victim services funding are limited, these Proposed Revised Program Guidelines describe state grantee responsibility when considering whether to approve a subgrantee's request to charge fees for services. This section prohibits the charging of fees for basic victim services, and requires that VOCA grantees, when making a decision, give priority to considerations of victim access to services over a subgrantee's desire to expand services. (See section VIII.A.12.)

6. Victim Rights Compliance. States have passed constitutional amendments and statutes guaranteeing the rights of crime victims to participate in the criminal justice process. Victims are allowed to make statements at sentencing and parole hearings; to receive notification of court proceedings and actions concerning case dispositions; to apply for crime victims compensation; and to receive restitution. However, in practice, many victims are not afforded these rights. Several states have developed programs that provide recourse to crime victims who believe that their rights have been violated. These Proposed Revised Program Guidelines allow VOCA funds to support victim rights compliance activities and services. (section VIII.B.1.)

7. Vulnerable Adults. These Proposed Revised Program Guidelines identify "vulnerable adults" as eligible to receive services under VOCA victim assistance. In addition, the definition of "vulnerable adults" is included in the definition section. (See sections I.Q. and IX.A.1&7)

8. Emergency Expenses. The 1997 Guidelines, under "Immediate Health and Safety," included as allowable costs

emergency food, clothing, shelter, and other services that can restore a victim's sense of security. This included boarding up broken windows and replacing or repairing locks. These Proposed Revised Program Guidelines add as allowable costs the replacement of prescription medicines and eyeglasses within 48 hours of the crime when other resources are unavailable for these purposes. (See section IX.A.1.)

Also added as allowable costs are short-term in-home services needed to assist children and vulnerable adults to remain in their own homes when the offender who is the care giver is removed. These services may include meal preparation, child care, respite care, and 24-hour supervision. The 1997 Guidelines allowed for emergency nursing home care; these Proposed Revised Program Guidelines add adult foster care and group home care as less restrictive alternatives to nursing home care.

Finally, the 1997 Guidelines provided for emergency legal assistance for victims of family violence. These Proposed Revised Program Guidelines extend emergency legal assistance to victims of any crime, as long as the service is directly related to the crime. This will allow coverage for obtaining protective or restraining orders by victims of stalking, sexual assault, and other crimes. In addition, legal assistance that helps victims assert their rights in a criminal case, including pro bono legal clinics for crime victims are allowable. (See section IX.A.1.)

9. Personal Advocacy and Case Management. In addition to personal advocacy, these Proposed Revised Program Guidelines add case management as an allowable activity. While personal advocacy has in the past included case management, the incorporation of specific language defining case management acknowledges that in most instances no single agency or organization can meet all the needs of crime victims and that it may be necessary to assist victims in navigating not only the criminal justice system, but also social services, health and mental health care, and other systems. (See section IX.A.2.)

10. Mental Health Counseling, Care and Peer Support. The 1997 Guidelines under "Mental Health Assistance" appeared to combine professional treatment services with peer support groups. These Proposed Revised Program Guidelines clarify distinctions between professional mental health treatment and peer support to allow for different qualifications and approaches of providers. (See section IX.A.3&4.)

11. Criminal Justice System Participation. These Proposed Revised Program Guidelines expand allowable expenses for a victim who is not a witness to attend court proceedings by including meals and lodging, interpreters for victims who are deaf or hard of hearing and for victims with limited English language proficiency, and respite and child care to enable a victim who is a care giver to participate in the criminal justice process. This does not allow VOCA funds to cover these costs when a victim is a witness in a case, since the criminal justice system is responsible for costs associated with witnesses. (See section IX.A.5.)

12. Forensic Interviews. In general, the 1997 Guidelines did not allow for VOCA victim assistance coverage of forensic interviews of crime victims, since the purpose of these interviews was viewed as an investigative function of law enforcement and prosecution. Since the release of the 1997 Guidelines, the victim services field has gained experience in working with trained interviewers who can elicit information for use not only for criminal justice evidence collection but also for victim services purposes. As a result, OVC proposes in these Proposed Revised Program Guidelines to allow for funding for trained forensic interviewers under certain circumstances. (See section IX.A.7.)

OVC is particularly interested in hearing from the field about the pros and cons of including forensic interviews as an allowable cost as well as parameters under which VOCA funds should and should not be used.

13. Victim-Offender Meetings. These Proposed Revised Program Guidelines clarify that VOCA victim assistance may only fund interaction between a victim and the perpetrator of the crime in which the victim was harmed and the meeting must be instigated by the victim. Further, VOCA funds can only be used to cover costs for that victim. This means that costs incurred for the offender must be borne by the criminal justice or other systems. VOCA victim assistance funds cannot be used for offender based restorative justice programs. (See section IX.A.8.)

14. Multisystem, Interagency, Multidisciplinary Approach to Serving Crime Victims. In the 1997 Guidelines, subgrantees were required to coordinate and collaborate with other public and community-based organizations in serving crime victims, but VOCA victim assistance funds could not be used for these purposes. Because there is recognition in the field that effective provision of victim services in most

instances requires a multisystem, interagency, and multidisciplinary approach, these Proposed Revised Program Guidelines consider as allowable costs participation on child and vulnerable adult multidisciplinary investigation and treatment teams, case planning and management meetings, and other such interactions when multiple agencies serve a crime victim. In addition, activities that further the development and maintenance of a seamless system of services for crime victims may be supported. This would include participation on work groups, task forces, committees, and other such bodies to establish protocols, working agreements, and other mechanisms for coordination and collaboration and oversee system delivery. This provision does not include as allowable activities lobbying or administrative advocacy. (See section IX.B.2.)

Because this provision is a major departure from previous Guidelines, OVC is particularly interested in receiving comments on this proposal.

In addition, OVC is interested in learning if there are subgrantee executive director or other administrative expenses that could be made allowable; *e.g.*, expenses that assure oversight of the VOCA project, quality of services, coordination with other organizations, budgeting for the project. This acknowledges, among other factors, that the victim services field is moving toward professionalization, projects are more complex, presence in the community is critical, and budgets are larger, resulting in the need for experienced and qualified managers for subgrantee agencies.

15. Training for Subgrantees, Others Who Serve Crime Victims, and Administrators and Managers. In the 1997 Guidelines, funds awarded to subgrantees could be used for training subgrantee staff, whether VOCA or non-VOCA funded. Because intervention with crime victims in most instances requires a multisystem, interagency, and multidisciplinary approach, these Proposed Revised Program Guidelines authorize the use of VOCA funds for joint training of VOCA-funded staff with others such as criminal justice officials and mental health providers so long as the training promotes a cross-system response to crime victims. Training-related travel is also allowed under these conditions.

In addition, at the state grantee's discretion, subgrantee training on administration and management is also allowable. This acknowledges that the complexities of overseeing victim services agencies have increased and

program administrators and managers must continually hone knowledge, skills, and abilities to ensure that comprehensive, quality services are provided to crime victims. (See sections IX.B.2. and 4.)

Because allowing VOCA direct services funds to be used to pay for training on administration and management is a significant departure from previous policy, OVC is particularly interested in receiving comments on this proposed change.

16. Compliance With the Americans with Disabilities Act and the National Historic Preservation Act. The 1997 Guidelines allow for minor building adaptations to facilitate the access to services for crime victims. These Proposed Revised Program Guidelines add information pertaining to any medically necessary building adaptations or modifications by including information on compliance with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.* This Act applies when a grantee wishes to use VOCA funds for making minor building adaptations or modifications to historic properties. (See section IX.C.1.)

17. Purchasing Vehicles. These Proposed Revised Program Guidelines continue to allow for leasing of vehicles by subgrantees but no longer allows for purchase. This is intended to prevent misuse and abuse of VOCA funds. (See section IX.C.5.)

Because this provision is a notable departure from previous Guidelines, OVC is particularly interested in receiving comments on this proposed change.

18. Automated Systems and Technology. In the 1997 Guidelines, subgrantees requesting VOCA funds for any advanced technology were required to meet specific justification requirements. These Proposed Revised Program Guidelines consider personal computers as common office equipment which is allowable under equipment and furniture. (See section IX.C.2.) The 1997 Guidelines requirements for funding advanced technologies are now required only for larger systems automation such as statewide information and referral systems and victim services agency case tracking systems.

Also, requirements are added for automation of victim notification systems to assure that a subgrantee has the capability to connect a victim receiving notification to needed crisis intervention and referral services. Because automated victim notification systems are dependent on criminal justice information systems, the requirement is added that development

and implementation of these systems must include work with the OJP single point of contact for OJP technology grants and comply with OJP requirements. (See section IX.C.6.)

19. State Onsite Monitoring of Subgrantees. State desk monitoring of subgrantees has always been an expectation of OVC. Because of the increase in federal VOCA funds now available to state grantees to fund victim assistance programs, the increase in the number of years in which these funds can be spent, the availability of administrative costs, and a major increase in the number of VOCA funded projects, in these Proposed Revised Program Guidelines OVC mandates that state grantees conduct onsite monitoring of subgrantees at a minimum of once every four years. State grantees would be required to develop a monitoring plan and maintain on file site visit reports and other documents related to subgrantee compliance with VOCA and the *OJP Financial Guide*, effective edition. This is an allowable expense which can be charged to the VOCA administrative allocation. (See section XI.)

Proposed Revised Guidelines for the Victims of Crime Act Victim Assistance Grant Program

These Proposed Revised Program Guidelines update the previously issued Final Program Guidelines, Victims of Crime Act Victim Assistance Grant Program (1997 Guidelines), 62 FR 19607, Apr. 22, 1997, and are in accordance with VOCA. These Proposed Revised Program Guidelines are all inclusive and upon issuance of Final Guidelines will supersede any prior VOCA Victim Assistance Guidelines issued by OVC. These Proposed Revised Program Guidelines seek to broaden the use of VOCA funding to cover additional subgrantee expenses, to support new services, and to reach victims of new categories of crime.

These Proposed Revised Program Guidelines are outlined as follows:

- I. Definitions
- II. Funding Allocations
- III. Mass Violence and Terrorism
- IV. State Grantee Eligibility Requirements
- V. VOCA Victim Assistance State Grantee Application Process
- VI. Administrative Cost Provision for State Grantees
- VII. State Grantee Training Funds
- VIII. Subgrantee Program Requirements
- IX. Subgrantee Allowable Costs
- X. Program Reporting Requirements
- XI. Monitoring
- XII. Suspension and Termination of Funding

I. Definitions

The following definitions are provided for purposes of these Proposed Revised Program Guidelines.

A. Case management. Case management includes working with a victim to examine the impact of the crime, identify needs, develop a plan of services and resources required to respond to the victim's needs, and assist the victim in implementing the plan. The case manager, located in a victim services organization, may be the coordinator for the work of all other agencies, assuring that services and benefits are provided and rights are accorded.

B. Child Sexual Exploitation. The sexual victimization of a minor under the age of 18 involving any of the following: child pornography, child prostitution, or online enticement of sexual acts. Child exploitation does not necessarily require commercial or monetary gain for the perpetrator.

C. Cybercrime. For purposes of these Guidelines, cybercrime is a crime in which computers and other technology are used to facilitate traditional criminal activity (e.g., stalking, child sexual exploitation, or fraud). Cybercrime does not include crimes where computers or other technologies are the targets of attack (e.g., computer hacking).

D. Domestic Violence. This term includes spouse abuse and intimate partner violence.

E. Economic Crime. Economic crime includes fraud, forgery, larceny, embezzlement, and identity theft which is perpetrated against individuals. It does not include crimes against a business, organization, or government.

F. Federal Crime. A federal crime is any crime that is a violation of the United States Criminal Code or violation of the Uniform Code of Military Justice. In general, federal crimes are investigated by federal law enforcement agencies, including the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Bureau of Alcohol, Tobacco and Firearms (BATF), U.S. Postal Service (USPS), Department of Interior (DOI), U.S. Secret Service (USSS), U.S. Customs Service (USCS), and Immigration and Naturalization Service (INS). Federal crimes are prosecuted in Federal District Courts by U.S. Attorneys and the U.S. Department of Justice Criminal Division. Examples of Federal crimes include, but are not limited to:

1. Crimes against federal officials.
2. Crimes that take place on federal property, including national parks and military bases, certain maritime and

territorial jurisdictions, and buildings owned or leased by the Federal Government.

3. Bank robberies where the bank is insured or otherwise secured by the Federal Government.

4. Crimes affecting interstate activities, such as kidnaping, interstate domestic violence, and fraud via the U.S. mail, telephone, or wire.

5. Crimes occurring in Indian Country or on reservations where the Federal Government has criminal jurisdiction.

6. Trafficking in persons.

G. Indian Tribes and Tribal Organizations. Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C.A. Sec. 1601, *et. seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

H. In-kind Match. In-kind match may include donations of expendable equipment, office supplies, training materials, work space, or the monetary value of time contributed by professionals and technical personnel and other skilled and unskilled labor, if the services they provide are an integral and necessary part of a funded project.

I. Mass Violence Occurring Within or Outside the United States. The term mass violence is not defined in VOCA or in any statute amending VOCA nor is it defined in the U.S. Criminal Code. Thus, OVC has developed a working definition of this term. The term mass violence means an intentional violent criminal act, for which a formal investigation has been opened by the Federal Bureau of Investigation or other law enforcement agency, that results in physical, emotional or psychological injury to a sufficiently large number of people as to significantly increase the burden of victim assistance for the responding jurisdiction, as determined by the OVC Director. If there is a discrepancy between the definition provided in these Proposed Program Guidelines and the *Guidelines for the Antiterrorism and Emergency Assistance Program for Terrorism and Mass Violence Crimes*, the definition in the latter Guidelines take precedence.

J. Mental Health. Mental health counseling and care means the assessment, diagnosis, and treatment of an individual's mental and emotional functioning as affected by a crime.

K. Nonviolent Crime. Nonviolent crime includes but is not limited to property and economic crime. It may include arson, burglary and other such

crimes when a victim or victims have not experienced injury or death.

L. Peer Support. Activities that provide opportunities for victims to meet others with similar crime victim experiences that provide self-help, information, and peer and social support in order to assist victims in receiving understanding and comfort and in adapting their lives after a crime.

M. State. The term *state* includes the 50 states, the District of Columbia, American Samoa, the United States Virgin Islands, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, and any other possession or territory of the United States of America.

N. Terrorism Occurring Outside the United States (also known as international terrorism). The term "international terrorism" is being used to define terrorism outside the United States. "International terrorism means activities that * * * (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; (B) appear to be intended to (i) intimidate or coerce a civilian population; (ii) influence the policy of a government by intimidation or coercion; or (iii) affect the conduct of a government by mass destruction, assassination or kidnaping; and (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum (18 U.S.C. 2331).

O. Terrorism Occurring Within the United States. For purposes of these guidelines, "terrorism occurring within the United States" is defined by the term "domestic terrorism" found in 18 U.S.C. 2331. An act of domestic terrorism means activities that (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, (B) appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnaping (18 U.S.C. Section 2331).

P. Victim Services. Victim services are those efforts that (1) respond to the emotional and physical needs of crime victims, (2) assist victims of crime to stabilize their lives after a victimization, (3) assist victims in understanding and participating in the criminal justice

system, (4) provide victims of crime with a measure of safety, and (5) provide training intended to improve the quality of services rendered to crime victims. (See Sections II. and III.)

Q. Vulnerable Adults. Vulnerable adults are adults who, because of a disability, are unable to report a crime or take action on their own behalf when experiencing an act of violence, criminal neglect, or economic exploitation. These persons may be frail elders, adults experiencing severe episodes of mental illness, adults with profound mental retardation, and adults with incapacitating physical disabilities. These adults may require the intervention of adult protective services including the services of a multidisciplinary investigation and treatment team to assist in planning for and delivering victim services. These adults may have conservators or guardians. To clarify, not all elders and persons with disabilities are vulnerable adults.

II. Funding Allocations

In 1984, VOCA established the Crime Victims Fund (Fund) in the U.S. Treasury to receive deposits from fines, penalty assessments and bond forfeitures from criminals convicted of federal crime. In addition, the Fund may accept gifts, bequests, or donations from private entities and individuals. This Fund is administered by the Office for Victims of Crime (OVC) to carry out the mandates of VOCA.

A. Fund Distribution. Distributions are allocated as follows:

1. Child Abuse Prevention and Treatment Grants. VOCA allows up to \$20 million of the first amounts deposited in the Fund to be allocated for Child Abuse Prevention and Treatment Grants. This occurs in any fiscal year in which Crime Victim Fund deposits are greater than the amount deposited in Fiscal Year 1998. An amount equal to 50 percent of the increase plus the base amount of \$10 million is available for this purpose. This applies regardless of whether there is a cap on the amount of money that can be distributed from the Fund. Eighty-five percent of these funds are forwarded to the Department of Health and Human Services. The remaining 15 percent is retained by OVC to assist Indian tribes in developing, establishing, and operating child abuse programs.

2. Federal Criminal Justice System. Unspecified amounts are earmarked by Congress annually to be made available for improving services for the benefit of crime victims in the Federal criminal justice system. These amounts pay for

personnel and the Federal Victim Notification System.

3. Remaining Fund Deposits. The remaining Fund deposits are distributed as follows:

a. Victim Compensation Grants. Forty-seven and one half percent (47.5%) is available to eligible state programs for crime victim compensation.

b. Victim Assistance Grants. Forty-seven and one half percent (47.5%) is available to states for victim assistance grants. Amounts not needed to meet the funding requirements under the victims compensation grant programs are added to this amount.

c. Discretionary Grants. Five (5) percent is retained by OVC for demonstration projects, program evaluation, compliance efforts, training and technical assistance, fellowships, internships, and for the financial support of services to victims of federal crime.

4. Antiterrorism Emergency Reserve. In addition to monies distributed above, the OVC Director may set aside up to \$50 million from amounts transferred to the Fund in response to the airplane hijackings and terrorist acts that occurred on September 11, 2001. The Director may replenish any amounts expended from the Reserve in subsequent fiscal years by setting aside up to 5 percent of the amounts remaining in the Fund in any fiscal year after distributing amounts for the Children's Justice Act, the VOCA crime victim compensation and assistance formula grants, and for OVC discretionary funds. These funds are to be used to support compensation and assistance services for victims of terrorism or mass violence crimes and fund an international victim compensation program.

B. Grant Period. VOCA grant funds are available for expenditure throughout the fiscal year (FY) of the award plus the next three fiscal years. The federal fiscal year (FFY) begins on October 1 and ends on September 30.

C. VOCA Victim Assistance Grant Formula. The Director of OVC is required to make an annual victim assistance grant to states from the Fund. Each state grantee receives a base amount of \$500,000, except for the territories of Northern Mariana Islands, Guam, and American Samoa, which receive a base amount of \$200,000. The remaining allocations from the Fund and any amounts rolled over from the crime victim compensation allocation are distributed to each state, based upon the state's population in relation to all other states, as determined by current U.S. census data.

D. Allocation of Funds Within States. The governor of each state must designate the state agency that will administer the VOCA victim assistance grant program. The designated agency must establish and abide by policies and procedures which meet the minimum requirements of VOCA, the Final Program Guidelines, and the *OJP Financial Guide*, effective edition. The state grantee has the sole discretion for determining which public and private nonprofit organizations will receive funds, in what amounts, and during what time period within the parameters of VOCA.

1. Strategic Planning. State grantees are encouraged to develop a strategic plan for the delivery of victim services. This plan could encompass analysis of crime statistics, crime victimization surveys that include victims who do not report crime to law enforcement as well as those who do, analysis of demographic characteristics of crime victims who do and do not access services, and identification of services and other resources available to crime victims. OVC encourages administrators to use formal assessment tools such as geographic information systems (GIS) to support data driven planning. The resulting plan would provide information on the sufficiency of coverage of services by community-based and criminal justice-based victim services programs and provide direction on the maintenance of current services and development of needed services. OVC recommends that a financial plan be an integral component of the strategic plan. This would include identification of multiple state and federal funding resources available for crime victim services and applicable requirements, establishment of program and service priorities, tying appropriate funding sources to program and service priorities, development of a multiyear funding plan, tracking expenditure of funds to allow for timely redistribution of funds not being used by subgrantees in order to prevent deobligations and maximize use of available funding, and identification of additional funding needed for a comprehensive victim assistance response.

2. Underserved Crime Victims. State grantees are encouraged to plan for and expand services to victims of crime (a) who are not traditionally served through VOCA victim assistance programs such as cybercrime and economic crime, (b) with special needs such as elders, persons with disabilities, and victims with limited English proficiency, (c) living in areas with high rates of crime such as certain urban, rural, low-income neighborhoods, and Indian Country, and

(d) whose needs are not being met, as identified by the state grantee.

3. Conduit Organizations. States may choose to use an organization as a conduit to aid in the selection of qualified subrecipients or to reduce the State's administrative burden in implementing the grant program. The use of a conduit organization does not relieve the State from ultimate programmatic and financial responsibilities.

III. Mass Violence and Terrorism

A. Criminal Crisis Response. State grantees are encouraged to participate in state activities that prepare for and respond to mass violence and terrorist acts. This includes working with the designated emergency preparedness organizations in state government and encouraging subgrantees to work with local emergency preparedness organizations in counties and municipalities. State grantees may use administrative and training funds for these purposes.

B. Antiterrorism Emergency Reserve. Upon request, the Director of OVC may supplement crime victim assistance programs for costs associated with responding to mass violence or terrorism to provide emergency relief, including crisis response efforts. See *OVC Guidelines for the Antiterrorism and Emergency Assistance Program for Terrorism and Mass Violence Crimes* for more information.

IV. State Grantee Eligibility Requirements

A. Grantee. The VOCA grantee must be a state organization designated by the governor to administer this program.

B. Grantee Program Requirements. State grantees must meet the following requirements when administering VOCA victim assistance grant funds:

1. Compliance With VOCA. VOCA state grantees and subgrantees must comply with the applicable provisions of VOCA and the Final Program Guidelines.

2. Eligible Subgrantees. State grantees may only subaward VOCA funds to eligible organizations and these funds must be used, unless otherwise specified for training and administrative costs, only for direct services to victims of crime.

3. Nonsupplantation. VOCA crime victim assistance grant funds must be used to enhance or expand services and shall not be used to supplant state or local public funds that would otherwise be available for crime victim services. This nonsupplantation clause applies to state and local public agencies, not private nonprofit organizations.

4. Priority Categories of Crime Victims. State grantees must give funding priority to victims of sexual assault, domestic abuse, and child abuse. To meet this requirement, states must allocate a minimum of 10 percent of each Federal Fiscal Year's (FFY) grant to each of these categories of crime victims (30 percent total). This grantee requirement does not apply to VOCA subgrantees.

Each state grantee must meet this requirement, unless it can demonstrate to OVC that (a) a priority category is currently receiving significant amounts of financial assistance from the state or other sources, (b) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim assistance grant program, or (c) crime rates for a priority category do not justify the required allocation.

5. Previously Underserved Category. State grantees must award an additional 10 percent of each VOCA grant to underserved victims of violent crime (other than priority category victims). To meet the underserved requirement, state grantees must identify crime victims by the types of crime they have experienced. These underserved victims may include, but are not limited to, survivors of homicide victims, or victims of physical assault, robbery, hate and bias crimes, bank robbery, and kidnaping.

The results of allocation of funds under number 4 and number 5 above are that 40 percent of each year's award must be allocated to four specified groups of violent crime victims. The remaining 60 percent may be allocated to categories of victims of violent or nonviolent crimes.

6. Financial Recordkeeping and Program Monitoring. Appropriate accounting, auditing, and on/offsite monitoring procedures will be used by grantees and subgrantees so that records are maintained to ensure delivery of services in accordance with VOCA and the subgrant award, to maintain fiscal control, to achieve proper management, and to ensure efficient disbursement of the VOCA victim assistance funds, in accordance with the *OJP Financial Guide*, effective edition.

7. Non Discrimination. No person shall on the grounds of race, color, religion, national origin, disability, or sex, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any undertaking funded in whole or in part with sums made available under VOCA. States must comply with these VOCA nondiscrimination requirements, the Federal civil rights statutes and

regulations cited in the Assurances that accompany the grant award document, and all other applicable civil rights requirements. States with decentralized operations must assure that all operations comply with these requirements.

8. Other Information Requested by the OVC Director. The state must provide such other information and assurances as the OVC Director reasonably requires.

C. Additional Provisions. 1. Coordination with Other Offices. State grantees are encouraged to coordinate their activities with VOCA compensation programs, U.S. Attorney's Offices, Federal Bureau of Investigation field offices, and other programs providing funding or services for crime victims such as state mental health agencies and housing programs.

2. Unfunded State Mandates. Many state legislatures have passed laws establishing important new rights for crime victims. OVC wishes to clarify that VOCA funds may be used for the purpose of implementing these laws, if no other state or local funds are available. VOCA funds may not be used to supplant state or local funds appropriated to implement state mandates.

V. VOCA Victim Assistance State Grantee Application Process

Each year, OVC provides to each designated state agency an application package which contains the necessary forms and detailed information required to apply for VOCA victim assistance grant funds. The amount for which each state may apply is included in the package.

To apply for VOCA victim assistance grant funds, states must complete and submit the Standard Form 424, *Application for Federal Assistance*, including attachments, and certify compliance with VOCA and OJP requirements. Required certifications will include, but may not be limited to, lobbying, drug free workplace, and non-debarment from work with the Federal Government. Completed applications must be received by OVC on or before the stated deadline, as determined by OVC. To receive the award, state grantees will be required to assure compliance with other federal requirements such as civil rights laws and the National Historic Preservation Act.

VI. Administrative Cost Provision for State Grantees

A. Administrative Cost Allowance. VOCA allows states to use up to 5 percent of victim assistance grant funds for administering the grant program.

Any portion of the allowable 5 percent that is not used for administrative purposes must be used exclusively for direct services to crime victims. Administrative funds must be expended during the grant award period. State grantees are not required to match the portion of the grant that is used for administrative purposes. This administrative cost option is available to the state grantee but does not apply to VOCA subgrantees.

The intent of this administrative cost provision is to sustain and advance program administration in all operational areas by supporting activities that will expand, enhance, or improve the state's previous level of effort in administering the VOCA victim assistance grant program and to support activities and costs that impact the delivery and quality of services to crime victims throughout the state. If a state elects to use up to 5 percent of the VOCA assistance grant for administrative purposes, only those costs directly associated with administering the program, enhancing overall program operations, and ensuring compliance with federal requirements can be paid with administrative grant funds. The state administrative agency may charge a federally approved indirect cost rate to this grant, but this cost is capped by the limits of these 5 percent administrative funds.

State grantees must certify that VOCA administrative funds will not be used to supplant state or local funds, but instead will be used to increase the amount of funds available for administering the program. For the purpose of establishing a baseline level of effort, states must maintain documentation of state funding for administration of the program prior to the state's use of VOCA administrative grant funds. State grantees will not be in violation of the nonsupplantation clause if there is a decrease in the state's previous financial commitment toward the administration of the VOCA grant programs in the following situations: (1) Serious loss of state revenue resulting in across-the-board budget restrictions, or (2) decrease in the number of state-supported staff positions used to meet the state's maintenance of effort in administering the VOCA grant programs. States using administrative funds must notify OVC if there is a decrease in the amount of the state's prior year's financial commitment to the cost of administering the VOCA program.

Only staff activities directly related to victim assistance grant program functions can be funded with VOCA

administrative funds. Similarly, any equipment purchases or other expenditures charged to the VOCA administrative funds can be charged only in proportion to the percentage of time they are used for the VOCA victim assistance grant program.

B. Allowable Costs. Below are examples of state grantee activities that directly relate to managing the VOCA grant and impact the delivery and quality of services to crime victims. These activities can be supported only with administrative funds:

1. Salaries and Benefits. Salaries and benefits for grantee staff and consultants to administer and manage the financial and programmatic aspects of VOCA. Administrative grant funds can only support that portion of the staff's time that is devoted to the VOCA assistance program. If staff performs other functions, the proportion of time worked on the VOCA assistance program must be documented at reasonable intervals using a reasonable method such as time and attendance records. The documentation must provide a clear audit trail for the expenditure of grant funds.

2. Training Attendance. Attendance of grantee staff at technical assistance meetings, conferences, and training that address issues relevant to state administration of victim assistance programs. This includes travel, registration fees, and other such expenses. These funds may also be used to train subgrantee managers, board members, and administrative staff on strategic planning, program development, financial management, evaluation, and other management and administrative skills.

3. Monitoring Compliance. Monitoring compliance of VOCA subgrantees with federal and state requirements.

4. Technology. Technology to include the study, design, and implementation of grants management systems, Web page construction and maintenance, victim notification systems, case tracking systems, Geographic Information Systems, and other relevant automated systems; the purchase and maintenance of equipment for the state grantee, including computers, software, FAX machines, copying machines, and TTY/TDDs; and services required to support technology.

5. Technical Assistance Provision. Technical assistance may be provided to VOCA grantees and subgrantees on the administration and management of the VOCA grant, including strategic and financial planning, program development, financial management, evaluation, public awareness and

outreach, human resources' management, and board development. Technical assistance may be provided to current and potential subgrantees and others who provide or seek to provide services to crime victims. Technical assistance may also be provided to promote innovative approaches to serving crime victims.

6. Membership. Memberships in crime victims organizations and the purchase of victim-related materials such as curricula, literature, and protocols. Memberships in organizations that support the management and administration of the VOCA victim assistance grant program are also allowable.

7. Program Evaluation. Surveys or studies that inform on the impact or outcome of services received by crime victims.

8. Prorated Audit Costs. Prorated program audit costs for the victim assistance program.

9. Indirect Costs. Indirect costs at a federally approved rate that does not exceed the 5 percent administrative cost allowance when applied.

10. Strategic Planning. Development of strategic plans, both service and financial, including the conduct of surveys and needs assessments.

11. Coordination and Collaboration Efforts. Coordination and collaboration efforts made on behalf of crime victims with appropriate groups such as criminal justice, victim advocacy, human services, financial assistance (including crime victim compensation), OJP bureaus and offices, and other appropriate federal, state, and local agencies and organizations.

12. Publications. Purchasing, printing, and developing training materials, victim services directories, brochures, and other relevant publications.

13. System Improvement. State level activities that support the development and operation of coordinated, comprehensive responses to crime victims. This includes involvement on task forces and other committees examining issues affecting crime victims, protocol development for criminal crisis responses, participation in demonstration projects designed to improve responses to crime victims, and efforts to assure that victims' assistance programming is coordinated with victim compensation programs.

14. Reporting. State activities necessary to meet federal and state reporting requirements concerning the VOCA victim assistance grant program are allowable.

C. Requirement to Notify OVC of Use of Administrative Funds. Prior to charging or incurring any costs against

this provision, state grantees are required to notify OVC of their decision to use administrative funds and the amount of the total grant that is to be used. State grantees may notify OVC when the decision is made to exercise this option or at the time the Application for Federal Assistance, SF424, is submitted.

A state may modify projections provided in the grant application by notifying OVC of the revised amount of the total grant that will be used as administrative funds. Failure to notify OVC of adjustments may prevent the state from meeting its obligation to reconcile its Statewide Report with its Final Financial Status Report (SF269A).

VII. State Grantee Training Funds

A. Three Provisions for Paying for Training. Under the Proposed Revised Program Guidelines, state grantees may pay for training in three ways: (1) Through the state administrative cost allowance to cover training for state grantee staff and managers and administrators of subgrantee organizations found in section VI.B.2.; (2) through a 5% allowance in a fiscal year award as described below; and (3) through training allowances for direct services and multidisciplinary staff in subgrantee awards as described under section IX.B.4.

B. Five Percent Training Allowances. 1. State grantees may retain up to 5 percent of the grant to provide statewide or regional training of victim services staff, allied professionals, criminal justice officials, public assistance officials, health and social services providers, and other allied organizations and professions about victimization issues, needs, and resources. The purpose for this training allowance is to assure that victim service providers receive needed training to provide appropriate, comprehensive, and quality services. Use of these funds is permissible for state victim assistance training academies.

2. Match. VOCA funds used for training by the state grantee requires no match.

3. Crime Victim Compensation. In order to assist subgrantees in meeting the requirement that they assist victims in applying for compensation, state grantees may choose to award a portion of their training funds to the VOCA crime victims compensation program to conduct training for VOCA subgrantees.

4. Time Period. Each training activity must occur within the grant period.

5. Nonsupplantation. VOCA grant funds cannot be used to supplant the cost of existing state administrative staff or related state training efforts.

6. Statement of Intent to OVC. State grantees that choose to use a portion or all of its 5% training allowance must submit a statement to OVC reporting the amount of the total grant that will be used to pay for training. A state grantee may modify projections by notifying OVC of the revised amount of the total grant that will be used for training. Failure to notify OVC of adjustments may prevent the state from meeting its obligation to reconcile its Statewide Report with its Final Financial Status Report (SF269A).

VIII. Subgrantee Program Requirements

A. Subgrantee Organization Eligibility Requirements. Subgrantees must use VOCA victim assistance funds only to provide direct services. Certain training and administrative costs may also be allowed by the state grantee as provided for under Sections IX.B.5. and IX.C. Each subgrantee organization must meet the following requirements:

1. Public or Nonprofit Organization. Subgrantees must be operated by a public or nonprofit organization, or a combination of such organizations, and provide services to crime victims.

2. Record of Effective Services. Subgrantees must demonstrate a record of providing effective services to crime victims. This includes having the support and approval of its services by the community, a history of providing direct services in a cost-effective manner, and financial support from sources other than VOCA.

3. New Programs. Programs that have not yet had a history of providing effective services to victims of crime must demonstrate that they have substantial financial resources in order to be considered for VOCA victim assistance funding. "Substantial financial resources" mean that, if a VOCA grant were to be awarded, at least 35% of the program's funding must come from non-VOCA sources. Support from other federal funding programs may be used to demonstrate substantial financial resources, but federal funds cannot be used as match for a VOCA subgrantee project, except as specified in the *OJP Financial Guide*, effective edition. If the 35% in substantial financial resources is non-federal or meets the exceptions in the *OJP Financial Guide*, effective edition, a portion of these funds can be used as match.

4. Project Match Requirements. New and existing VOCA victim assistance subgrantees must match 20 percent (cash or in-kind) of the total cost of each VOCA project, and the match must be derived from non-federal sources, except as provided in the *OJP Financial*

Guide, effective edition. All funds designated as match are restricted to the same uses as the VOCA victim assistance funds and must be expended within the grant period. Any deviation from this policy must be approved by OVC and the OJP Office of the Comptroller in writing.

a. Exceptions to the 20 Percent Match. Lower match requirements must be allowed for:

(1) Indian Tribes and Tribal Organizations. The match for subgrantees that are Indian tribes or organizations located on reservations are 5 percent (cash or in-kind) of the total VOCA project. Reduced match is allowed because many tribes have meager financial resources and American Indians experience high rates of crime. This reduced match is allowed to help tribes access VOCA victim assistance funds.

(2) Territories and Possessions of the U.S. Other territories and possessions of the United States, except for the Commonwealth of Puerto Rico, are not required to match VOCA funds. (48 U.S.C. 1469a(d))

b. Sources of Match.

(1) Volunteers. The value placed on volunteer services must be consistent with the rate of compensation paid for similar work in the subgrantee's organization. If the required skills are not found in the subgrantee's organization, the rate of compensation must be consistent with the labor market. Fringe benefits may be included in the valuation.

(2) Equipment. The value placed on loaned or donated equipment may not exceed its fair rental value.

(3) Space. The value of donated space may not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality.

c. Recordkeeping. A VOCA subgrantee must maintain records that clearly show the source, the amount, and the period for which the match was allocated. The basis for determining the value of personal services, materials, equipment, and space must be documented. Volunteer services must be documented by the same methods used by the subgrantee for its paid employees.

5. Volunteers. Subgrantee organizations must use volunteers unless the state grantee determines there is a compelling reason to waive this requirement. A compelling reason may include but is not limited to a statutory or contractual provision concerning liability or confidentiality of counselor/victim information and communication,

which bars using volunteers for certain positions.

6. Promotion of Community Efforts to Aid Crime Victims. Within the community, subgrantees must promote coordinated public and private efforts to aid crime victims. Coordination and collaboration may include, but is not limited to, serving on federal, state, local, or Indian tribe task forces, work groups, committees, commissions or coalitions, to develop written agreements and protocols and to oversee and recommend improvements to community responses to crime victims.

7. Assistance to Victims in Applying for Compensation. Such assistance may include identifying and notifying crime victims of the availability of compensation, assisting them with application forms and procedures, obtaining necessary documentation, monitoring claim status, and intervening on behalf of the victim with the crime victims compensation program.

8. Compliance With Federal Rules Regulating Grants. Subgrantees must comply with the applicable provisions of VOCA, the Final Program Guidelines, and the requirements of the *OJP Financial Guide*, effective edition, which include maintaining appropriate programmatic and financial records that fully disclose the amount and disposition of VOCA funds received. This includes financial documentation for disbursements, program income, daily time and attendance records specifying time devoted to allowable VOCA victim services, maintaining case files, the portion of the project supported by other sources of revenue, job descriptions, contracts for services, and other records that facilitate an effective audit.

9. Non Discrimination. VOCA requires that no person shall on the ground of race, color, religion, national origin, disability, or sex be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under VOCA victim assistance. In addition, subgrantees cannot discriminate against victims because they disagree with the way the State is prosecuting the criminal case.

10. Federal Crime Victims. Subgrantees must provide services to victims of federal and tribal crimes on the same basis as victims of state and local crimes.

11. Compliance with State Criteria. Subgrantees must abide by any additional eligibility or service criteria established by the state grantee,

including licensing or credentialing requirements and submitting statistical and programmatic information on the use and impact of VOCA funds.

12. Fees for Service and Program Income. OVC discourages but does not prohibit the charging of fees for services by subgrantees and thus the generation of program income under the VOCA victim assistance grant program. This discouragement results from the history of VOCA which expected that services would be available to all crime victims free of charge regardless of their ability to pay or of the availability of insurance or other third-party payment resources. Crime victims suffer tremendous emotional, physical, and financial losses. It was never the intent of Congress to exacerbate the impact of the crime by asking victims to pay for services.

Fees cannot be charged for basic victim services such as crisis intervention; accompaniment to hospitals for medical examinations; safety planning; personal advocacy and case management; criminal justice system advocacy; accompaniment to court and other criminal justice meetings and events; notification of events in the victim's case; interpreters; forensic medical evidence collection examinations; and forensic interviews.

For other allowable costs in a VOCA funded project, when the VOCA grantee has limited VOCA victim assistance and other victim services funding available, and determines that if a subgrantee is allowed to charge fees, that a larger group of victims would receive services or that services could be enhanced, the VOCA grantee may consider a subgrantee's request to charge fees and so generate program income. A subgrantee must obtain the approval of the VOCA grantee before charging fees to any crime victim under a VOCA victim assistance funded project.

Before approving the charging of fees by a subgrantee from a victim's health insurance or other third party coverage, or from the victim directly, the state grantee must examine the impact on victim access to services, including whether victims would decline services if this practice would require payments or use of benefits that apply not only to the victim but also to the victim's family. The state grantee must also consider the impact on privacy if the insurance plan or other third party payment is tied to employment and result in the employer's learning of the victimization or mental health treatment needs of the victim. Victims must be notified in advance of any release of any individually identifiable information to a third party payer. Ultimately, the

VOCA grantee must prioritize access to services by crime victims over the ability of subgrantees to charge fees.

In considering whether to allow a subgrantee to charge victims a fee for services, the grantee must assure the capability of the state grantee and the subgrantee to track program income in accordance with federal financial accounting requirements. (See the *OJP Financial Guide*, effective edition.) OVC strongly recommends that the grantee consult state accounting personnel when considering a request to charge fees, in order to assure that the tracking system would withstand an audit. The subgrantee must use generated program income only for direct services in furtherance of the goals of the VOCA funded project.

13. Client-Counselor Confidentiality. The state grantee and subgrantee must maintain confidentiality of client-counselor/service provider information, as required by state and federal law.

14. Research Confidentiality. Except as otherwise provided by federal law, any research and statistical information that is identifiable to any private person may only be used for the purpose for which it was obtained under VOCA. This information, and any copy of this information, is immune from legal process and shall not, without the consent of the private person furnishing the information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. This is particularly important for victim services agencies that plan to develop and maintain victim databases containing specific, identifiable victim information.

This provision is intended, among other things, to ensure the confidentiality of information provided by crime victims to counselors working for victim services programs receiving VOCA funds. There is nothing in VOCA or its legislative history to indicate that Congress intended to override or repeal a state's existing law governing the disclosure of information, which is supportive of VOCA's fundamental goal of helping crime victims. For example, this provision would not override or repeal a state's existing law pertaining to the mandatory reporting of suspected child abuse. See *Pennhurst School and Hospital v. Halderman, et al.*, 451 U.S. 1 (1981).

In addition, this confidentiality provision should not be interpreted to thwart the legitimate informational needs of public agencies. For example, this provision does not prohibit a domestic violence shelter from acknowledging, in response to an

inquiry by a law enforcement agency conducting a missing person investigation, that the person is safe in the shelter. Similarly, this provision does not prohibit access to a victim service project by a federal or state agency seeking to determine whether federal and state funds are being used in accordance with funding agreements.

B. Eligible Subgrantee Organizations. State grantees must award subgrants to organizations that meet VOCA eligibility requirements. The subgrantee organization must be operated by a public agency or nonprofit organization, or a combination of such agencies or organizations. All of these requirements must be met if the state grantee retains funds for its own direct services. Eligible organizations include, but are not limited to:

1. **Organizations Whose Sole Mission Is To Provide Services to Crime Victims.** These organizations include, but are not limited to, sexual assault, domestic violence, and child abuse programs, programs that serve survivors of homicide victims or drunk driving crashes, comprehensive victim services programs, and victim rights compliance programs.

2. **Other Organizations That Serve Victims of Crime.** These include, but are not limited to, guardians ad litem programs, outpatient mental health treatment programs, child guidance centers, social services agencies, public housing authorities, schools, and pro bono legal aid organizations.

3. **Criminal Justice Agencies.** Criminal justice organizations, including law enforcement, prosecutors' offices, courts, corrections departments, and probation and paroling authorities, are eligible to receive VOCA funds, but these funds may be used only to provide crime victim services that exceed a criminal justice agency's or official's normal duties. See sections IX.A.5 and IX.D.4. for allowable and unallowable costs.

4. **Religiously Affiliated Organizations.** Religiously affiliated organizations that receive VOCA funds cannot limit employment or access to services on the basis of religious affiliation and must offer and provide services to all crime victims regardless of religious affiliation.

5. **State Crime Victim Compensation Agencies.** Compensation programs, including both centralized and decentralized programs, may receive VOCA victim assistance funds to offer direct services to crime victims that extend beyond the essential duties of compensation staff. These services may include crisis intervention; counseling; operating toll-free numbers; and

providing information, referrals, and follow-up for crime victims.

6. **Hospitals and Emergency Medical Facilities.** VOCA funds may be awarded to hospital and emergency medical facilities to offer crisis counseling, peer support groups, and forensic exams.

7. **Indian Tribes and Tribal Organizations.** According to the *Bureau of Justice Statistics Report*, 1999, Indians experience the highest rate of crime among any minority ethnic group of Americans. OVC encourages state grantees to fund victims services programs on reservations and in urban communities with large Indian populations.

8. **Services Crossing State Lines.** State grantees may award VOCA victim assistance funds to organizations that are physically located in an adjacent state when doing so is an efficient and cost-effective way to provide services to victims who reside in the awarding state. When adjacent state awards are made, the amount of the award must be proportional to the number of victims to be served by the adjacent state organization. OVC recommends those state grantees who award funds to a victim service program enter into an interstate agreement with an adjacent state to address provision of services, monitoring, auditing federal funds, overseeing compliance, and reporting. States must notify OVC at the time of subaward of each VOCA award made to an organization in another state.

9. **State Grantee.** Since the intention of the VOCA grant program is to support and enhance the crime victim services provided by community agencies, state grantees that meet the definition of an eligible subgrantee organization may subaward themselves no more than 10 percent of their annual VOCA grant amount.

10. **Federal Criminal Justice Organizations:** Any agency of the Federal Government that performs local law enforcement functions in and on behalf of the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any other territory or possession of the United States may qualify as an eligible crime victim assistance program.

C. Ineligible Recipients of VOCA Victim Assistance Funds. The following organizations that offer services to crime victims are not eligible to receive VOCA victim assistance funding. State grantees are encouraged to coordinate efforts with these agencies to better serve crime victims. These organizations include, but are not limited to, the following:

1. **Federal Agencies.** This includes U.S. Attorneys' Offices and local FBI

field offices. (See VIII.B.10. for exception.)

2. **Inpatient Medical or Substance Abuse Treatment Facilities.** This prohibition is for inpatient treatment including for the treatment for medical, mental or drug and alcohol conditions. The only exception is for victims on hold in a mental health facility for a suicide watch that is directly related to the crime.

3. **For Profit Organizations.** VOCA requires that eligible subgrantees be either public or nonprofit organizations or a combination of both.

IX. Subgrantee Allowable Costs

A. Allowable Costs for Direct Services. The following is a listing of services that are allowable under victim assistance grant funds within a subgrantee organization:

1. **Immediate Physical and Psychological Health and Safety.** Services that respond to the immediate emotional, psychological and physical needs (excluding medical care) of crime victims are allowable. These services include, but are not limited to, crisis or suicide intervention needed as a result of the crime; accompaniment to hospitals for medical examinations; hotline counseling; safety planning; emergency food, shelter, clothing, and transportation; short-term in-home care and supervision services for children and vulnerable adults who remain in their own homes when the offender who is the caregiver is removed; short-term (as defined by the state) nursing home, adult foster care, or group home placement for vulnerable adults (including elder abuse victims) for whom no other safe, short-term residence is available; crime scene cleanup; and window and lock replacement or repair.

Emergency replacement of prescription medicine and eyeglasses or other health care items are allowed when the state's compensation program, individual's health insurance plan, Medicaid or other health care funding source cannot provide for these expenses within 48 hours of the crime. Immediate health and safety services also include emergency legal assistance such as filing restraining or protective orders, obtaining emergency custody orders, and obtaining visitation rights. In addition, legal assistance that helps victims assert their rights in a criminal case, including pro bono legal clinics for crime victims is allowable. Not allowable are non-emergency legal expenses such as divorce proceedings, child custody proceedings, or civil action to obtain restitution.

2. Personal Advocacy and Case Management. These services include working with a victim to assess the impact of the crime; identify needs; develop a plan of services; identify resources; and provide information, referrals, advocacy, and follow-up contact for continued services, as needed. The purpose of these services is to assist victims of crime in understanding the dynamics of victimization and in stabilizing their lives after a victimization. These services are particularly required when multiple organizations are involved in serving a victim and family. For example, an advocate working with survivors of a homicide victim may assist the family in notifying other family members, counsel the family on interacting with the media, link them with a peer support organization, obtain crisis mental health assistance, connect them with criminal justice officials, and intercede for them with creditors, service providers, and employers. Another example would be a child advocate in a child advocacy center who works with a family while serving as liaison with law enforcement, prosecution, and child protective services; makes referrals and assists in applying for crime victim compensation; and helps the family in accessing child development services and mental health treatment.

3. Mental Health Counseling and Care. Mental health counseling and care must be provided by a person who meets state standards to provide these services.

4. Peer Support. Activities that provide opportunities for victims to meet others with similar crime victim experiences that provide self-help, information, and peer and social support in order to assist victims in receiving understanding and comfort and in adapting their lives after a crime.

5. Assistance in Criminal Justice Proceedings. Services and costs that help victims participate in the criminal justice system include advocacy on behalf of crime victims; accompaniment to criminal justice offices and court; transportation, meals, and lodging to allow victims who are not witnesses to participate in the criminal justice system; interpreters for victims who are deaf or hard of hearings or with limited English proficiency when they are not witnesses; child care and respite care to enable a victim who is a caregiver to attend criminal justice activities related to the case; notification to victims regarding trial dates, case disposition, incarceration, and parole hearings; assistance with victim impact statements; and assistance in recovering

property that was retained as evidence. State grantees may also fund projects devoted to restitution advocacy on behalf of crime victims. (See section IX.D.4. for unallowable criminal justice costs)

6. Forensic Medical Evidence Collection Examinations. Forensic examinations are allowable costs for adult and child victims to the extent that other funding sources such as state appropriations are insufficient. These costs may be covered, if (1) the examination meets standards established by the state; and (2) appropriate crisis counseling and/or other types of victim services are offered to the victim in conjunction with the examination.

7. Forensic Interviews. Forensic interviews are the responsibility of the criminal justice system and VOCA victim assistance funds cannot be used to supplant other state and local public funding including criminal justice funding. VOCA funding may only be used for forensic interviews of children and vulnerable adults when (1) results of the interview will be used not only for law enforcement and prosecution purposes but also for social services, personal advocacy, case management, and mental health purposes; (2) interviews are conducted in the context of a multidisciplinary investigation and diagnostic team or in a specialized setting such as a child advocacy center, (3) the interviewer is trained to conduct forensic interviews appropriate to the developmental age and abilities of children or the developmental, cognitive, and physical or communication disabilities presented by adults, and (4) the subgrantee is not a prosecution or law enforcement organization.

Forensic interviews for adults with disabilities who do not come under the definition of vulnerable adult are also the responsibility of the criminal justice system. However, if the state VOCA administrator believes that persons with disabilities will have diminished access to the criminal justice system without the expertise of professionals with the knowledge and skill to work with persons who present with developmental, cognitive, physical or communication disabilities, the VOCA administrator may authorize use of VOCA victim assistance funds to assure that the expertise is available to assist the victim in a forensic interview.

8. Victim-Offender Meetings. State grantees may fund activities involving victim-offender meetings between the victim and the offender who perpetrated the crime against the victim. In allowing funds for these activities, at a minimum,

grantees must consider (a) the safety and security of the victim; (b) the benefit or therapeutic value to the victim; (c) the procedures for ensuring that participation of the victim and offender are voluntary and that everyone understands the nature of any meeting or other activity, (d) the provision of appropriate support and accompaniment for the victim, (e) appropriate debriefing opportunities for the victim after a meeting, (f) the credentials of the facilitators, and (g) the opportunity for a crime victim to withdraw from the process at any time. The state grantee must assure that the project allows no contact with the victim or victim's family verbally or in writing that could be construed as soliciting, recommending, or encouraging participation in these activities. VOCA assistance funds cannot be used for victim-offender meetings that serve to replace criminal justice proceedings and offender based restorative justice programs. For face to face meetings with offenders, VOCA victim assistance funds may only be used for the proportionate cost of activities that are related to the victim's involvement.

9. Transportation. Transportation for victims to receive services or participate in criminal justice proceedings.

10. Public Presentations. VOCA funds may be used to support public awareness and education presentations that are made in schools, community centers, and other public forums, and that are designed to identify crime victims and provide or refer them to needed services. Costs related to these activities include presentation materials, brochures, newspaper notices, and public service announcements.

B. Allowable Subgrantee Support Costs. Costs which support the provision of quality, appropriate, and comprehensive services to crime victims, are allowable. These include:

1. Personnel Costs.

a. Direct Services Staff. These costs are directly related to providing direct services and include staff salaries, fringe benefits, malpractice insurance and the cost of advertising to recruit VOCA-funded personnel and volunteers.

b. Supervision of Direct Service Providers. State grantees may provide VOCA funds for supervision of direct service providers in a VOCA funded project.

2. Multisystem, Interagency, Multidisciplinary Response to Crime Victims. VOCA funds may be used for activities that support the development and functioning of coordinated and comprehensive responses to crime

victims by direct service providers with allied professionals and the criminal justice system. Direct service examples are serving on child abuse and vulnerable adult multidisciplinary investigation and treatment teams, and coordinating with federal agencies to provide services to victims of federal crimes.

Allowable costs that further coordination and collaboration by a subgrantee may include participation by direct service providers, directors, administrators and board members on statewide or other task forces, work groups, and committees to develop protocols, interagency and other working agreements, and to oversee and make changes that improve state and community responses to crime victims. These activities do not include lobbying and administrative advocacy which is unallowable. These activities also do not allow for funding statewide coordinators for victim notification systems, crisis response teams, and other such coordinators who do not provide direct services.

3. **Contracts for Professional Services.** Subgrantees may only use VOCA funds to contract for specialized professional services that are not available within the organization. Examples of such services include psychological or psychiatric consultation; legal consultation for victim advocates who assist victims in using appropriate legal avenues to alleviate danger and in exercising their rights; and interpreters for victims who are deaf or hard of hearing or with limited English proficiency. Subgrantees are prohibited from using a majority of VOCA funds for contracted services which contain administrative, overhead, and other indirect costs in the hourly or daily rate.

4. **Skills Training for Staff, Others Who Work With Crime Victims, and Administrators and Managers.** VOCA funds designated for training must be used to develop the skills of paid staff and volunteers who are direct services providers. These funds may be used to train non-VOCA-funded service providers and criminal justice officials only when the training promotes a multisystem, interagency, and multidisciplinary response to crime victims. An example would be joint training of members of a child abuse multidisciplinary investigation and treatment team, which may include a child advocate, a child protective services worker, a law enforcement officer, a prosecutor and a pediatrician. VOCA funds may be used to pay for manuals, books, video conferencing, and other materials and training methods. At the discretion of the VOCA

grantee, VOCA direct services funds may also be used for subgrantee training on program administration and management.

5. **Training-Related Travel.** VOCA funds can support costs such as travel, meals, lodging, and registration fees for VOCA and non-VOCA-funded direct service staff in a VOCA subgrantee organization. VOCA funds can support these expenses for other service providers and criminal justice officials only when the training promotes a multisystem, interagency, multidisciplinary response to crime victims. These expenses may be funded for training in-state, regionally, and nationally.

C. **Subgrantee Administrative Costs.** The following costs are necessary and essential to providing direct services and so the state grantee may allow use of VOCA victim assistance direct service funds for these purposes.

1. **Office Costs.** Office costs that are necessary and essential to providing direct services are allowable. These costs include the prorated costs of rent; telephones, computers, and other technologies; utilities; and local travel expenses for service providers. This also includes required minor building adaptations needed to meet standards of the Americans with Disabilities Act or the National Historic Preservation Act. An example would be the cost of building an access ramp that is necessary to provide services to persons with physical disabilities. (See the OJP Financial Manual for policy on "Procurement Under Awards of Federal Assistance" when considering allowing use of VOCA funds for minor building alterations.)

2. **Equipment and Furniture.** VOCA funds may be used to purchase furniture and equipment that facilitate the delivery of direct services to crime victims. Examples of allowable costs are telephones; Braille and TTY/TDD equipment; personal computers and printers; beepers; video cameras and recorders for documenting and reviewing interviews with children; two-way mirrors; colposcopes; and equipment and furniture for shelters, work spaces, victim waiting rooms, and children's play areas. Other allowable costs include furniture and equipment that help a subgrantee meet the requirements of the Americans with Disabilities Act.

VOCA funds can only support the prorated share of an item that is used exclusively for victim-related activities. In addition, subgrantees cannot use VOCA funds to purchase equipment for another organization or individual to perform a victim-related service.

3. **Operating Costs.** Examples of allowable operating costs include but are not limited to supplies; equipment use fees, when supported by usage logs; printing, photocopying, and postage; brochures that describe available services; books and other victim-related materials; computer backup files/tapes and storage; prorated costs of liability insurance on buildings; and security systems.

4. **VOCA Administrative Time.** VOCA funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics; administrative time to collect and maintain crime victims records; conduct victim satisfaction surveys and needs assessments used to improve victim services delivery in the VOCA funded project; and the prorated share of audit costs.

5. **Leasing Vehicles.** A subgrantee may use VOCA funds to lease vehicles if the subgrantee can demonstrate to the state grantee that such an expenditure is essential to delivering services to crime victims. The VOCA administrator must give prior approval for all such leases.

6. **Automated Systems and Technology.** A state grantee may award funds for automated systems and technology that support delivery of direct services to victims. Examples are automated information and referral systems, e-mail systems that allow communications among victim service providers, automated case tracking systems, and victim notification systems. Costs may include personnel, hardware, and other expenses as determined by the state grantee. When funding automated systems, state grantees must comply with the requirements of the *OJP Financial Guide*, effective edition.

a. Because automated systems are usually complex, expensive and require significant expertise in design, installation, and maintenance, the state grantee must assure that the applicant for funds meets the eligibility requirements of other subgrantees and must obtain from the applicant information on:

(1) How the technology will improve the delivery of direct services to crime victims,

(2) How the technology will be integrated into or will enhance the subgrantee's current operations,

(3) The cost of installation,

(4) The cost of training staff to use the technology,

(5) The ongoing operational costs, such as maintenance agreements, updating the system, and supplies. Property insurance is an allowable

expense as long as VOCA funds support a prorated share of the cost of the insurance payments, and

(6) How ongoing operational costs will be supported.

b. If a state grantee uses VOCA victim assistance funds to support the startup cost of a victim notification system or to provide funding for ongoing operations of a victim notification system, the grantee must:

(1) Assure that the subgrantee has the capability of connecting a victim receiving notification to needed crisis intervention and referral services,

(2) Work with the state's single point of contact for OJP technology grants and comply with OJP requirements,

(3) Retain ownership of the technology.

7. Maintenance, Repair, or Replacement of Essential Items. VOCA funds may be used for maintenance, repair or replacement of items that contribute to maintaining a healthy or safe environment for crime victims, such as a furnace in a shelter or a security system for a sexual assault program. Routine maintenance, repair costs, and automobile insurance are allowable for vehicles. State grantees must review each subgrantee request to ensure that (a) other sources of funding are not available, and (b) the cost of maintenance, repair, or replacement is reasonable.

D. Nonallowable Subgrantee Costs and Activities. The following services, activities, and costs cannot be supported with VOCA victim assistance grant funds. This list is not exhaustive.

1. Lobbying and Administrative Advocacy. VOCA funds cannot support activities on legislation or administrative reform, whether conducted directly or indirectly.

2. Perpetrator Rehabilitation and Counseling. Subgrantees cannot use VOCA funds to offer rehabilitative services to perpetrators or offenders. Likewise, VOCA funds cannot support services to incarcerated individuals, even when the service pertains to the victimization of that individual.

3. Evaluations and Studies. VOCA direct services funds may not be used to pay for efforts conducted by individuals, organizations, task forces, or special commissions to study and/or research particular crime victim issues.

4. Criminal Justice System Activities. VOCA funds cannot be used to pay for activities that are directed at prosecuting an offender or improving the criminal justice system's effectiveness and efficiency. See sections IX.A.6&7. for exceptions on forensic interviews and examinations. Also, VOCA funds cannot be used for

witness costs, including for victims when they serve as witnesses, since these are the responsibility of the criminal justice system.

5. Fundraising Activities. VOCA victim assistance funds cannot be used to pay for any activities or other costs related to fundraising.

6. Indirect Organizational Costs. The costs of capital improvements, property losses and expenses, real estate purchases, mortgage payments, and construction are not allowable. See section IX.C.1. for exceptions.

7. Individual Victim Losses. Reimbursing crime victims for expenses incurred as a result of a crime such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills is not allowed. See section IX.A.1 for exceptions on allowable property loss expenses.

8. Medical Costs. VOCA funds cannot pay for nursing home care, home health care, inpatient treatment, hospital care, and other types of medical and/or dental treatment. See section X.A.1. for exceptions.

9. Relocation Expenses. Relocation expenses for crime victims are not allowable. These include moving expenses, security deposits on housing, ongoing rent, mortgage payments and utility startup. However, VOCA funds may be used to support personal advocacy and case management activities to locate resources to assist victims with these expenses.

10. Administrative Staff Expenses. Salaries, benefits, fees, furniture, equipment, technology, and other expenses of executive directors, board members, and other administrators are not allowable. Exceptions are for time spent providing direct services to crime victims, creating and maintaining victim records; staff recruitment and training, and completing VOCA-required time and attendance sheets, statistics, programmatic and financial reports, and victim satisfaction surveys and needs assessments.

11. Administrative Coordination Activities. VOCA funds cannot be used for the ongoing administration of criminal crisis response teams, automated victim notification systems, and other such programs when these activities do not provide direct services to crime victims.

12. Costs of Sending Individual Crime Victims to Conferences. VOCA victim assistance funds cannot be used to send individual crime victims to conferences.

13. Crime Prevention. VOCA victim assistance funds cannot be used for crime prevention activities.

X. Program Reporting Requirements

State grantees must adhere to all reporting requirements and time lines for submitting required reports as indicated below. Failure to do so may result in a hold being placed on the ability to drawdown the current year's funds, the attachment of special conditions, or the suspension or termination of the grant.

A. Subgrant Award Reports. The State grantee must submit a Subgrant Award Report on a form prescribed by OVC for each project that receives VOCA funds.

1. Reporting Deadline. State grantees must submit a Subgrant Award Report to OVC within 90 days of making the subaward.

2. Electronic Submission. State and territorial grantees must transmit their Subgrant Award Report information to OVC via the automated subgrant dial-in system.

3. Changes to Subgrant Award Report. If Subgrant Award Report information changes by the end of the grant period, state grantees must inform OVC of the changes by revising the information via the automated subgrant dial-in system. The total award amount of all Subgrant Award Reports, including the administrative costs and training funds submitted by the state grantee, must agree with the *Final* Financial Status Report (Standard Form 269A) submitted at the end of the grant period.

B. Performance Report. 1. Reporting Deadline. Each state grantee is required to submit information annually on the OVC-provided Performance Report, Form No. OJP 7390/4, by December 30 of each year for the previous fiscal year active grants.

2. Administration and Training. For those state grantees who opt to use a portion of the VOCA victims assistance grant for administrative and/or training costs, the grantee must describe how the funds were actually used and report the impact of the administrative and training funds on the state grantee's ability to expand, enhance, and improve services to crime victims. State grantees must maintain a clear audit trail of all costs supported by these funds.

C. Financial Requirements. 1. Special Condition. As a condition of receiving a grant, state grantees and subgrantees must agree to comply with the general and specific requirements of the *OJP Financial Guide*, effective edition, applicable OMB Circulars, and Common Rules. This includes maintenance of books and records in accordance with generally accepted government accounting principles. For copies of the *OJP Financial Guide*, effective edition, call or write the Office of Justice

Programs, Office of the Comptroller, 810 7th Street, NW., Washington, DC 20531. Contact the Customer Service Center by telephoning 1-800-458-0786 or log on at <http://www.ojp.usdoj.gov/FinGuide/>.

2. Quarterly and Final Financial Status Reports (SF269A). Follow instructions provided in the *OJP Financial Guide*, effective edition

XI. Monitoring

A. State Grantee. State grantees are required to conduct regular desk monitoring and to conduct onsite monitoring in which all subgrantees are visited a minimum of once every four years. State grantees shall develop a monitoring plan and maintain a copy of site visit results and other documents related to compliance. At a minimum, state grantees are to review documents such as (1) the subgrantee policies and procedures that address specific requirements of VOCA and the *OJP Financial Guide*, effective edition, (2) victim service delivery performance data, (3) timekeeping and equipment records, and (4) documentation for costs supported by VOCA funds.

B. Office for Victims of Crime. OVC conducts onsite monitoring of grantees in accordance with its monitoring plan. While on the site, OVC personnel review various documents and files including (1) program manuals and procedures governing the VOCA grant program; (2) the Application

Requirements, procedures, and guidelines for subawarding VOCA funds; (3) the monitoring protocol; (4) a sample of grant files; (5) other state grantee and subgrantee records and files, as appropriate; and (6) site visit findings and other documents related to compliance by subgrantee programs with VOCA requirements.

In addition, OVC may visit selected subgrantees and review documents such as (1) policies and procedures governing the organization and use VOCA funds; (2) programmatic records of victims' services; (3) timekeeping and equipment records and (4) other supporting documentation for costs supported by VOCA funds. Grantees are notified in writing of their compliance with VOCA requirements.

C. Other Federal Organizations. The Office of Justice Programs Office of the Comptroller, the General Accounting Office, and the Office of the Inspector General conduct periodic reviews of the financial policies, procedures, and records of VOCA grantees and subgrantees. On request, state grantees and subgrantees must give authorized representatives the right to access and examine all records, books, papers, case files, and documents related to the grant. Specific items identified as confidential and immune from government process must nevertheless be made available to any of the above organizations upon request.

XII. Suspension and Termination of Funding

If, after notice to the grantee, OVC finds that a state or any one of its subgrantees has failed to comply substantially with VOCA, the *OJP Financial Guide*, effective edition, the Final Program Guidelines, the Application Requirements to include assurances, certifications, and special conditions, or any implementing regulation or requirement, the OVC Director and the OJP OC may suspend or terminate funding to the state and/or take other appropriate action. Under the procedures of 28 CFR part 18 (7-1-96 edition), states may request a hearing on the record on the justification for the suspension and/or termination of VOCA funds in whole or in part to the state and take other appropriate action.

VOCA subgrantees may not request a federal hearing. However, VOCA subgrantees who believe that the state grantee has violated a program and/or a financial requirement is not precluded from bringing the alleged violation(s) to the attention of the Federal Cognizant Agency for that State.

Dated: August 22, 2002.

John W. Gillis,

Director, Office for Victims of Crime, Office for Justice Programs.

[FR Doc. 02-21830 Filed 8-30-02; 8:45 am]

BILLING CODE 4410-18-P



Federal Register

**Tuesday,
September 3, 2002**

Part IV

**Department of
Interior**

Bureau of Land Management

Notice of Realty Action; Notice

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[UT-100-1492-02; UTU-79715]

Notice of Realty Action**AGENCY:** Bureau of Land Management (BLM), Interior.**ACTION:** Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Utah.

SUMMARY: The following public land, located in Washington County, Utah, has been examined and found suitable for classification for conveyance to the City of Washington under the provision of the Recreation and Public Purposes Act. As amended (43 U.S.C. 869 *et seq.*):

Salt Lake Meridian, Utah

T. 42 S., R. 14 W.,
 Sec. 9, N¹/₂NW¹/₄NW¹/₄,
 Containing 15 acres, more or less.

SUPPLEMENTARY INFORMATION: The City of Washington proposes to use the land to construct, operate and maintain a water treatment facility. The land is not needed for Federal purposes. Conveying title to the affected public land is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for power line purposes granted to PacifiCorp by right-of-way U-43523.

Detailed information concerning this action is available at the office of the Bureau of Land Management, St. George Field Office, 345 E. Riverside Drive, St. George, Utah 84790. Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. 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 classification, leasing or conveyance of the land to the Field Office Manager, St. George Field Office.

Classification Comments

Interested parties may submit comments involving the suitability of the lands for a water treatment facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the City's application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for water treatment facility purposes.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: July 2, 2002.

James D. Crisp,

Field Office Manager.

[FR Doc. 02-22396 Filed 8-30-02; 8:45 am]

BILLING CODE 4310--\$\$-P



Federal Register

**Tuesday,
September 3, 2002**

Part V

Securities and Exchange Commission

**17 CFR Parts 240, 249, and 274
Ownership Reports and Trading by
Officers, Directors and Principal Security
Holders; Final Rule**

SECURITIES AND EXCHANGE COMMISSION**17 CFR Parts 240, 249 and 274**

[Release Nos. 34-46421; 35-27563; IC-25720; File No. S7-31-02]

RIN 3235-A162

Ownership Reports and Trading by Officers, Directors and Principal Security Holders**AGENCY:** Securities and Exchange Commission.**ACTION:** Final rule; request for comment.

SUMMARY: We are adopting rule and form amendments to implement the accelerated filing deadline applicable to change of beneficial ownership reports required to be filed by officers, directors and principal security holders under Section 16(a) of the Securities Exchange Act of 1934, as amended by the Sarbanes-Oxley Act of 2002. The amendments are intended to facilitate the statutory changes, which become effective August 29, 2002, consistent with their purpose.

DATES: *Effective Date:* August 29, 2002.*Comment Date:* Comments on the amended rules must be received on or before September 30, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Comments also may be submitted electronically at the following electronic mail address: rule-comments@sec.gov. To help us process and review your comments more efficiently, comments should be sent by one method only. All comment letters should refer to File No. S7-31-02; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web Site (<http://www.sec.gov>).¹

FOR FURTHER INFORMATION CONTACT:

Anne M. Krauskopf, Special Counsel, David Lee, Special Counsel, or Carol McGee, Special Counsel at (202) 942-2900, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0402.

¹ We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rules 16a-3,² 16a-6³ and 16a-8⁴ under the Securities Exchange Act of 1934 ("Exchange Act"),⁵ and Forms 3,⁶ 4⁷ and 5⁸ under the Exchange Act.

I. Executive Summary and Background

Section 16⁹ applies to every person who is the beneficial owner of more than 10% of any class of equity security registered under Section 12 of the Exchange Act,¹⁰ and each officer and director (collectively, "reporting persons" or "insiders") of the issuer of such security. Upon becoming a reporting person, or upon the Section 12 registration of that security, Section 16(a)¹¹ requires a reporting person to file an initial report with the Commission disclosing his or her beneficial ownership of all equity securities of the issuer.¹² To keep this information current, Section 16(a) also requires reporting persons to report changes in such ownership, or the purchase or sale of a security-based swap agreement¹³ involving such equity security. Previously, Section 16(a) provided for such transactions to be reported on a monthly basis within 10 days after the close of each calendar month in which such a change in ownership or purchase or sale of a security-based swap agreement occurs.

On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the "Act")¹⁴ was enacted. Section 403(a) of the Act amends Section 16(a) to require reports of such a change in ownership or purchase or sale of a security-based swap agreement "before the end of the second business day following the day on which the subject transaction has been executed,

² 17 CFR 240.16a-3.

³ 17 CFR 240.16a-6.

⁴ We adopt a technical amendment to Rule 16a-8(a)(1) [17 CFR 240.16a-8(a)(1)], which defines trusts subject to Section 16, to implement an amendment that we adopted in Exchange Act Release No. 37260 (Jun. 14, 1996) [61 FR 30392]. This amendment provides that a trust is subject to Section 16 only if the trust is a more than ten percent beneficial owner.

⁵ 15 U.S.C. 78a *et seq.*

⁶ 17 CFR 249.103 and 17 CFR 274.202.

⁷ 17 CFR 249.104 and 17 CFR 274.203.

⁸ 17 CFR 249.105.

⁹ 15 U.S.C. 78p.

¹⁰ 15 U.S.C. 78l.

¹¹ 15 U.S.C. 78p(a).

¹² Rule 3a12-3 [17 CFR 240.3a12-3] provides that securities registered by a foreign private issuer, as defined in Rule 3b-4 [17 CFR 240.3b-4] are exempt from Section 16. The legislative and regulatory actions addressed in this release do not change this exemption.

¹³ As defined in Section 206B of the Gramm-Leach-Bliley Financial Modernization Act of 1999, as amended by H.R. 4577, P. L. No. 106-554, 114 Stat. 2763.

¹⁴ Pub. L. 107-204, 116 Stat. 745.

or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible."¹⁵

Section 403(b) of the Act provides that this amendment becomes effective 30 days after the date of enactment. That effective date is August 29, 2002. Thus, reporting persons will be required to report all transactions subject to Section 16(a) for which the date of execution (trade date) is on or after August 29, 2002 on Form 4 in accordance with the amended two-business day deadline,¹⁶ except where the rules under Section 16(a) provide otherwise.

On August 6, 2002, we announced that we anticipated adopting final rules to implement the new accelerated reporting deadline, effective no later than the August 29, 2002 effective date of the Section 16(a) amendments.¹⁷ The final rules that we adopt today accomplish the following:

- Amend the Section 16(a) forms to conform all references to the Form 4 filing deadline to the amended statutory filing deadline and to reflect that Form 4 is no longer a monthly form.
- Amend Rule 16a-6(b), the small acquisitions rule, to conform the description of the Form 4 deadline contained in that rule to the amended statutory filing deadline.

¹⁵ Section 16(a)(2)(C) (15 U.S.C. 78p(a)(2)(C)), as amended by the Act. Section 30(h) of the Investment Company Act of 1940 (15 U.S.C. 80a-29(h)) provides that "Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of outstanding securities (other than short-term paper) of which a registered closed-end company is the issuer or who is an officer, director, member of an advisory board, investment adviser, or affiliated person of an investment adviser of such a company shall in respect of his transactions in any securities of such company (other than short-term paper) be subject to the same duties and liabilities as those imposed by section 16 of the Securities Exchange Act of 1934 upon certain beneficial owners, directors, and officers in respect of their transactions in certain equity securities." Accordingly, the Act's amendments also accelerate the deadline for change of beneficial ownership reports required pursuant to Section 30(h).

¹⁶ For example, if a transaction is executed any time on Tuesday, September 3, the Form 4 will be due by the close of business (5:30 p.m. Eastern time) at the Commission on Thursday, September 5. Because the Act does not change the due date for Form 3, situations may arise where a reporting person is required to file a Form 4 before the Form 3 is due. In this situation, we encourage the reporting person to file the Form 3 along with the Form 4 at the time the Form 4 is due.

¹⁷ Exchange Act Release No. 46313 (Aug. 6, 2002) [67 FR 51900]. Comment letters relating to that release refer to File No. S7-31-02. Comment letters are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters are posted on the Commission's Internet Web Site (<http://www.sec.gov>).

- Amend Rules 16a-3(f) and 16a-6(a) so that transactions between officers or directors and the issuer exempted from Section 16(b)¹⁸ short-swing profit recovery by Rule 16b-3¹⁹ previously reportable on an annual basis on Form 5²⁰ will be required to be reported within two business days on Form 4.
- Amend Rule 16a-3(g) to calculate the two-business day Form 4 due date differently for the following transactions, for which we have determined that the amended Section 16(a) statutory reporting period is otherwise not feasible:²¹
 - Transactions pursuant to arrangements that satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1(c)²² where the reporting person does not select the date of execution; and
 - Discretionary Transactions pursuant to employee benefit plans where the reporting person does not select the date of execution.²³

We are not adopting any rules to calculate the Form 4 filing deadline differently based on non-feasibility for any other categories of transactions.²⁴ The amendments we adopt today will apply to transactions that occur on or after August 29, 2002. Transactions previously reportable on Form 5 that are not covered by the Rule 16a-3(f) amendments will remain reportable on Form 5 to the same extent as before, and transactions previously exempt from Section 16(a) reporting will remain exempt. An insider's failure to timely file a Section 16(a) report will remain subject to the company's disclosure obligation,²⁵ which we are not amending.

¹⁸ 15 U.S.C. 78p(b).

¹⁹ 17 CFR 240.16b-3. Rule 16b-3 is available to exempt transactions between an officer or director and the issuer (including an employee benefit plan sponsored by the issuer), subject to satisfaction of the transaction-specific conditions prescribed by the rule.

²⁰ 17 CFR 249.105. Form 5 is due within 45 days after the issuer's fiscal year end.

²¹ In Exchange Act Release No. 46313 we stated that we also would consider calculating the deadline differently for a transaction pursuant to a single market order that is executed over more than one day, but not to exceed a specified number of days. Because we believe that it is feasible to report these transactions as they are executed, we are not modifying the calculation of the statutory two-business day deadline for these transactions.

²² 17 CFR 240.10b5-1(c).

²³ "Discretionary Transaction" is defined in Rule 16b-3(b)(1).

²⁴ However, we request comment in Section IV, below, as to whether there are other types of transactions that require regulatory changes to make it feasible for insiders to report them within the two-business day deadline.

²⁵ This obligation is set forth in Item 405 of Regulations S-K and S-B [17 CFR 229.405 and 17

II. Rule and Form Amendments

A. Conforming Amendments to Rule 16a-6 and Forms 4 and 5

We are amending Form 4 (including the General Instructions to the form) to conform all references to the applicable filing deadline to the amended statutory filing deadline, and to reflect that Form 4 is no longer a monthly form.²⁶ In particular, the revised form provides that the holdings columns must report holdings following the reported transaction(s), rather than month-end holdings.²⁷ The form also specifically provides that reportable Rule 16b-3 exempt transactions must be reported on Form 4.²⁸

In addition, we are adding new column 2A to Table I of Form 4 and column 3A to Table II to require reporting of deemed execution dates computed in accordance with the Rule 16a-3(g) amendments adopted today.²⁹ These columns, which must be completed only if such a deemed execution date applies to the transaction reported,³⁰ will enable investors and members of the Commission staff reading the form to determine if the form was filed on a timely basis as readily as with the current form. Table I column 2 and Table II column 3, which require the transaction date to be reported, will continue to require the transaction's trade date to be reported.

We also are adding new columns 2A and 3A to Form 5, so that investors and members of the Commission staff reading that form similarly will be able to determine how late a transaction was reported.³¹ Finally, we revise Form 5 to

CFR 228.405, respectively], and is required disclosure in the annual report on Form 10-K [17 CFR 249.310] or Form 10-KSB [17 CFR 249.310b] and the proxy statement for the annual meeting at which directors are to be elected [17 CFR 240.14a-101, Item 7].

²⁶ See revised Form 4 General Instruction 1(a), and Items 4 and 5.

²⁷ See revised Form 4 General Instructions 3(a)(i), 3(a)(ii), 3(a)(iii), and 4(a)(i), Table I column 5 and Table II column 9. Reporting holdings following the reported transaction(s) will satisfy the statutory requirement to report "ownership by the filing person at the date of filing" set forth in amended Section 16(a)(3)(B). In keeping with current practice, insiders will reflect changes in holdings resulting from transactions exempt from Section 16(a) in the holdings column of the next otherwise required Form 4 or 5 filed to report a transaction in securities of the same class. See Section IV.A of Exchange Act Release No. 37260. An insider may rely in good faith on the last plan statement in reporting holdings pursuant to 401(k) plans and other Rule 16b-3(c) exempt plans.

²⁸ See revised Form 4 General Instruction 4(a)(i), and amended Rules 16a-3(f)(1)(i)(A), and 16a-3(g)(1), discussed in Section II.B, below, and amended Rule 16a-6(a), discussed below in this section.

²⁹ See Section II.B, below.

³⁰ See revised Form 4 General Instruction 4(a)(ii).

³¹ See revised Form 5 General Instruction 4(a)(ii).

clarify that reportable Rule 16b-3 exempt transactions no longer may be reported on that form on a deferred basis.³²

We plan to publish new forms implementing these amendments as soon as possible. Until amended forms are available, reporting persons should continue to use the current versions, but should modify box 4 on Form 4 to state the month, day and year of the transaction. When using the current forms to report a transaction with a deemed execution date computed pursuant to amended Rule 16a-3(g), a reporting person should include an asterisk next to the trade date in the transaction date column, and add a footnote to disclose the deemed execution date.

Rule 16a-6 permits small acquisitions to be reported on Form 5, subject to specified conditions.³³ If the conditions are no longer met, so that the small acquisition no longer qualifies for deferred reporting on Form 5, it must be reported on a Form 4. We are amending the rule to conform the Form 4 due date for this purpose to the two-business day due date provided by the Act, so the Form 4 will be due two business days after the deferral conditions are no longer met.³⁴

We also are amending the rule so that it will not be available to defer reporting of small acquisitions from the issuer (including an employee benefit plan sponsored by the issuer).³⁵ This will prohibit reliance on Rule 16a-6 to report on Form 5 transactions exempted by Rule 16b-3 that will be required to be reported on Form 4, as described immediately below.

B. Amendments to Rule 16a-3

Rule 16a-3 sets forth the general reporting requirements under Section 16(a). We are amending this rule in several respects to address the reporting modifications effected by the Act.

Form 4 reporting within two business days of officers' and directors' transactions with an issuer exempted by Rule 16b-3 that previously were reportable on Form 5 is necessary to

³² See revised Form 5 General Instruction 4(a)(i)(A). We also adopt technical amendments to Form 3 General Instruction 5(b)(v), Form 4 General Instruction 4(b)(v) and Form 5 General Instruction 4(b)(v) to omit references to furnishing the Social Security Numbers of natural persons, consistent with the amendments we adopted in Securities Act Release No. 7424 (Jun. 25, 1997) [62 FR 35338].

³³ As currently provided in Rule 16a-6(a), a small acquisition is an "acquisition of an equity security not exceeding \$10,000 in market value, or of the right to acquire such securities[.]" The conditions for deferring reporting to Form 5 are set forth in Rules 16a-6(a)(1) and 16a-6(a)(2).

³⁴ Rule 16a-6(b).

³⁵ Rule 16a-6(a).

satisfy the Act's purpose to require immediate disclosure of insider transactions. Accordingly, we amend the rule to eliminate deferred reporting for these Section 16(b) exempt transactions and specifically require reporting on Form 4.³⁶ We previously solicited comment on this regulatory action.³⁷

Consequently, grants, awards and other acquisitions from the issuer exempted by Rule 16b-3(d), dispositions to the issuer exempted by Rule 16b-3(e), and Discretionary Transactions pursuant to employee benefit plans exempted by Rule 16b-3(f) no longer will be reportable on a deferred basis on Form 5, but instead must be reported on Form 4 within two business days.³⁸ Following these amendments, derivative securities transactions reportable on Form 4 will include, without limitation, issuances, exercises,³⁹ and cancellations and reprints of stock options, including repricings.

Like the other amendments we adopt today, the amendments that accelerate reporting of reportable Rule 16b-3 exempt transactions apply to transactions that occur on or after August 29, 2002.⁴⁰ The amendments do

³⁶ Rules 16a-3(f)(1)(i)(A) and 16a-3(g)(1). Rule 16a-3(g)(1) also is amended to conform with the statute by providing that Form 4 must be filed before the end of the second business day following the day on which the subject transaction has been executed.

³⁷ "Form 8-K Disclosure of Certain Management Transactions," Securities Act Release No. 8090, Exchange Act Release No. 45742 (Apr. 12, 2002) [67 FR 19914, at 19920] ("Form 8-K Release"). As we stated in Exchange Release No. 46313, in light of the statutory amendments to Section 16(a), we do not intend to consider further our proposed amendments to require companies to report on Form 8-K directors' and executive officers' transactions in company equity securities. However, we continue to consider the other amendments we proposed in the Form 8-K Release. These proposed amendments would require companies to disclose information about (1) directors' and executive officers' arrangements intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1(c) and (2) company loans and loan guarantees to directors and executive officers that are not prohibited by Section 402 of the Act.

³⁸ The amendment does not affect the Rule 16b-3 exemptive conditions applicable to these types of transactions, or the reporting status of any other transactions addressed by Rule 16a-3(f)(1).

³⁹ The current requirements of Rule 16a-3(f)(1)(i)(A) to report on Form 4 exercises and conversions of derivative securities that are exempt from Section 16(b) short-swing profit recovery under either Rule 16b-3 or Rule 16b-6(b) [17 CFR 240.16b-6(b)] will continue.

⁴⁰ Reporting on Form 5 of other transactions as to which deferred reporting is currently available or for which an insider failed to file a required report remains available. At their option, filing persons may continue to report earlier on Form 4 transactions that are reportable on Form 5, as provided by former Rule 16a-3(g)(2). We redesignate this rule as Rule 16a-3(g)(5) [17 CFR 240.16a-3(g)(5)] and restate it in plain English.

not affect such transactions that occur before the effective date.

In requiring reporting before the end of the second business day following the day on which the transaction is executed, the Act provides the Commission rulemaking authority to calculate that deadline differently "in any case in which the Commission determines that such 2-day period is not feasible." If the trade date is considered the date of execution, we have determined that filing Form 4 within the two-business day deadline would not be feasible for two narrowly defined types of transactions where objective criteria prevent the reporting person from controlling the trade date.

The first exception relates to transactions pursuant to Rule 10b5-1(c) arrangements.⁴¹ A reporting person generally cannot know whether such a transaction will be executed immediately. Where the reporting person has not selected the date of execution, the reporting person generally knows that an order has been placed, but does not control—and may not be able reasonably to predict—when the transaction actually will occur. Instead, price movement in the market may determine the date of execution for these transactions.

The second exception addresses Discretionary Transactions, where the logistics of plan administration may prevent a reporting person from selecting the date of execution.⁴² A reporting person may not reasonably expect a Discretionary Transaction to be executed immediately, but instead at a time consistent with the plan's particular administrative procedures.

Accordingly, the new rules will define the date of execution differently for these transactions, solely for Section 16(a) reporting purposes. In light of the Act's purpose to effect immediate disclosure of reporting persons' transactions, the alternative calculations we adopt for these transactions require expeditious reporting. We are modifying the calculation of the statutory two-business day period as described below for these transactions:

⁴¹ Rule 10b5-1 provides that a person trades "on the basis of" material nonpublic information when the person purchases or sells securities while aware of material nonpublic information. However, Rule 10b5-1(c) establishes affirmative defenses that permit a person to trade in circumstances where it is clear that the information was not a factor in the decision to trade. See Securities Act Release No. 7881, Exchange Act Release No. 43154 (Aug. 15, 2000) [65 FR 51716], adopting Rule 10b5-1.

⁴² A "Discretionary Transaction," which is defined in Rule 16b-3(b)(1), involves an intra-plan transfer of previously invested assets into or out of a plan issuer securities fund, or a cash-out from a plan issuer securities fund.

- For a transaction pursuant to a contract, instruction⁴³ or written plan for the purchase or sale of issuer equity securities that satisfies the affirmative defense conditions of Exchange Act Rule 10b5-1(c) where the reporting person does not select the date of execution, the date on which the executing broker, dealer or plan administrator notifies the reporting person of execution of the transaction is deemed the date of execution, so long as the notification date is not later than the third business day following the trade date.⁴⁴

- For a Discretionary Transaction where the reporting person does not select the date of execution, the date on which the plan administrator notifies the reporting person that the transaction has been executed is deemed the date of execution, so long as the notification date is not later than the third business day following the trade date.⁴⁵

In each case, a reporting person must report the transaction on Form 4 before the end of the second business day following the deemed date of execution, as calculated under the applicable rule, for the transaction.⁴⁶ Defining the date of execution as the notification date enables a reporting person to report on Form 4 a transaction of which he or she otherwise would not have notice. However, neither exception will be available if the reporting person has selected the date of transaction execution, for example where a Rule 10b5-1(c) arrangement provides for a sale on the first business day of each month.

The three-business day period provides reasonable time for notification to be made, and is consistent with the Act's purpose to expedite reporting. For both Rule 10b5-1(c) transactions and Discretionary Transactions, we expect the reporting person will make specific arrangements for the broker, dealer or plan administrator to provide the reporting person actual notice of transaction execution as quickly as

⁴³ Such an instruction can be in the form of a limit order.

⁴⁴ Rules 16a-3(g)(2) and 16a-3(g)(4) [17 CFR 240.16a-3(g)(2) and 17 CFR 240.16a-3(g)(4)].

⁴⁵ Rules 16a-3(g)(3) and 16a-3(g)(4) [17 CFR 240.16a-3(g)(3) and 17 CFR 240.16a-3(g)(4)].

⁴⁶ As described in Section II.A above, we are adding a column to both Tables I and II on Form 4 to report the deemed date of execution, so investors and members of the Commission staff reading the form will be able to see the applicable date for calculating the due date. We are adding the same column to Form 5, so that form will provide the same information if the transaction is reported on Form 5 because the reporting person failed to file the required Form 4.

feasible.⁴⁷ By deeming the notification date to be the third business day following the trade date if actual notification does not occur by then, the rule limits the potential delay permitted for reporting these transactions on a timely basis.⁴⁸

The broker, dealer or plan administrator may use any means of communication, including oral, paper or electronic means, to notify the reporting person that the transaction has been executed. While a broker or dealer also will have an obligation to provide the reporting person with a transaction confirmation under Exchange Act Rule 10b-10,⁴⁹ the confirmation may not arrive soon enough to give the reporting person the information he or she needs for Section 16(a) reporting purposes. For example, a confirmation sent through the mail could take several days to arrive. We would, therefore, usually expect brokers and dealers to provide the information needed for Section 16(a) reporting purposes to the reporting person either electronically or by telephone.⁵⁰

Regarding Rule 10b5-1(c) transactions, the new rule will be available broadly to any transaction that satisfies the affirmative defense conditions of Rule 10b5-1(c), including transactions pursuant to employee benefit plans and dividend or interest reinvestment plans that are not exempt from Section 16(a) reporting. Following effectiveness of Section 403 of the Act, acquisitions pursuant to Qualified Plans, Excess Benefit Plans, Stock Purchase Plans⁵¹ and the reinvestment of dividends or interest pursuant to broad-based dividend or interest reinvestment plans⁵² will remain exempt from Section 16(a) reporting. In contrast, transactions pursuant to non-qualified deferred compensation plans and other dividend or interest reinvestment plan transactions (such as

acquisitions pursuant to voluntary contributions of additional funds) will be reportable on Form 4 within two business days after the date of execution. However, to the extent that such a transaction satisfies the affirmative defense conditions of Rule 10b5-1(c), the date of execution for Form 4 reporting purposes may be calculated on the modified basis.

III. Electronic Filing and Website Posting

The Act also amends Section 16(a) to require, not later than one year following enactment, electronic filing of change of beneficial ownership reports, and website posting of such reports by both the Commission and issuers.⁵³ We have announced our intention to begin rulemaking to make the filing of Section 16(a) reports on EDGAR mandatory,⁵⁴ and are proceeding expeditiously with that rulemaking and related system programming to assure adoption within the one-year period mandated by the Act.

Meanwhile, we encourage reporting persons and companies filing Section 16(a) reports on their behalf to make these filings electronically.⁵⁵ To facilitate EDGAR conversion under the current filing system, we will accept electronically-filed Section 16(a) reports that are not presented in the standard box format and omit the horizontal and vertical lines separating information items, so long as the captions of the items and all required information are presented in the proper order. Reporting persons who plan to file their Section 16(a) reports electronically should submit Forms ID requesting EDGAR access codes as soon as possible to minimize processing delays.⁵⁶ When making a request, please indicate whether the person for whom codes are requested is a reporting person with respect to any other companies, and whether a CIK number already has been assigned to that person. We also encourage companies to post Section 16(a) reports on their websites before

the July 30, 2003 statutory implementation date.

IV. Request for Comment

We request comment on the changes we are adopting in this release. Are any other technical amendments necessary to implement Section 403 of the Act? Commenters should address whether the amendments to Rule 16a-3(g) to define the date of execution differently for specified types of transactions will make it feasible for insiders to report those transactions within the two-business day deadline. Is any additional time necessary to make Form 4 reporting feasible for these transactions? Alternatively, do the new rules allow more time than is necessary for this purpose?

Commenters also should address whether any other types of transactions require regulatory changes to make it feasible for insiders to report them within that deadline. In this regard, what factors should we consider in making a feasibility determination?

On a broader issue not otherwise addressed in this release, we seek comment whether any changes are required in the treatment of stock options under Sections 16(a) and 16(b). One set of issues involves whether and how the six-month period of Section 16(b) should be applied and calculated in connection with stock options, exercises and the sale of the underlying stock. For example, should a six-month holding period be required as a mandatory condition to exempt grants under Rule 16b-3(d), rather than be one of the alternative permissible bases for an exemption?

V. Procedural Matters

The Administrative Procedure Act generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.⁵⁷ This requirement does not apply, however, if the agency "for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest."⁵⁸

The Commission believes that it is appropriate to adopt the amendments to Rules 16a-3 and 16a-6 and Forms 4 and 5 without notice and the opportunity for public comment because they are necessary to conform the Section 16(a) rules and forms to the two-business day reporting deadline provided by the amendments to Section 16(a) enacted in Section 403 of the Act that become

⁴⁷ This may require modification of routine procedures, particularly with respect to employee benefit plans.

⁴⁸ Rule 16a-3(g)(4).

⁴⁹ 17 CFR 240.10b-10, which requires broker-dealers to disclose specified information in writing to customers at or before completion of a transaction.

⁵⁰ It is possible, however, that an electronic confirmation provided to a customer could satisfy the requirements of Rule 10b-10 as well as notification for Section 16(a) reporting purposes.

⁵¹ "Qualified Plan" is defined in Rule 16b-3(b)(2). "Stock Purchase Plan" is defined in Rule 16b-3(b)(5). Rule 16a-3(f)(1)(i)(B) exempts these transactions from Section 16(a) reporting because Rule 16b-3(c) exempts them from Section 16(b) short-swing profit recovery.

⁵² Rule 16a-11 [17 CFR 240.16a-11] exempts these acquisitions from Sections 16(a) and 16(b), if the conditions of the rule are met.

⁵³ Section 16(a)(4), as amended by the Act.

⁵⁴ Securities Act Release No. 7803 (Feb. 25, 2000) [65 FR 11507].

⁵⁵ For classes of securities listed on the New York Stock Exchange, the American Stock Exchange and the Chicago Stock Exchange, filing Section 16(a) reports on EDGAR satisfies the requirements of Section 16(a)(1) (as amended) and Rule 16a-3(c) to file the reports with the exchange on which the securities are listed. See staff no-action letters to New York Stock Exchange (Jul. 22, 1998), American Stock Exchange (Jul. 22, 1998) and Chicago Stock Exchange (Jan. 13, 1998).

⁵⁶ Form ID [17 CFR 239.63] is on our website at (<http://www.sec.gov/about/forms/formid.pdf>). These forms should be sent by facsimile to the Commission at (202) 504-2474 or (703) 914-4240.

⁵⁷ See 5 U.S.C. 553(b).

⁵⁸ *Id.*

effective, by their terms, on August 29, 2002.⁵⁹

Unless the rule and form amendments become effective by that date, reporting persons may be confused by the longer time period currently specified by the rules and forms. To satisfy the Act's purpose to require immediate disclosure of insider transactions, some of the amendments eliminate deferred reporting of officers' and directors' reportable transactions with an issuer exempted from short-swing profit recovery by Rule 16b-3.⁶⁰ Without these regulatory amendments, the statutory amendments will become effective without fulfilling their purpose.

The amendments to Rule 16a-3(g) implement specific rulemaking authority granted to the Commission by Section 403 of the Act to compute the two-business day deadline differently in certain narrowly-defined circumstances, based on feasibility. We do not believe Congress intended to require reporting persons to report transactions for which they had no opportunity to obtain notice of execution. Without these regulatory amendments, the statutory amendments will become effective in a manner that is not feasible for these transactions.

The technical amendments to Rule 16a-8(a)(1) implement amendments we previously adopted to provide that a trust is subject to Section 16 only if the trust is a more than ten percent beneficial owner.⁶¹ The technical amendments to the General Instructions to Forms 3, 4 and 5 to omit references to furnishing the Social Security Numbers of natural persons implement a policy that we previously adopted.⁶²

Accordingly, the Commission for good cause finds that a notice and comment period for these rules would be unnecessary, impracticable and contrary to the public interest.

The Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.⁶³ This requirement, however, does not apply if the agency finds good cause for making the rule effective

sooner.⁶⁴ For the same reasons as it is waiving notice and comment, the Commission finds good cause to make the rules effective August 29, 2002.⁶⁵ In addition, the amendments to Rule 16a-3(g) relieve a restriction.

VI. Paperwork Reduction Act

We already have control numbers for Forms 3 (OMB Control No. 3235-0104), 4 (OMB Control No. 3235-0287) and 5 (OMB Control No. 3235-0362). These forms prescribe beneficial ownership information that a reporting person must disclose. Preparing and filing a report on any of these forms is a collection of information. Consistent with the will of Congress, the amendments conform the Section 16(a) rules and forms to the two-business day reporting deadline provided by the amendments to Section 16(a) enacted in Section 403 of the Act.

Following the amendments adopted today, reporting persons will remain obligated to disclose the same information that they were previously required to report on these forms.⁶⁶ Some transactions previously reported on Form 5 instead will be reported on Form 4. Because of the expedited filing deadline, reporting persons may file Forms 4 more frequently, but each form would report fewer transactions. We therefore believe that the overall information collection burden will remain approximately the same because the same transactions will remain reportable.

VII. Costs and Benefits

The action that the Commission takes today largely represents the implementation of a Congressional mandate. We recognize that implementation of the Act will likely create costs and benefits to the economy. Costs may arise because reporting persons will be required to file Form 4 significantly more quickly after a transaction, and potentially more frequently because Form 4 no longer will be a monthly form. The increased speed of filing also may increase preparation costs. In addition, to the extent that amended Section 16(a) results in an increase in the number of

Forms 4 filed—although the total number of reportable transactions has not been changed by Section 403 of the Act or this release—the aggregate cost of providing this information may increase.

Conversely, amended Section 16(a) is likely to provide significant benefits by making information concerning insiders' transactions in issuer equity securities publicly available substantially sooner than it was before. Making this information available to all investors on a more timely basis should increase market transparency, which will likely enhance market efficiency and liquidity.

In adopting specific rules for transactions for which we have determined that filing Form 4 within the statutory two-business day deadline otherwise would not be feasible, we have considered the associated costs and benefits. The reporting rules that we adopt for these transactions generally involve instances where the reporting person does not control and cannot reasonably be expected to know immediately the precise transaction date. The rules therefore allow reasonable additional time so that reporting is feasible, while requiring expeditious reporting consistent with the Act's purpose to effect immediate disclosure of reporting persons' transactions.

VIII. Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act⁶⁷ requires us, when adopting rules under the Exchange Act, to consider the anti-competitive effective of any rules we adopt. Further, Section 3(f) of the Exchange Act⁶⁸ and Section 2(c) of the Investment Company Act⁶⁹ 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 amendments generally implement a statute that improves the timeliness of information available to investors about insiders' transactions in issuer equity securities. We are adopting rules to provide certain different calculations for the two-business day standard set by Congress. These rules should have no effect on competition and capital formation. They are

⁵⁹ In the release where we announced that we would consider adopting final rules no later than August 29, 2002, we invited public comment on the implementation of the legislative provisions relating to Section 16(a). Exchange Act Release No. 46313 (Aug. 6, 2002) [67 FR 51900].

⁶⁰ We previously solicited comment on this regulatory action in "Form 8-K Disclosure of Certain Management Transactions," Securities Act Release No. 8090, Exchange Act Release No. 45742 (Apr. 12, 2002) [67 FR 19914, at 19920].

⁶¹ Exchange Act Release No. 37260 (Jun. 14, 1996) [61 FR 30392].

⁶² Securities Act Release No. 7424 (Jun. 25, 1997) [62 FR 35338].

⁶³ See 5 U.S.C. 553(d).

⁶⁴ *Id.*

⁶⁵ This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become immediately effective notwithstanding the requirements of 5 U.S.C. § 801 (if the agency finds that notice and public procedure are "impractical, unnecessary, or contrary to the public interest," the rule "shall take effect at such time as the Federal agency promulgating the rule determines").

⁶⁶ The addition of a column on each table—which requires only a date and will be used only for certain narrowly-defined transactions—is a *de minimis* change.

⁶⁷ 15 U.S.C. 78w(a)(2).

⁶⁸ 15 U.S.C. 78c(f).

⁶⁹ 15 U.S.C. 80a-2(c).

designed to increase the efficiency of insider reporting.

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act⁷⁰ does not apply to the rules we adopt today. The Regulatory Flexibility Act requires agencies to prepare analyses for rulemaking only when the Administrative Procedure Act requires general notice of proposed rulemaking.⁷¹ As noted above, the Commission is not required to solicit public comment because the Commission is using the expedited rulemaking procedures under section 553(b) of the Administrative Procedure Act.⁷²

X. Statutory Authority

The amendments contained in this release are adopted under the authority set forth in Sections 3(b),⁷³ 16 and 23(a)⁷⁴ of the Exchange Act, Section 17(a) of the Public Utility Holding Company Act of 1934,⁷⁵ Section 30(h) of the Investment Company Act of 1940, and Section 3(a) of the Sarbanes-Oxley Act of 2002.

Text of Amendments

List of Subjects in 17 CFR Parts 240, 249 and 274

Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. 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, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

2. Section 240.16a-3 is amended by revising paragraphs (f)(1)(i)(A) and (g), to read as follows:

§ 240.16a-3 Reporting transactions and holdings.

* * * * *

(f)(1) * * *
(i) * * *

(A) Exercises and conversions of derivative securities exempt under

either § 240.16b-3 or § 240.16b-6(b), and any transaction exempt under § 240.16b-3(d), § 240.16b-3(e), or § 240.16b-3(f) (these are required to be reported on Form 4);

* * * * *

(g)(1) A Form 4 must be filed to report: All transactions not exempt from section 16(b) of the Act; All transactions exempt from section 16(b) of the Act pursuant to § 240.16b-3(d), § 240.16b-3(e), or § 240.16b-3(f); and all exercises and conversions of derivative securities, regardless of whether exempt from section 16(b) of the Act. Form 4 must be filed before the end of the second business day following the day on which the subject transaction has been executed.

(2) Solely for purposes of section 16(a)(2)(C) of the Act and paragraph (g)(1) of this section, the date on which the executing broker, dealer or plan administrator notifies the reporting person of the execution of the transaction is deemed the date of execution for a transaction where the following conditions are satisfied:

(i) the transaction is pursuant to a contract, instruction or written plan for the purchase or sale of equity securities of the issuer (as defined in § 16a-1(d)) that satisfies the affirmative defense conditions of § 240.10b5-1(c) of this chapter; and

(ii) the reporting person does not select the date of execution.

(3) Solely for purposes of section 16(a)(2)(C) of the Act and paragraph (g)(1) of this section, the date on which the plan administrator notifies the reporting person that the transaction has been executed is deemed the date of execution for a discretionary transaction (as defined in § 16b-3(b)(1)) for which the reporting person does not select the date of execution.

(4) In the case of the transactions described in paragraphs (g)(2) and (g)(3) of this section, if the notification date is later than the third business day following the trade date of the transaction, the date of execution is deemed to be the third business day following the trade date of the transaction.

(5) At the option of the reporting person, transactions that are reportable on Form 5 may be reported on Form 4, so long as the Form 4 is filed no later than the due date of the Form 5 on which the transaction is otherwise required to be reported.

* * * * *

3. Section 240.16a-6 is amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 240.16a-6 Small acquisitions.

(a) Any acquisition of an equity security or the right to acquire such securities, other than an acquisition from the issuer (including an employee benefit plan sponsored by the issuer), not exceeding \$10,000 in market value shall be reported on Form 5, subject to the following conditions:

* * * * *

(b) If an acquisition no longer qualifies for the reporting deferral in paragraph (a) of this section, all such acquisitions that have not yet been reported must be reported on Form 4 before the end of the second business day following the day on which the conditions of paragraph (a) of this section are no longer met.

4. Section 240.16a-8 is amended by revising paragraph (a)(1) to read as follows:

§ 240.16a-8 Trusts.

(a) *Persons subject to section 16.* (1) *Trusts.* A trust shall be subject to section 16 of the Act with respect to securities of the issuer if the trust is a beneficial owner, pursuant to § 240.16a-1(a)(1), of more than ten percent of any class of equity securities of the issuer registered pursuant to section 12 of the Act (“ten percent beneficial owner”).

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

6. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

7. Form 3 (referenced in § 249.103 and § 274.202) and the General Instructions thereto are amended by revising the fourth sentence of paragraph (b)(v) of General Instruction 5, to read as follows:

Note—The text of Form 3 does not and this amendment will not appear in the Code of Federal Regulations.

Form 3—Initial Statement of Beneficial Ownership of Securities

* * * * *

General Instructions

* * * * *

⁷⁰ 5 U.S.C. 601-612.

⁷¹ 5 U.S.C. 603(a).

⁷² See Section V, above.

⁷³ 15 U.S.C. 78c(b).

⁷⁴ 15 U.S.C. 78w(a).

⁷⁵ 15 U.S.C. 79q(a).

5. Holdings Required To Be Reported

* * * * *

(b) Beneficial Ownership Reported (Pecuniary Interest)

* * * * *

(v) * * * Indicate only the name and address of the designated filer in Item 1 of Form 3 and attach a list of the names and addresses (or, if entities, IRS identification numbers instead of addresses) of each other reporting person. * * *

* * * * *

8. Form 4 (referenced in § 249.104 and § 274.203) and the General Instructions thereto are amended by:

- a. Revising the first sentence of General Instruction 1(a);
 - b. Revising General Instructions 3(a)(i), 3(a)(ii) and 3(a)(iii);
 - c. Revising General Instruction 4(a)(i) and the first sentence of the Note thereto;
 - d. Adding a sentence at the end of General Instruction 4(a)(ii) before the Note thereto;
 - e. Revising the fourth sentence of General Instruction 4(b)(v); and revising Items 4 and 5 to the information preceding Table I;
 - f. Adding column 2A to follow column 2 in Table I;
 - g. Revising column 5 in Table I;
 - h. Adding column 3A to follow column 3 in Table II; and
 - i. Revising column 9 in Table II.
- The revisions read as follows:

Note— The text of Form 4 does not and this amendment will not appear in the Code of Federal Regulations.

Form 4—Statement of Changes in Beneficial Ownership of Securities

* * * * *

General Instructions

1. When Form Must Be Filed

(a) This Form must be filed before the end of the second business day following the day on which a transaction resulting in a change in beneficial ownership has been executed (see Rule 16a-1(a)(2) and Instruction 4 regarding the meaning of “beneficial owner,” and Rule 16a-3(g) regarding determination of the date of execution for specified transactions). * * *

* * * * *

3. Class of Securities Reported

(a) (i) Persons reporting pursuant to Section 16(a) of the Exchange Act must report each transaction resulting in a change in beneficial ownership of any class of equity securities of the issuer and the beneficial ownership of that class of securities following the reported transaction(s), even though one or more of such classes may not be registered pursuant to Section 12 of the Exchange Act.

(ii) Persons reporting pursuant to Section 17(a) of the Public Utility Holding Company Act of 1935 must report each transaction

resulting in a change in beneficial ownership of any class of securities (equity or debt) of the registered holding company and all of its subsidiary companies and the beneficial ownership of that class of securities following the reported transaction(s). Specify the name of the parent or subsidiary issuing the securities.

(iii) Persons reporting pursuant to Section 30(h) of the Investment Company Act of 1940 must report each transaction resulting in a change in beneficial ownership of any class of securities (equity or debt) of the registered closed-end investment company (other than “short-term paper” as defined in Section 2(a)(38) of the Investment Company Act) and the beneficial ownership of that class of securities following the reported transaction(s).

* * * * *

4. Transactions and Holdings Required To Be Reported

(a) General Requirements
 (i) Report, in accordance with Rule 16a-3(g): (1) all transactions not exempt from Section 16(b); (2) all transactions exempt from Section 16(b) pursuant to § 240.16b-3(d), § 240.16b-3(e), or § 240.16b-3(f); and (3) all exercises and conversions of derivative securities, regardless of whether exempt from Section 16(b) of the Act. Every transaction must be reported even though acquisitions and dispositions are equal. Report total beneficial ownership following the reported transaction(s) for each class of securities in which a transaction was reported.

Note: The amount of securities beneficially owned following the reported transaction(s) specified in Column 5 of Table I and Column 9 of Table II should reflect holdings reported or required to be reported by the date of the Form. * * *

(ii) * * * A deemed execution date must be reported in Column 2A of Table I or Column 3A of Table II only if the execution date for the transaction is calculated pursuant to § 240.16a-3(g)(2) or § 240.16a-3(g)(3).

* * * * *

(b) Beneficial Ownership Reported (Pecuniary Interest)

* * * * *

(v) * * * Indicate only the name and address of the designated filer in Item 1 of Form 4 and attach a list of the names and addresses (or, if entities, IRS identification numbers instead of addresses) of each other reporting person. * * *

* * * * *

Form 4

* * * * *

4. Statement for Month/Day/Year

* * * * *

5. If Amendment, Date of Original (Month/Day/Year)

* * * * *

Table I.—Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

* * * * *

2A. Deemed Execution Date, If Any (Month/Day/Year)

* * * * *

5. Amount of Securities Beneficially Owned Following Reported Transaction(s)

* * * * *

Table II.—Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

* * * * *

3A. Deemed Execution Date, if any (Month/Day/Year)

* * * * *

9. Number of Derivative Securities Beneficially Owned Following Reported Transaction(s)

* * * * *

9. Form 5 (referenced in § 249.105) and the General Instructions thereto are amended by:

- a. Revising General Instruction 4(a)(i)(A);
- b. Adding a sentence at the end of General Instruction 4(a)(ii);
- c. Revising the fourth sentence of General Instruction 4(b)(v);
- d. Adding column 2A to follow column 2 in Table I; and
- e. Adding column 3A to follow column 3 in Table II.

The revisions read as follows:

Note— The text of Form 5 does not and this amendment will not appear in the Code of Federal Regulations.

Form 5—Annual Statement of Beneficial Ownership of Securities

* * * * *

4. Transactions and Holdings Required To Be Reported

(a) General Requirements

(i) * * *

(A) Any transaction during the issuer's most recent fiscal year that was exempt from Section 16(b) of the Act, except: (1) any transaction exempt from Section 16(b) pursuant to § 240.16b-3(d), § 240.16b-3(e), or § 240.16b-3(f) (these are required to be reported on Form 4); (2) any exercise or conversion of derivative securities exempt under either § 240.16b-3 or § 240.16b-6(b) (these are required to be reported on Form 4); (3) any transaction exempt from Section 16(b) of the Act pursuant to § 240.16b-3(c), which is exempt from Section 16(a) of the Act; and (4) any transaction exempt from Section 16 of the Act pursuant to another Section 16(a) rule;

* * * * *

(ii) * * * A deemed execution date must be reported in Column 2A of Table I or Column 3A of Table II only if the execution date for the transaction is calculated pursuant to § 240.16a-3(g)(2) or § 240.16a-3(g)(3).

* * * * *

(b) Beneficial Ownership Reported
(Pecuniary Interest)

* * * * *

(v) * * * Indicate only the name and address of the designated filer in Item 1 of Form 5 and attach a list of the names and addresses (or, if entities, IRS identification numbers instead of addresses) of each other reporting person. * * *

* * * * *

Form 5

* * * * *

Table I.—Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

* * * * *

2A. Deemed Execution Date, if any (Month/Day/Year)

* * * * *

Table II.—Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

* * * * *

3A. Deemed Execution Date, if any (Month/Day/Year)

* * * * *

Dated: August 27, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-22301 Filed 8-28-02; 3:03 pm]

BILLING CODE 8010-01-P



Federal Register

**Tuesday,
September 3, 2002**

Part VI

Department of Housing and Urban Development

**Utility Allowances for Use by the Federal
National Mortgage Association and the
Federal Home Mortgage Corporation;
Notice**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4771-N-01]

Utility Allowances for Use by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces that the Department has established monthly utility allowances in accordance with the Secretary's authority to regulate the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). Each enterprise is also referred to as a Government-Sponsored Enterprise (GSE). These allowances are used to determine whether rental units financed by GSE mortgage purchases are affordable and may count toward the achievement of the income-based housing goals established by the Secretary. For these purposes, the allowances in this notice shall be added to the contract rent for rental units in which: (1) Tenant income is not available; (2) contract rent does not include the cost of utilities; and (3) the GSE does not use the HUD Section 8 utility allowances.

FOR FURTHER INFORMATION CONTACT: Sandra Fostek, Director, Office of Government-Sponsored Enterprises Oversight, Department of Housing and Urban Development, Room 6182, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-2224 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Environmental Review

This notice involves the establishment of a rate and cost

determination similar to interest rates, loan limits, building cost limits, prototype costs or fair market rent schedules which does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

II. Background

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, enacted as Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992, codified generally at 12 U.S.C. 4501-4561) (the Act)¹ requires the Secretary, *inter alia*, to establish and monitor the performance of the GSEs in meeting annual goals for mortgage purchases on housing for low- and moderate-income families and special affordable housing, *i.e.*, housing meeting the needs of, and affordable to, low-income families in low-income areas and very low-income families. On January 2, 1996, the Secretary's regulation on the GSEs, codified at 24 CFR, part 81 (regulation), became effective. (See 60 FR 61846, December 1, 1995). This regulation was modified by new regulations that became effective on January 1, 2001. (See 65 FR 65044, October 31, 2000).

Under the Act and regulations, in considering whether a rental dwelling unit that is financed by a GSE mortgage purchase is affordable and counts toward any housing goal, the Secretary must consider the income of tenants if income information is available. Where income information is not available, rent on the dwelling unit is used as a proxy and compared to the rent levels affordable to very low-, low-, and moderate-income families, and families whose incomes do not exceed 50 percent of the area median income (especially low-income families).² To be considered affordable and count under the goal, the rent cannot exceed 30

percent of the maximum income level of the family's classification, with adjustments for unit size.³

Under the regulation, rent is defined as contract rent, but only where the contract rent includes the cost of all utilities.⁴ In all other instances, rent is contract rent plus (1) the actual cost of utilities or (2) a utility allowance.⁵ The regulation allows the GSEs to choose from two different utility allowances—the allowances used in the HUD Section 8 Program or the utility allowances derived from the American Housing Survey (AHS) and issued by the Secretary.⁶

On July 8, 1998 (63 FR 36931), a notice was issued establishing the utility allowances for 1998 and 1999. Those utility allowances were based on the Department's analysis of data from the 1995 AHS.

This notice announces that the Department has established the AHS-derived utility allowances for 2002 and 2003. In establishing these allowances, the Department analyzed 1999 AHS data on the mean costs, based on unit type (*i.e.*, number of bedrooms), paid by renters in both multifamily and single-family properties for electricity, gas, fuel oil, other fuel, water and sewerage, and garbage and trash removal.⁷

The GSEs were advised by letter dated May 9, 2002, that these allowances were to be published in the **Federal Register** and that they would become effective on July 1, 2002, but could be implemented sooner at each GSE's option.

III. The Utility Allowances

In accordance with sections 1321, 1331-33, and 1336 of the Federal Housing Enterprises Financial Safety and Soundness Act (12 U.S.C. 4541, 4561-63, and 4566), and as provided in paragraph (1) under the definition of "utility allowance" in section 81.2(b) of Title 24 of the Code of Federal Regulations, the AHS-derived monthly utility allowances for 2002 and 2003 are as follows:

Type of property	Number of bedrooms			
	Efficiency	1	2	3 or more
Multifamily	\$41	\$57	\$80	\$112
Single Family	41	73	113	155

¹ Unless otherwise specified, all sections cited herein are in the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Sections 1331-1336 of that Act are codified at 12 U.S.C. 4561-66.

² Sections 1332(c) and 1333(c); 1333(d)(3) and 24 CFR 81.14(d).

³ Sections 1332(c)(2) and 1333(c)(2).

⁴ 24 CFR 81.2.

⁵ *Id.*

⁶ *Id.*

⁷ The utility allowances reported for 2002 and 2003 reflect an adjustment to the 1999 AHS means

for the 16.6 percent increase in the Consumer Price Index for All Urban Consumers (CPI-U) for Fuels and Other Utilities from 1999 to 2001 and the 2.0 percent projected decrease from 2001 to 2002 as forecast by DRI-WEFA.

The utility allowances for 2002 and 2003 are less than the previously published allowances for 1998 and 1999 for efficiency and one-bedroom units, approximately the same for two-bedroom units, and somewhat greater for units with three or more bedrooms. This is the result of changes in mean utility expenditures on particular utilities that are separately billed (which is the basis for the utility allowances) for different bedroom sizes and of changes in billing patterns. Based on the AHS, the mean electricity expenditures were lower in 1999 than in 1995, with the largest decreases seen for efficiency and one-bedroom units. With respect to billing patterns, a lower proportion of renters in 1999 paid separately for trash in each of the unit categories, a lower proportion paid separately for gas in

each of the unit categories except single-family efficiency, and the proportion of renters paying separately for electricity was lower or the same in each of the unit categories except single-family and multifamily efficiency units. The net result was lower estimated average utility costs in 1999 than in 1995 for all categories of units. The inflation adjustment to convert the 1999 estimates into 2002 utility allowances was sufficiently higher than the inflation adjustment previously used to adjust 1995 figures to 1998 as to cause the 2002 allowances for 2- and 3+ bedroom units to be greater than the previously published 1998 allowances. The mean utility costs for efficiency and one-bedroom units decreased more than for the larger bedroom-size categories between the AHS of 1995 and 1999,

causing the inflation-adjusted 2002 utility allowances for efficiency and one-bedroom units to remain below the corresponding previously published allowances.

IV. Effect of Notice Beyond 2003

For 2004 and thereafter, the Secretary shall establish AHS-derived utility allowances by subsequent notice. Pending establishment of such allowances for 2004 and thereafter, the allowances in this notice shall continue to be used by the GSEs.

Dated: August 26, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02-22328 Filed 8-30-02; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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. 223/P.L. 107-211

To amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993 to provide additional time for Clear Creek County to dispose of certain lands transferred to the county under the Act. (Aug. 21, 2002; 116 Stat. 1050)

H.R. 309/P.L. 107-212

Guam Foreign Investment Equity Act (Aug. 21, 2002; 116 Stat. 1051)

H.R. 601/P.L. 107-213

To redesignate certain lands within the Craters of the Moon National Monument, and for other purposes. (Aug. 21, 2002; 116 Stat. 1052)

H.R. 1384/P.L. 107-214

Long Walk National Historic Trail Study Act (Aug. 21, 2002; 116 Stat. 1053)

H.R. 1456/P.L. 107-215

Booker T. Washington National Monument Boundary Adjustment Act of 2002 (Aug. 21, 2002; 116 Stat. 1054)

H.R. 1576/P.L. 107-216

James Peak Wilderness and Protection Area Act (Aug. 21, 2002; 116 Stat. 1055)

H.R. 2068/P.L. 107-217

To revise, codify, and enact without substantive change certain general and permanent laws, related to public buildings, property, and works, as title 40, United States Code, "Public Buildings, Property, and Works". (Aug. 21, 2002; 116 Stat. 1062)

H.R. 2234/P.L. 107-218

Tumacacori National Historical Park Boundary Revision Act of 2002 (Aug. 21, 2002; 116 Stat. 1328)

H.R. 2440/P.L. 107-219

To rename Wolf Trap Farm Park as "Wolf Trap National Park for the Performing Arts", and for other purposes. (Aug. 21, 2002; 116 Stat. 1330)

H.R. 2441/P.L. 107-220

To amend the Public Health Service Act to redesignate a facility as the National Hansen's Disease Programs Center, and for other purposes. (Aug. 21, 2002; 116 Stat. 1332)

H.R. 2643/P.L. 107-221

Fort Clatsop National Memorial Expansion Act of 2002 (Aug. 21, 2002; 116 Stat. 1333)

H.R. 3343/P.L. 107-222

To amend title X of the Energy Policy Act of 1992, and for other purposes. (Aug. 21, 2002; 116 Stat. 1336)

H.R. 3380/P.L. 107-223

23 To authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of Great Smoky Mountains National Park. (Aug. 21, 2002; 116 Stat. 1338)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-048-00001-1)	9.00	Jan. 1, 2002
3 (1997 Compilation and Parts 100 and 101)	(869-048-00002-0)	59.00	¹ Jan. 1, 2002
4	(869-048-00003-8)	9.00	⁴ Jan. 1, 2002
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700-1199	(869-048-00005-4)	47.00	Jan. 1, 2002
1200-End, 6 (6 Reserved)	(869-048-00006-2)	58.00	Jan. 1, 2002
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8	(869-048-00022-4)	58.00	Jan. 1, 2002
9 Parts:			
1-199	(869-048-00023-2)	58.00	Jan. 1, 2002
200-End	(869-048-00024-1)	56.00	Jan. 1, 2002
10 Parts:			
1-50	(869-048-00025-4)	58.00	Jan. 1, 2002
51-199	(869-048-00026-7)	56.00	Jan. 1, 2002
200-499	(869-048-00027-5)	44.00	Jan. 1, 2002
500-End	(869-048-00028-3)	58.00	Jan. 1, 2002
11	(869-048-00029-1)	34.00	Jan. 1, 2002
12 Parts:			
1-199	(869-048-00030-5)	30.00	Jan. 1, 2002
200-219	(869-048-00031-3)	36.00	Jan. 1, 2002
220-299	(869-048-00032-1)	58.00	Jan. 1, 2002
300-499	(869-048-00033-0)	45.00	Jan. 1, 2002
500-599	(869-048-00034-8)	42.00	Jan. 1, 2002
600-End	(869-048-00035-6)	61.00	Jan. 1, 2002
13	(869-048-00036-4)	47.00	Jan. 1, 2002

Title	Stock Number	Price	Revision Date
14 Parts:			
1-59	(869-048-00037-2)	60.00	Jan. 1, 2002
60-139	(869-048-00038-1)	58.00	Jan. 1, 2002
140-199	(869-048-00039-9)	29.00	Jan. 1, 2002
200-1199	(869-048-00040-2)	47.00	Jan. 1, 2002
1200-End	(869-048-00041-1)	41.00	Jan. 1, 2002
15 Parts:			
0-299	(869-048-00042-9)	37.00	Jan. 1, 2002
300-799	(869-048-00043-7)	58.00	Jan. 1, 2002
800-End	(869-048-00044-5)	40.00	Jan. 1, 2002
16 Parts:			
0-999	(869-048-00045-3)	47.00	Jan. 1, 2002
1000-End	(869-048-00046-1)	57.00	Jan. 1, 2002
17 Parts:			
1-199	(869-048-00048-8)	47.00	Apr. 1, 2002
200-239	(869-048-00049-6)	55.00	Apr. 1, 2002
240-End	(869-048-00050-0)	59.00	Apr. 1, 2002
18 Parts:			
1-399	(869-048-00051-8)	59.00	Apr. 1, 2002
400-End	(869-048-00052-6)	24.00	Apr. 1, 2002
19 Parts:			
1-140	(869-048-00053-4)	57.00	Apr. 1, 2002
141-199	(869-048-00054-2)	56.00	Apr. 1, 2002
200-End	(869-048-00055-1)	29.00	Apr. 1, 2002
20 Parts:			
1-399	(869-048-00056-9)	47.00	Apr. 1, 2002
400-499	(869-048-00057-7)	60.00	Apr. 1, 2002
500-End	(869-048-00058-5)	60.00	Apr. 1, 2002
21 Parts:			
1-99	(869-048-00059-3)	39.00	Apr. 1, 2002
100-169	(869-048-00060-7)	46.00	Apr. 1, 2002
170-199	(869-048-00061-5)	47.00	Apr. 1, 2002
200-299	(869-048-00062-3)	16.00	Apr. 1, 2002
300-499	(869-048-00063-1)	29.00	Apr. 1, 2002
500-599	(869-048-00064-0)	46.00	Apr. 1, 2002
600-799	(869-048-00065-8)	16.00	Apr. 1, 2002
800-1299	(869-048-00066-6)	56.00	Apr. 1, 2002
1300-End	(869-048-00067-4)	22.00	Apr. 1, 2002
22 Parts:			
1-299	(869-048-00068-2)	59.00	Apr. 1, 2002
300-End	(869-048-00069-1)	43.00	Apr. 1, 2002
23	(869-048-00070-4)	40.00	Apr. 1, 2002
24 Parts:			
0-199	(869-048-00071-2)	57.00	Apr. 1, 2002
200-499	(869-048-00072-1)	47.00	Apr. 1, 2002
500-699	(869-048-00073-9)	29.00	Apr. 1, 2002
700-1699	(869-048-00074-7)	58.00	Apr. 1, 2002
1700-End	(869-048-00075-5)	29.00	Apr. 1, 2002
25	(869-048-00076-3)	68.00	Apr. 1, 2002
26 Parts:			
§§ 1.0-1.60	(869-048-00077-1)	45.00	Apr. 1, 2002
§§ 1.61-1.169	(869-048-00078-0)	58.00	Apr. 1, 2002
§§ 1.170-1.300	(869-048-00079-8)	55.00	Apr. 1, 2002
§§ 1.301-1.400	(869-048-00080-1)	44.00	Apr. 1, 2002
§§ 1.401-1.440	(869-048-00081-0)	60.00	Apr. 1, 2002
§§ 1.441-1.500	(869-048-00082-8)	47.00	Apr. 1, 2002
§§ 1.501-1.640	(869-048-00083-6)	44.00	⁷ Apr. 1, 2002
§§ 1.641-1.850	(869-048-00084-4)	57.00	Apr. 1, 2002
§§ 1.851-1.907	(869-048-00085-2)	57.00	Apr. 1, 2002
§§ 1.908-1.1000	(869-048-00086-1)	56.00	Apr. 1, 2002
§§ 1.1001-1.1400	(869-048-00087-9)	58.00	Apr. 1, 2002
§§ 1.1401-End	(869-048-00088-7)	61.00	Apr. 1, 2002
2-29	(869-048-00089-5)	57.00	Apr. 1, 2002
30-39	(869-048-00090-9)	39.00	Apr. 1, 2002
40-49	(869-048-00091-7)	26.00	Apr. 1, 2002
50-299	(869-048-00092-5)	38.00	Apr. 1, 2002
300-499	(869-048-00093-3)	57.00	Apr. 1, 2002
500-599	(869-048-00094-1)	12.00	⁵ Apr. 1, 2002
600-End	(869-048-00095-0)	16.00	Apr. 1, 2002
27 Parts:			
1-199	(869-048-00096-8)	61.00	Apr. 1, 2002

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
200-End	(869-048-00097-6)	13.00	Apr. 1, 2002	100-135	(869-044-00151-9)	38.00	July 1, 2001
28 Parts:				136-149	(869-044-00152-7)	55.00	July 1, 2001
0-42	(869-044-00098-9)	55.00	July 1, 2001	150-189	(869-044-00153-5)	52.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001	190-259	(869-044-00154-3)	34.00	July 1, 2001
29 Parts:				260-265	(869-044-00155-1)	45.00	July 1, 2001
0-99	(869-044-00100-4)	45.00	July 1, 2001	266-299	(869-044-00156-0)	45.00	July 1, 2001
*100-499	(869-048-00101-8)	21.00	July 1, 2002	300-399	(869-044-00157-8)	41.00	July 1, 2001
500-899	(869-044-00102-1)	47.00	⁶ July 1, 2001	400-424	(869-044-00158-6)	51.00	July 1, 2001
900-1899	(869-048-00103-4)	35.00	July 1, 2002	425-699	(869-044-00159-4)	55.00	July 1, 2001
1900-1910 (§§ 1900 to 1910.999)	(869-044-00104-7)	55.00	July 1, 2001	700-789	(869-044-00160-8)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869-044-00105-5)	42.00	July 1, 2001	790-End	(869-044-00161-6)	44.00	July 1, 2001
1911-1925	(869-044-00106-3)	20.00	⁶ July 1, 2001	41 Chapters:			
1926	(869-044-00107-1)	45.00	July 1, 2001	1, 1-1 to 1-10		13.00	³ July 1, 1984
1927-End	(869-044-00108-0)	55.00	July 1, 2001	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	³ July 1, 1984
30 Parts:				3-6		14.00	³ July 1, 1984
1-199	(869-044-00109-8)	52.00	July 1, 2001	7		6.00	³ July 1, 1984
200-699	(869-044-00110-1)	45.00	July 1, 2001	8		4.50	³ July 1, 1984
700-End	(869-044-00111-7)	53.00	July 1, 2001	9		13.00	³ July 1, 1984
31 Parts:				10-17		9.50	³ July 1, 1984
0-199	(869-044-00112-8)	32.00	July 1, 2001	18, Vol. I, Parts 1-5		13.00	³ July 1, 1984
200-End	(869-044-00113-6)	56.00	July 1, 2001	18, Vol. II, Parts 6-19		13.00	³ July 1, 1984
32 Parts:				18, Vol. III, Parts 20-52		13.00	³ July 1, 1984
1-39, Vol. I		15.00	² July 1, 1984	19-100		13.00	³ July 1, 1984
1-39, Vol. II		19.00	² July 1, 1984	1-100	(869-044-00162-4)	22.00	July 1, 2001
1-39, Vol. III		18.00	² July 1, 1984	101	(869-044-00163-2)	45.00	July 1, 2001
1-190	(869-044-00114-4)	51.00	⁶ July 1, 2001	102-200	(869-044-00164-1)	33.00	July 1, 2001
191-399	(869-044-00115-2)	57.00	July 1, 2001	201-End	(869-044-00165-9)	24.00	July 1, 2001
*400-629	(869-048-00116-6)	47.00	July 1, 2002	42 Parts:			
630-699	(869-044-00117-9)	34.00	July 1, 2001	1-399	(869-044-00166-7)	51.00	Oct. 1, 2001
700-799	(869-044-00118-7)	42.00	July 1, 2001	400-429	(869-044-00167-5)	59.00	Oct. 1, 2001
800-End	(869-044-00119-5)	44.00	July 1, 2001	430-End	(869-044-00168-3)	58.00	Oct. 1, 2001
33 Parts:				43 Parts:			
1-124	(869-044-00120-9)	45.00	July 1, 2001	1-999	(869-044-00169-1)	45.00	Oct. 1, 2001
125-199	(869-044-00121-7)	55.00	July 1, 2001	1000-end	(869-044-00170-5)	56.00	Oct. 1, 2001
200-End	(869-044-00122-5)	45.00	July 1, 2001	44	(869-044-00171-3)	45.00	Oct. 1, 2001
34 Parts:				45 Parts:			
1-299	(869-044-00123-3)	43.00	July 1, 2001	1-199	(869-044-00172-1)	53.00	Oct. 1, 2001
300-399	(869-044-00124-1)	40.00	July 1, 2001	200-499	(869-044-00173-0)	31.00	Oct. 1, 2001
*400-End	(869-048-00125-5)	59.00	July 1, 2002	500-1199	(869-044-00174-8)	45.00	Oct. 1, 2001
35	(869-048-00126-3)	10.00	⁶ July 1, 2002	1200-End	(869-044-00175-6)	55.00	Oct. 1, 2001
36 Parts:				46 Parts:			
1-199	(869-048-00127-1)	36.00	July 1, 2002	1-40	(869-044-00176-4)	43.00	Oct. 1, 2001
200-299	(869-044-00128-4)	33.00	July 1, 2001	41-69	(869-044-00177-2)	35.00	Oct. 1, 2001
300-End	(869-044-00129-2)	55.00	July 1, 2001	70-89	(869-044-00178-1)	13.00	Oct. 1, 2001
37	(869-044-00130-6)	45.00	July 1, 2001	90-139	(869-044-00179-9)	41.00	Oct. 1, 2001
38 Parts:				140-155	(869-044-00180-2)	24.00	Oct. 1, 2001
0-17	(869-044-00131-4)	53.00	July 1, 2001	156-165	(869-044-00181-1)	31.00	Oct. 1, 2001
18-End	(869-044-00132-2)	55.00	July 1, 2001	166-199	(869-044-00182-9)	42.00	Oct. 1, 2001
39	(869-044-00133-1)	40.00	July 1, 2002	200-499	(869-044-00183-7)	36.00	Oct. 1, 2001
40 Parts:				500-End	(869-044-00184-5)	23.00	Oct. 1, 2001
1-49	(869-044-00134-9)	54.00	July 1, 2001	47 Parts:			
50-51	(869-044-00135-7)	38.00	July 1, 2001	0-19	(869-044-00185-3)	55.00	Oct. 1, 2001
52 (52.01-52.1018)	(869-044-00136-5)	50.00	July 1, 2001	20-39	(869-044-00186-1)	43.00	Oct. 1, 2001
52 (52.1019-End)	(869-044-00137-3)	55.00	July 1, 2001	40-69	(869-044-00187-0)	36.00	Oct. 1, 2001
*53-59	(869-048-00138-7)	29.00	July 1, 2002	70-79	(869-044-00188-8)	58.00	Oct. 1, 2001
60 (60.1-End)	(869-044-00139-0)	53.00	July 1, 2001	80-End	(869-044-00189-6)	55.00	Oct. 1, 2001
60 (Apps)	(869-044-00140-3)	51.00	July 1, 2001	48 Chapters:			
*61-62	(869-048-00141-7)	38.00	July 1, 2002	1 (Parts 1-51)	(869-044-00190-0)	60.00	Oct. 1, 2001
63 (63.1-63.599)	(869-044-00142-0)	53.00	July 1, 2001	1 (Parts 52-99)	(869-044-00191-8)	45.00	Oct. 1, 2001
63 (63.600-63.1199)	(869-044-00143-8)	44.00	July 1, 2001	2 (Parts 201-299)	(869-044-00192-6)	53.00	Oct. 1, 2001
63 (63.1200-End)	(869-044-00144-6)	56.00	July 1, 2001	3-6	(869-044-00193-4)	31.00	Oct. 1, 2001
64-71	(869-044-00145-4)	26.00	July 1, 2001	7-14	(869-044-00194-2)	51.00	Oct. 1, 2001
72-80	(869-044-00146-2)	55.00	July 1, 2001	15-28	(869-044-00195-1)	53.00	Oct. 1, 2001
81-85	(869-044-00147-1)	45.00	July 1, 2001	29-End	(869-044-00196-9)	38.00	Oct. 1, 2001
86 (86.1-86.599-99)	(869-044-00148-9)	52.00	July 1, 2001	49 Parts:			
86 (86.600-1-End)	(869-044-00149-7)	45.00	July 1, 2001	1-99	(869-044-00197-7)	55.00	Oct. 1, 2001
87-99	(869-044-00150-1)	54.00	July 1, 2001	100-185	(869-044-00198-5)	60.00	Oct. 1, 2001
				186-199	(869-044-00199-3)	18.00	Oct. 1, 2001
				200-399	(869-044-00200-1)	60.00	Oct. 1, 2001
				400-999	(869-044-00201-9)	58.00	Oct. 1, 2001
				1000-1199	(869-044-00202-7)	26.00	Oct. 1, 2001

Title	Stock Number	Price	Revision Date
1200-End	(869-044-00203-5)	21.00	Oct. 1, 2001
50 Parts:			
1-199	(869-044-00204-3)	63.00	Oct. 1, 2001
200-599	(869-044-00205-1)	36.00	Oct. 1, 2001
600-End	(869-044-00206-0)	55.00	Oct. 1, 2001
CFR Index and Findings			
Aids	(869-044-00047-0)	59.00	Jan. 1, 2002
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

⁵ No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

⁶ No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

⁷ No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 2002

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these

dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
Sept 3	Sept 18	Oct 3	Oct 18	Nov 4	Dec 2
Sept 4	Sept 19	Oct 4	Oct 21	Nov 4	Dec 3
Sept 5	Sept 20	Oct 7	Oct 21	Nov 4	Dec 4
Sept 6	Sept 23	Oct 7	Oct 21	Nov 5	Dec 5
Sept 9	Sept 24	Oct 9	Oct 24	Nov 8	Dec 9
Sept 10	Sept 25	Oct 10	Oct 25	Nov 12	Dec 9
Sept 11	Sept 26	Oct 11	Oct 28	Nov 12	Dec 10
Sept 12	Sept 27	Oct 15	Oct 28	Nov 12	Dec 11
Sept 13	Sept 30	Oct 15	Oct 28	Nov 12	Dec 12
Sept 16	Oct 1	Oct 16	Oct 31	Nov 15	Dec 16
Sept 17	Oct 2	Oct 17	Nov 1	Nov 18	Dec 16
Sept 18	Oct 3	Oct 18	Nov 4	Nov 18	Dec 17
Sept 19	Oct 4	Oct 21	Nov 4	Nov 18	Dec 18
Sept 20	Oct 7	Oct 21	Nov 4	Nov 19	Dec 19
Sept 23	Oct 8	Oct 23	Nov 7	Nov 22	Dec 23
Sept 24	Oct 9	Oct 24	Nov 8	Nov 25	Dec 23
Sept 25	Oct 10	Oct 25	Nov 12	Nov 25	Dec 24
Sept 26	Oct 11	Oct 28	Nov 12	Nov 25	Dec 26
Sept 27	Oct 15	Oct 28	Nov 12	Nov 26	Dec 26
Sept 30	Oct 15	Oct 30	Nov 14	Nov 29	Dec 30
