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Contents

Federal Register

Vol. 67, No. 174

Monday, September 9, 2002

Agricultural Marketing Service
RULES
Peanuts, domestic and imported, marketed in United States; minimum quality and handling standards, 57129–57145

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
NOTICES
Meetings:
Foreign Animal and Poultry Diseases, Secretary's Advisory Committee, 57208

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Medicare & Medicaid Services
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57241

Coast Guard
RULES
Drawbridge operations:
Louisiana, 57147–57148

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Customs Service
NOTICES
General program test:
Quota preprocessing; test expansion and extension, 57271–57273

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57222
Submission for OMB review; comment request, 57222–57223

Employment and Training Administration
NOTICES
Adjustment assistance:
Mallinckrodt Respiratory Co. et al., 57245–57246
NAFTA transitional adjustment assistance:
Reliant Manufacturing et al., 57246–57247

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Idaho National Engineering and Environmental Laboratory, ID, 57223–57224

Engraving and Printing Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57273

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Radionuclides other than radon from DOE facilities and from Federal facilities other than NRC licensees and not covered by Subpart H, 57159–57169
Air programs:
Acid Rain and Nitrogen Oxides Budget Trading Programs; definitions and continuous emission monitoring provisions; revisions
Correction, 57274
Air quality implementation plans; approval and promulgation; various States:
Maine, 57148–57155
Pennsylvania, 57155–57159
PROPOSED RULES
Air programs:
Spark-ignition marine vessels and highway motorcycles; emissions control
Correction, 57188–57189
Air quality implementation plans; approval and promulgation; various States:
Maine, 57187–57188
Pennsylvania, 57188
Hazardous waste program authorizations:
Minnesota, 57191–57193
Radiation protection programs:
Transuranic radioactive waste for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability—
Nevada Test Site, NV, 57190–57191
Waste Isolation Pilot Plant compliance criteria; alternative provisions; hearings, 57189–57190
NOTICES
Committees; establishment, renewal, termination, etc.:
Environmental Policy and Technology National Advisory Council, 57224–57225
Grant and cooperative agreement awards:
Chesapeake Bay Program, 57225
Meetings:
Information from external sources; quality evaluation; assessment factors, 57225–57226
Pesticide registration, cancellation, etc.:
Benomyl, 57226–57228
Reports and guidance documents; availability, etc.:
Nonpoint source pollution from urban areas (urban runoff); control and prevention; national management measures, 57228–57230

Equal Employment Opportunity Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57230

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Bombardier-Rotax GmbH; correction, 57145–57146
CFM International, 57146–57147
Pratt & Whitney; correction, 57145

Federal Bureau of Investigation
NOTICES
Meetings:
National Crime Prevention and Privacy Compact Council, 57245

Federal Communications Commission
RULES
Common carrier services:
Terminal equipment, connection to telephone network—
Customer premises equipment; technical criteria and registration streamlining; biennial review; reconsideration, 57181–57183
PROPOSED RULES
Radio stations; table of assignments:
Alabama, 57203
Colorado and Texas, 57203–57204
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 57230–57231

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Various States, 57173–57181
PROPOSED RULES
Flood elevation determinations:
Various States, 57193–57203
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 57231–57232

Federal Energy Regulatory Commission
PROPOSED RULES
Electric utilities (Federal Power Act):
Undue discrimination; remedying through open access transmission service and standard electricity market design
Staff conference, 57187

Federal Law Enforcement Training Center
NOTICES
Meetings:
National Center for State and Local Law Enforcement Training Advisory Committee, 57273

Federal Motor Carrier Safety Administration
NOTICES
Motor carrier safety standards:
Driver qualifications—
Adams, Danny, et al.; vision requirement exemptions, 57267–57270
Allen, Elijah A., Jr., et al.; vision requirement exemptions, 57266–57267

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 57232–57233
Formations, acquisitions, and mergers, 57233

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 57233–57235
Prohibited trade practices:
Conoco Inc., and Phillips Petroleum Co., 57235–57239

Food and Drug Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 57241–57242

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Northeast Oregon Forests, 57208

General Services Administration
RULES
Federal travel:
Maximum per diem rates, 57169–57172

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
NOTICES
Scientific misconduct findings; administrative actions:
Yao, Zhenhai, M.D., Ph.D., 57239–57241

International Trade Administration
NOTICES
Antidumping:
Corrosion-resistant carbon steel flat products from—
Japan, 57208–57211
Iron construction castings from—
China, 57211–57215
Oil country tubular goods from—
Argentina, 57215–57217
Pure magnesium from—
Canada, 57217–57220
Sulfanilic acid from—
China, 57220

Justice Department
See Federal Bureau of Investigation
NOTICES
Privacy Act:
Systems of records, 57244–57245

Labor Department
See Employment and Training Administration
See Labor Statistics Bureau

Labor Statistics Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57247–57248

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57248

National Highway Traffic Safety Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57270–57271

National Institutes of Health
NOTICES
Meetings:
National Center for Research Resources, 57242
National Institute of Allergy and Infectious Diseases, 57242–57243
National Institute of Diabetes and Digestive and Kidney Diseases, 57243

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Other rockfish, 57184–57185
Pollock, 57183–57186
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Atlantic white marlin, 57204–57207
Fishery conservation and management:
Northeastern United States fisheries—
Mid-Atlantic Fishery Management Council; meetings, 57207
NOTICES
Coastal zone management programs and estuarine sanctuaries:
Consistency appeals—
Millennium Pipeline Co., 57220–57221
Permits:
Endangered and threatened species, 57221–57222

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Nuclear Fuel Services, Inc., 57248–57249
Virginia Electric & Power Co., 57249

Presidential Documents
PROCLAMATIONS
Special observances:
National Alcohol and Drug Addiction Recovery Month (Proc. 7589), 57123–57124
Patriot Day (Proc. 7590), 57125–57126
ADMINISTRATIVE ORDERS
Migration and refugee assistance; availability of funds (Presidential Determination No. 2002-29 of August 30, 2002), 57127

Public Health Service
See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission
RULES
Sarbanes-Oxley Act of 2002; implementation:
Annual and quarterly company reports; disclosure certification, 57275–57297
PROPOSED RULES
Investment companies:
Certification of management investment company shareholder reports and designation of certified shareholder reports as Exchange Act periodic reporting forms, 57297–57308
NOTICES
Investment Company Act of 1940:
Deregistration applications—
CDC Kobrick Investment Trust et al., 57253–57255
Meetings; Sunshine Act, 57255
Self-regulatory organizations; proposed rule changes:
Municipal Securities Rulemaking Board, 57255–57256
National Association of Securities Dealers, Inc., 57257–57262
New York Stock Exchange, Inc., 57262–57265
Applications, hearings, determinations, etc.:
Public utility holding company filings, 57249–57253
Stratus Services Group, Inc., 57253

State Department
NOTICES
Art objects; importation for exhibition:
Painted Prints: The Revelation of Color in Northern Renaissance and Baroque Engravings, Etchings, and Woodcuts, 57265

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration

Treasury Department
See Customs Service
See Engraving and Printing Bureau
See Federal Law Enforcement Training Center
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 57271

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 57275–57308

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

7589 57123
7590 57125

Administrative Orders:

Presidential Determinations:
No. 02-29 of August 30, 2002 57127

7 CFR

996 57129
997 57129
998 57129
999 57129

14 CFR

39 (3 documents) 57145, 57146

17 CFR

228 57276
229 57276
232 57276
240 57276
249 57276
270 57276
274 57276

Proposed Rules:

249 57298
270 57298
274 57298

18 CFR

Proposed Rules:

35 57187

33 CFR

117 57147

40 CFR

52 (2 documents) 57148, 57155
61 57159
75 57272

Proposed Rules:

52 (2 documents) 57187, 57188
86 57188
90 57188
194 (2 documents) 57189, 57190
271 57191
1045 57188
1051 57188
1065 57188
1068 57188

41 CFR

Ch. 301 57169

44 CFR

65 (2 documents) 57173, 57174
67 57177

Proposed Rules:

67 (2 documents) 57193, 57196

47 CFR

68 57181

Proposed Rules:

73 (2 documents) 57203

50 CFR

679 (3 documents) 57183, 57184, 57185

Proposed Rules:

223 57204
224 57204
648 57207

Federal Register
Vol. 67, No. 174
Monday, September 9, 2002

Presidential Documents

Title 3—

The President

Proclamation 7589 of September 4, 2002

National Alcohol and Drug Addiction Recovery Month, 2002

By the President of the United States of America

A Proclamation

Drug and alcohol abuse destroys the hopes of men, women, and young people and takes a terrible toll on society. Addiction destroys the lives of countless Americans, shatters families, and threatens the safety of our neighborhoods.

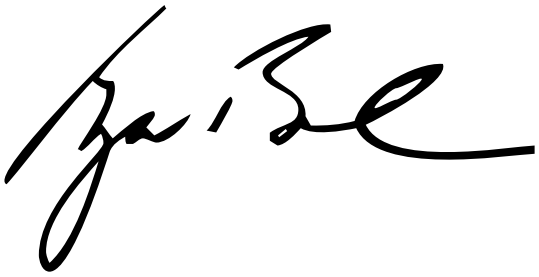
National Alcohol and Drug Addiction Recovery Month provides an important opportunity to promote the values that have given people the strength to beat drug and alcohol abuse and remain drug-free. The theme of this year's commemoration, Join the Voices of Recovery: A Call to Action, emphasizes the critical role of communities in encouraging individuals with substance abuse problems to seek help. While those who suffer from addiction must help themselves, it is also crucial for family, friends, and people with shared experiences to support those fighting to overcome substance abuse. Those in recovery play a key role in helping others achieve healthy lives. They can convey important information about the toll of alcohol and drug addiction and the benefits of recovery, inspire others to succeed, and allow young people to learn valuable lessons about their experiences.

As a Nation, we must aggressively promote compassionate treatment for those suffering from addiction. When individuals begin the process of recovery, they take an important first step toward regaining dignity and hope. Across our Nation, we know that many Americans who are dependent on drugs are not receiving the treatment they need. My National Drug Control Strategy expands drug treatment to Americans who need it. For 2003, my Administration proposes $3.8 billion for drug treatment, an increase of more than 6 percent over 2002. This includes a $100 million increase in treatment spending for 2003 as part of a plan to add $1.6 billion over 5 years. Staying clean and sober is a lifelong responsibility, and those who succeed improve their health, can better enjoy their family and friends, and are more likely to find success in the workplace. The vast majority of people in recovery are capable individuals who contribute to America's strength. We celebrate the success of those in recovery, but we must help those still suffering from dependence and battling addiction.

My Administration is implementing an effective national strategy that is community-based. We have established the goal of a 10 percent reduction of drug use over the next 2 years, and a 25 percent reduction over the next 5 years. We must stop drug use before it starts, heal America's drug users, and disrupt the supply of and demand for drugs in our country. And we must continue the fight against alcohol abuse and the toll it takes on our society. Together, we can achieve these goals, help save lives, and restore hope to individuals and families.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 2002 as National Alcohol and Drug Addiction Recovery Month. I call upon all the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of September, 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.



[FR Doc. 02–23006
Filed 9–6–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7590 of September 4, 2002

Patriot Day, 2002

By the President of the United States of America

A Proclamation

On this first observance of Patriot Day, we remember and honor those who perished in the terrorist attacks of September 11, 2001. We will not forget the events of that terrible morning nor will we forget how Americans responded in New York City, at the Pentagon, and in the skies over Pennsylvania—with heroism and selflessness; with compassion and courage; and with prayer and hope. We will always remember our collective obligation to ensure that justice is done, that freedom prevails, and that the principles upon which our Nation was founded endure.

Inspired by the heroic sacrifices of our firefighters, rescue and law enforcement personnel, military service members, and other citizens, our Nation found unity, focus, and strength. We found healing in the national outpouring of compassion for those lost, as tens of millions of Americans participated in moments of silence, candlelight vigils, and religious services. From the tragedy of September 11 emerged a stronger Nation, renewed by a spirit of national pride and a true love of country.

We are a people dedicated to the triumph of freedom and democracy over evil and tyranny. The heroic stories of the first responders who gave their all to save others strengthened our resolve. And our Armed Forces have pursued the war against terrorism in Afghanistan and elsewhere with valor and skill. Together with our coalition partners, they have achieved success.

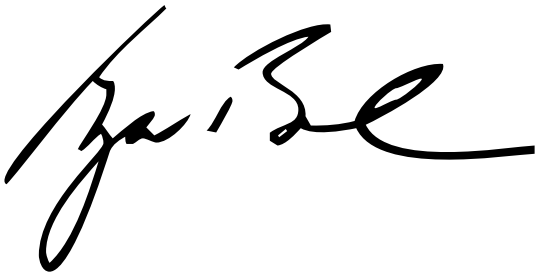
Americans also have fought back against terror by choosing to overcome evil with good. By loving their neighbors as they would like to be loved, countless citizens have answered the call to help others. They have contributed to relief efforts, improved homeland security in their communities, and volunteered their time to aid those in need. This spirit of service continues to grow as thousands have joined the newly established USA Freedom Corps, committing themselves to changing America one heart at a time through the momentum of millions of acts of decency and kindness.

Those whom we lost last September 11 will forever hold a cherished place in our hearts and in the history of our Nation. As we mark the first anniversary of that tragic day, we remember their sacrifice; and we commit ourselves to honoring their memory by pursuing peace and justice in the world and security at home. By a joint resolution approved December 18, 2001 (Public Law 107–89), the Congress has authorized and requested the President to designate September 11 of each year as ''Patriot Day.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim September 11, 2002, as Patriot Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities, including remembrance services and candlelight vigils. I also call upon the Governors of the United States and the Commonwealth of Puerto Rico, as well as appropriate officials of all units of government, to direct that the flag be flown at half-staff on Patriot Day. Further, I encourage all Americans to display the flag at half-staff from their homes on that day and to observe a moment of silence beginning at 8:46 a.m. eastern daylight time, or another appropriate commemorative time, to honor

the innocent victims who lost their lives as a result of the terrorist attacks of September 11, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of September, 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.



[FR Doc. 02–23007
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Federal Register
Vol. 67, No. 174
Monday, September 9, 2002

Presidential Documents

Title 3—

The President

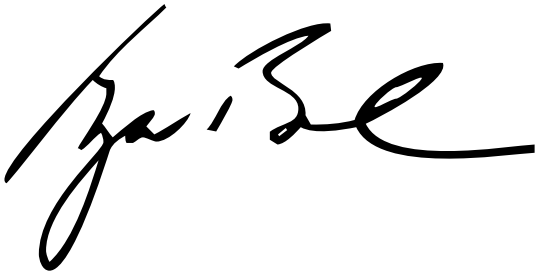
Presidential Determination No. 02–29 of August 30, 2002

Presidential Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $6.6 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund for contributions to the Office of the United Nations High Commissioner for Refugees and to the International Committee of the Red Cross to address unexpected urgent refugee and migration needs arising from the crisis in Liberia and from the return of refugees to Sierra Leone.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, August 30, 2002.

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Rules and Regulations

Federal Register

Vol. 67, No. 174

Monday, September 9, 2002

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 996, 997, 998, and 999

[Docket No. FV02–996–1 IFR]

Establishment of Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States and Termination of the Peanut Marketing Agreement and Associated Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes a new Part 996 requiring all domestic and imported peanuts marketed in the United States to be officially inspected. This action is mandated by the Farm Security and Rural Investment Act of 2002, enacted May 13, 2002. This rule establishes handling standards that handlers and importers must follow and edible quality standards that all such peanuts intended for edible use must meet prior to entering human consumption channels. Safeguards to protect against peanut quality concerns also are specified. This rule also terminates Peanut Marketing Agreement No. 146 (Agreement) and the rules and regulations issued under the Agreement. It also terminates the companion regulations that apply to imported peanuts and peanuts handled by persons not subject to the Agreement.

DATES: Effective September 10, 2002, except that, Part 998 is removed effective January 1, 2003; comments received by October 9, 2002, will be considered prior to issuance of a final rule. Indemnification payments for the 2001 crop peanuts will continue through December 31, 2002.

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

FOR FURTHER INFORMATION CONTACT: Jim Wendland or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, suite 2A04, Unit 155, Riverdale, Maryland 20737; telephone (301) 734–5243, Fax: (301) 734–5275 or Ronald L. Cioffi, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938; or e-mail: *james.wendland@usda.gov, kenneth.johnson@usda.gov* or *ronald.cioffi@usda.gov.*

Small businesses may request information on complying with this rule by contacting Jay Guerber, at the same address as above, or e-mail: *jay.guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Section 1308 of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171), 7 U.S.C. 7958, hereinafter referred to as the ''Act.''

This interim final rule has been determined to be non-significant for the purposes of Executive Order 12866 by the Office of Management and Budget (OMB) and therefore has not been reviewed by OMB.

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

There are no administrative procedures, which must be exhausted prior to any judicial challenge to the provisions of this rule.

Termination of the Peanut Marketing Agreement and the Peanut Non-Signer and Import Regulations

This rule terminates Peanut Marketing Agreement No. 146 (7 CFR 998.1—998.61) and the rules and regulations (7 CFR 998.100—998.409) in effect under the Agreement on December 31, 2002, so that indemnification payments can be made on 2001 crop peanuts. This rule also terminates the companion regulations that apply to peanuts handled by persons not subject to the Agreement (7 CFR part 997) and to imported peanuts (7 CFR 999.600) effective September 10, 2002.

The Peanut Marketing Agreement No. 146 (7 CFR part 998) has been in effect since 1965 under the authority of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (AMAA). The Agreement was administered by the Peanut Administrative Committee (PAC), which was comprised of peanut handlers and producers appointed by USDA. Minimum quality regulations were applied to handlers who signed the Agreement. The Agreement covered peanuts produced in the three regional production areas in the United States. The Agreement also included authority for indemnification payments to signatory handlers on peanuts involved in product and appeals claims due to aflatoxin content. Reporting and recordkeeping requirements also were prescribed. Handlers paid assessments to the PAC to cover program administrative and indemnification costs.

Consistent with the requirements of the AMAA, comparable quality requirements were in effect for peanuts handled by persons not signatory to the Agreement (''non-signers''). The non-signer program (7 CFR part 997) was mandated in 1989 by Public Law 101–220, which amended the AMAA. The peanut import regulation has been authorized by section 108B(f)(2) of the Agricultural Act of 1949 (7 U.S.C. 1445c3), as amended in 1990 and 1993.

The non-signer regulations covered peanuts handled by persons not subject to the Agreement. The inspection and quality requirements were the same as those under the Agreement. Non-signer handlers had to pay the same administrative assessment rate as applied to signatory handlers under the Agreement.

The peanut import regulation required imported peanuts to meet the same quality and handling requirements as required under the Agreement. Imported peanuts were maintained under lot identification procedures and kept separate and apart from domestic peanuts until certified for human consumption use.

Under all three programs, failing peanuts could be reconditioned to meet edible requirements or disposed of in non-edible outlets. Safeguard provisions were included in the three programs to ensure that the Federal or Federal State Inspection Service (Inspection Service) sampled, inspected, and certified the quality of all peanut lots intended for edible consumption, and that chemical analyses were performed by USDA laboratories or laboratories approved by USDA.

The Act terminated the PAC effective July 1, 2002. This, in turn, requires terminating the Agreement and its implementing regulations. The companion regulations covering peanuts handled by persons not signatory to the Agreement and imported peanuts also are terminated. Assessments collected by the PAC under the Agreement and by USDA under the non-signer regulations ceased with 2001 crop peanuts.

New Peanut Program Authority

Section 1308 of the Act requires that USDA take several actions with regard to peanuts marketed in the United States, effective with 2002 crop peanuts.

Mandatory Inspection: Paragraph (a) requires that all peanuts marketed in the United States (including imported peanuts) be officially inspected and graded by Federal or Federal-State inspectors.

Termination of the Peanut Administrative Committee: Paragraph (b) terminated the PAC effective July 1, 2002. As noted above, because the PAC was charged with daily oversight of the Agreement's regulatory program, termination of the PAC necessitates termination of the Agreement and its implementing regulations. The companion non-signer and peanut import regulations were based on regulations under the Agreement. Those regulations also are terminated.

Establishment of a Peanut Standards Board: Paragraph (c) provides for the establishment of a Peanut Standards Board (Board), and requires USDA to consult with the Board prior to establishing or changing quality and handling standards for domestically produced and imported peanuts. The Board is not subject to the Federal Advisory Committee Act. A transition period is designated to allow time for USDA to implement nomination procedures and select a Board, as prescribed under the Act.

USDA received nominations and applications from interested persons to serve on the Board. A Notice was published in the **Federal Register** on August 2, 2002 (67 FR 50409) and an application form was posted on the AMS Web site at: *http://www.ams.usda.gov/fv/peanut-farmbill.htlm.* Written nominations were received through September 3, 2002.

The Act also provides, in paragraph (g)(1) of section 1308, that during the transition period from the Agreement to the new program, USDA may designate persons serving as members of the PAC to serve as members of the Board, on an interim basis, for the purpose of carrying out the duties of the Board. USDA has established the interim Board and has consulted with the Board and Board officers on three occasions to establish the quality and handling standards specified in this program.

Maintaining wholesome quality peanuts: Paragraph (d) directs USDA to make identifying and combating the presence of all quality concerns related to peanuts a priority in the development of quality and handling standards for peanuts and in the inspection of domestically produced and imported peanuts. The Act directs USDA to consult with appropriate Federal and State agencies to provide adequate safeguards against all quality concerns related to peanuts. USDA notified State government Inspection Service supervisors of the proposed text on the internet and met with supervisors on July 29 and August 15, 2002. USDA also has contacted officials in the United States Customs Service (Customs Service) and the Food and Drug Administration (FDA) with regard to this new program.

Imported peanuts: Paragraph (e) provides that imported peanuts shall be subject to the same quality and handling standards as apply to domestically produced peanuts.

Program Continuity

To maintain program continuity until the new peanut program could take effect, USDA continued the implementing regulations of the Agreement, and the non-signer and import regulations from July 1, 2002, until the effective date of this action. This action terminates the Agreement and the rules and regulations in effect under the Agreement on December 31, 2002, to allow payment of indemnification claims on 2001 crop peanuts. The peanut non-signer and import regulations are terminated on the effective date of this action. Assessments will not be collected and indemnification will not be paid on 2002 crop peanuts.

The provisions of this new program will apply to 2002 and subsequent crop year peanuts, to 2001 crop year peanuts not yet inspected, and to 2001 crop year failing peanuts that have not met disposition standards, and will continue in force and effect until modified, suspended, or terminated.

Pursuant to the Act, USDA has consulted with interim Board members in the development of the quality and handling standards established in this rulemaking. USDA coordinated a conference call with interim Board members on July 2, 2002. An initial draft text with reduced USDA oversight was prepared by USDA and distributed to the interim Board members prior to the conference call. The draft was reviewed and initial changes and comments were proposed. At the interim Board's direction, four interim Board officers met with USDA on July 17, 2002. Three of the four officers proposed several additional changes. A second draft text was prepared reflecting those proposed changes. That draft was again distributed to interim Board members and State supervisors of the Inspection Service and was discussed at a meeting in Atlanta, Georgia, on July 30, 2002. In addition to the 18-member interim Board, approximately 50 industry members and Inspection Service State supervisors attended the meeting. The revised draft text was thoroughly reviewed and several modifications were recommended. Quality standards which would allow purchase of Segregation 2 and 3 quality peanuts for processing for human consumption use and a change minimum kernel size were discussed by the interim Board. An implementation schedule also was discussed.

In addition to those meetings, USDA revised the draft text after the Atlanta meeting and posted it on the AMS website. Written comments were received from interim Board members after the meeting and a few comments were received in response to the posting of the draft standards text on the internet. Comments were accepted through August 12, 2002.

New Peanut Quality and Handling Standards

This rulemaking action establishes, under Part 996, peanut quality and handling standards similar to the quality and handling requirements that were in effect under USDA's three previous peanut programs, with certain

changes. The changes, described in the following discussion, are based on interim Board and industry suggestions.

No restrictions on use of farmers stock peanuts: Previously, only farmers stock peanuts determined to be Segregation 1 quality peanuts could be acquired by handlers for preparation and disposition to human consumption outlets. Segregation 2 and 3 farmers stock peanuts were restricted to non-human consumption use such as seed, oilstock, animal feed, and birdseed.

This rule differs from the previous peanut programs in that handlers may purchase any segregation quality peanuts for shelling and eventual disposition to human consumption outlets, provided that such peanuts, after handling, meet the outgoing standards of this program. This change was recommended by several of the large peanut handling operations.

Some handlers on the interim Board stated that the prohibition on Segregation 2 and 3 peanuts for edible use is more than 35 years old and that modern technologies enable handlers to shell and mill failing quality peanuts of any segregation category. They stated that this will increase use of domestic peanut production for edible consumption without a loss in edible peanut quality. They also stated that raw, farmers stock peanuts produced in other countries are not subject to incoming quality requirements or restricted as to segregation levels in those countries. Thus, they believe, this change in the peanut program would place domestic handlers on an even playing field with shellers in other countries who might export to the United States peanuts shelled and handled from any quality raw peanuts.

At least one grower spoke in favor of removal of the restriction on use of Segregation 2 and 3 farmers stock only in non-edible outlets. Many growers have long contended that a single moldy peanut in a wagonload of farmers stock greatly reduces the value of the entire wagon and, thus, significantly reduces the grower's income. These growers see this as unfair and believe that they should be able to market their peanuts without a restriction on segregation use.

Under the new program, Segregation 3 peanuts with visible aflatoxin mold may now be purchased by handlers and imported by importers. Safeguard procedures remain in place to assure peanut quality and wholesomeness. The requirement that any farmers stock peanuts shelled and milled for human consumption use must be inspected and certified as meeting outgoing quality standards for grade and aflatoxin content prior to disposition for human consumption use is retained in this rule.

Storage of Segregation 2 and 3 farmers stock peanuts purchased by the handler is at the handler's discretion. Separate storage and shelling of Segregation 2 and 3 peanuts under the handler's ownership are no longer necessary because any peanuts intended for human consumption use must meet outgoing quality requirements before such use. Shelling of a handler's farmers stock peanuts and use of the handler's shelled peanuts also are at the handler's discretion, provided that any shelled peanuts which the handler disposes for human consumption use are inspected and certified for outgoing grade quality, as indicated in the table in § 996.31(a), and certified as negative to aflatoxin pursuant to a chemical analysis carried out by a USDA or USDA-approved laboratory. Positive lot identification (PLI) practices covered under § 996.40(a) must also be followed.

A handler may dispose of the handler's non-edible quality peanuts (sheller oilstock residuals) to such non-edible peanut uses as crushing into oil, or animal feed, or seed, pursuant to § 996.50. Disposition is at the handler's discretion provided that non-edible peanuts are moved under positive lot identification procedures and records documenting all such dispositions are maintained by the handler pursuant to § 996.71(b).

To the extent that farmers stock peanuts are imported, the importer has the same discretionary control over the storage, handling, and disposition of such peanuts.

Any storage or subsequent inspection that a handler may carry out for farmers stock peanuts held under USDA's Farm Service Agency's (FSA) loan program are subject to the provisions of the loan program.

Likewise, a handler may receive or acquire farmers stock peanuts or shelled peanuts from another handler and proceed to mill and prepare those peanuts for edible or non-edible use. Any contractual arrangements covering storage, shelling, milling, or disposition of such peanut lots are up to the two handlers. However, any peanuts intended for human consumption must be certified for such use pursuant to § 996.31(a).

This rule establishes the same outgoing quality standards for damage, defects, foreign material and moisture, and maximum allowable aflatoxin content as required under the previous peanut programs. The 15 parts-per-billion (ppb) maximum aflatoxin content is specified in the definition of the term ''negative aflatoxin content'' in § 996.11.

Direct blanching without prior inspection: Under the previous programs, all peanuts were required to be sampled and inspected for grade quality and aflatoxin content as the peanuts completed the shelling operation. The peanuts were also positive lot identified at that time and kept separate and apart from other milled lots. After the peanuts were moved to a blanching operation and blanched, a second sampling and grade inspection was conducted.

Under this program, handlers intending to blanch peanuts pursuant to a buyer's demand, may move peanuts from the handler's shelling facility to the handler's dedicated blanching facility without obtaining outgoing inspection and PLI prior to movement. Under this provision, the handler's blanching operation may not blanch peanuts belonging to other handlers. Movement of such peanuts under these conditions may be without grade inspection and PLI.

This change was recommended by interim Board handler members who have their own blanching facilities as a method of reducing handling and inspection costs and improving the efficiency of handling operations for peanuts that the handler intends to blanch. This change does not apply to peanuts sent to a custom blancher for blanching because those peanuts may be commingled with peanuts from another handler. To help safeguard against inadvertent commingling with another handler's peanuts, peanut lots sent to a custom blancher must be maintained under positive lot identity and be accompanied by a valid grade inspection certificate.

Because the peanuts are sampled and inspected for grade and aflatoxin content after completion of the blanching operation, and PLI is applied at that time, the outgoing quality and identity of the peanuts is not jeopardized.

Reporting farmers stock acquisitions: Because handlers and importers may now shell and mill Segregation 2 and 3 peanuts into edible quality peanuts, it is necessary that USDA account for all farmers stock peanuts acquired by handlers and importers. Reporting of farmers stock acquisitions is changed in this rule to require that all farmers stock acquisitions, regardless of segregation category, must be reported by the handler and importer to USDA. The Monthly Report of Acquisitions form is similar to the form previously used under the non-signer peanut program

and to the PAC–1 filed by signatory handlers under the Agreement.

Reporting failing lots: Under the previous programs, non-signer handlers and importers were required to file with USDA copies of the outgoing grade and aflatoxin certificates on every peanut lot failing quality or aflatoxin standards. USDA used these certificates to monitor reconditioning and proper disposition of the failing lots. Under the Agreement, the Inspection Service and the aflatoxin laboratories filed with PAC, all grade and aflatoxin certificates on behalf of the signatory handlers.

Reporting procedures similar to those used under the Agreement are used for all handlers and importers in this new program. Thus, handlers and importers will not be required to file failing grade quality and aflatoxin certificates with USDA. These certificates will be filed by the Inspection Service and USDA and USDA-approved aflatoxin laboratories.

Comments From Interim Board Members and Others

As previously discussed, USDA conducted a telephone conference call with interim Board members on July 2, 2002, and met with interim Board officers on July 17, 2002, and the full interim Board on July 30, 2002. Written comments from interim Board members and a few handlers not members of the interim Board were received throughout this period. Unless otherwise indicated, the comments addressed below were provided during the July 30 interim Board meeting.

Most interim Board members indicated that they did not seek radical or wholesale changes to the Agreement's regulations. This was apparent from the comments offered during the initial telephone conference call and at the July 30 interim Board meeting.

Some grower member representatives raised three general objections to establishment of new standards for the 2002 peanut crop. They believed that the new program should not be implemented if the 2002 crop harvest had begun. Because of geographical location, peanuts in south Texas and north Florida, representing a small portion of the total crop, were harvested before USDA could complete this rulemaking process. Because the new quality standards offer potential benefits to growers and handlers, some grower members believe that implementation after the 2002 crop harvest has begun is unfair to producers and handlers in those early-harvest areas.

Some interim Board members suggested that the greatest benefit to the program—purchase of Segregation 2 and 3 peanuts for possible edible use—would affect only a very small percentage of the early harvest peanuts, and that it may be possible to warehouse some of those farmers stock peanuts until the new standards become effective. Other interim Board members did not contest this assessment.

Section 1308 of the Act provides that its provisions take effect with the 2002 peanut crop. An alternative could be to continue the more restrictive 2001 regulations for the entire 2002 crop. However, USDA believes that implementation of the program as soon as possible after harvest begins is better than that alternative. The benefits of the new program to the entire industry are compelling. Most interim Board members believe that there should not be further delay in implementing this action. Only a small number of early harvest producers should be affected by the implementation date of this action. Further, storage accommodations can help alleviate any timing concerns.

The same interim Board members concerned about producer fairness also cautioned about making significant changes to incoming quality provisions without knowledge of changes being considered to the Marketing Assistance Program by USDA's Farm Service Agency. Pursuant to the Act, the FSA loan program also is being restructured, and the extent and nature of the loan provisions will not be known until after the quality and handling standards in this program become effective.

These members stated that the provision to allow purchase of Segregation 2 and 3 quality peanuts for edible consumption could affect the FSA loan program. They questioned details relating to the loan payments, inspection costs and storage of farmers stock peanuts placed under FSA's loan program. These questions are applicable to growers and will be addressed by FSA in that program. This action concerns the outgoing quality standards and handling procedures applicable to peanut handlers.

None of the definitions and other provisions addressed in this rule will be applicable to other peanut programs operated by USDA such as the loan and direct payment, counter-cyclical payments, and quota buyout payment programs provided for in the 2002 Act. Thus, for example, the definitions of ''handle'' and ''handler'' set out in this rule will have no application to those other programs, and will not govern eligibility for payments, or the kinds of payments that can be made, under those other programs. Rather, the definitions and other provisions implemented here were strictly developed for the limited purposes reflected in the rule and no other. The policy choices and any statutory interpretations involved reflect that limited purpose. FSA was consulted in that respect and assured that the understanding and intent was clearly that these rules would not in any way restrict policy determination made with respect to other programs. Rules for other peanut programs will be issued in due course. Further, references in this preamble to previous peanut programs is meant to refer to those peanut operations which were under the control of the Agricultural Marketing Service (AMS) and not those under the control of FSA or FSA's predecessor agency.

Written comments were received from a few independent handlers stating that not all handlers are able to remove all defective kernels, particularly in lots with concealed freeze damage or kernels with yellow pitting. Also, some operations do not have the latest technologies or their own dedicated blanching facilities to remove all kernels which contain aflatoxin.

Handlers will have to make decisions regarding the reconditioning of each failing lot. Those decisions are made on a lot-by-lot basis, based upon the grade factors identified in the lot's latest grade inspection or aflatoxin certificate. Handlers with the latest milling technologies or their own blanching operations may be better able to recondition failing lots than handlers without such equipment. Handlers are not prevented from remilling lots more than one time to remove defective or contaminated kernels. Custom blanching operations with current technologies are available to all handlers. If reconditioning operations are not successful, other handlers with such equipment could acquire the failing lots or recondition them on a contract basis. Because handlers are not prevented from reconditioning other handlers' failing lots, high quality standards can be established and maintained.

In the 1980's, Agreement regulations prohibited small kernels from use in edible consumption lots because research showed a higher incidence of aflatoxin in small peanuts. Research conducted at that time indicated that aflatoxin occurs more frequently in peanuts which are under stress during the growing season and that many peanut kernels are small because the plants were under such stress.

Some large handlers now contend that modern sorting technologies are able to remove the smaller, contaminated kernels and that end-product manufacturers now have markets for smaller whole kernels in snack foods

and other edible products. The handlers recommend that the change would allow more domestically produced peanuts to be used in human consumption outlets and, thus, result in a more efficient use of total domestic peanut production. They also claim that foreign manufacturers of peanut products, such as peanut paste and peanut butter, are not under such minimum size restrictions for the manufactured product they export to the United States. They contend that relaxation in the size and shape of the holes in the screens used to sort out small kernels will allow domestic handlers and manufacturers to better compete with foreign product.

However, interim Board members representing regional grower associations oppose smaller kernel sizes for food quality and wholesomeness reasons. They believe that the risk of increased aflatoxin contamination in the smaller kernels outweighs the benefit of any incremental increase in the use of small peanut kernels, or cost savings accrued. Those opposed to use of small kernels contend that, in addition to having a higher incidence of aflatoxin, smaller kernels also may have a bitter taste. At the interim Board meeting, a representative from a peanut manufacturers' association said that manufacturers would oppose use of smaller size kernels.

The draft text which USDA posted on the Internet included the table displaying the amended screen sizes that would allow smaller kernels in edible lots. Written comments were received, most from interim Board members, opposing use of round hole screens and the smaller kernel size. Those comments cited concerns for wholesomeness and a loss of quality if smaller kernels were allowed in edible lots. Some suggested that the screen sizes should not be changed without further research on the increased risk of aflatoxin in small peanut kernels.

After review of the positions presented at the meeting and the written comments received, USDA believes that the kernel sizes specified under the previous peanut programs should continue in effect for the 2002 crop year. Therefore, the recommendation to change the minimum size standard is not accepted for 2002 crop peanuts.

An oilmill operator (crusher) filed a written comment that the mission of the new standards should be to ensure food safety and not to establish restrictions that increase costs and hinder trade between willing sellers and buyers. The oilmill operator suggested that: (1) Incoming inspection should not be required for farmer stock peanuts that the producer and handler/crusher know will be sent immediately to crushing; (2) shelled peanuts intended for non-edible use do not need to be positive lot identified; and (3) peanuts imported as non-edible specifically for crushing also should not have to be inspected before such disposition.

Incoming inspection is necessary to determine the value of any farmers stock peanuts. It is not likely that a producer will sell peanuts at low, oilstock prices without first obtaining inspection to ascertain whether the peanuts could be higher than oilstock quality. In addition, production data collected at incoming inspection continues to be used for loan data purposes and to develop daily crop reports which are helpful to peanut growers, handlers and manufacturers. This data would not be as helpful to all segments of the industry if it covered only high quality peanuts.

With regard to the commenter's second point, sheller oilstock residuals are positive lot identified with red tags to help prevent commingling in handling or storage and to assure buyers that certified edible lots are not mixed with lesser quality peanuts prior to shipment. Also, most crushing operations require certification of foreign material and moisture on milled peanuts.

With regard to the commenter's third point, to date, no peanuts have been imported specifically for crushing. Crushing is the least economical use of peanuts. It is not likely that importers would pay the international shipping costs and use limited duty-free import quota on peanuts suitable only for crushing.

This action removes a long standing Agreement provision (§ 998.200(c)(3)) which automatically imposed a small aflatoxin sampling and testing charge on buyers. The charge had been carried for several years under the Agreement and was supported by handler members on the interim Board. However, such service charges are matters that should be negotiated between sellers and buyers and, therefore, are not appropriate in these regulations.

Several additional changes have been made to the draft text posted on the Internet. These changes are based on further USDA review of the draft text and discussions with Inspection Service supervisors. These changes include re-instituting Agreement requirements that help USDA monitor disposition of sheller oilstock residuals, the movement of failing lots through the reconditioning processes, adjustments to positive lot identification procedures, and compliance oversight. A more thorough recordkeeping paragraph also was added to reflect current industry practice and the requirements of this program.

The outgoing quality and handling standards established under this rule are the same as, or similar to, the requirements under the previous peanut programs and are intended to maintain the peanut industry's high standards for peanut quality and wholesomeness.

Quality Standards

The following categories of peanuts are subject to inspection requirements and quality and handling standards established under new Part 996.

Incoming quality—farmers stock peanuts: Under this program, all farmers stock peanuts received by handlers or importers must be sampled and inspected by Federal or Federal-State Inspection Service (Inspection Service) inspectors to determine the moisture content of the peanuts, the amount of foreign material in the peanuts, and the amount of damage and concealed damage in the peanuts. Moisture and foreign material content not exceeding 10.49 percent meet incoming quality standards—the same as under the previous peanut programs. The peanuts also are inspected for visible *Aspergillis flavus* mold.

Domestically produced farmers stock peanuts are required to undergo incoming inspection at a buying point prior to shelling or storage. Incoming quality standards are found in paragraph (a) of § 966.30. Incoming inspection is conducted by the Inspection Service to determine the general grade level of raw, farmers stock peanuts presented by the producer at buying points in the various domestic production areas. Peanuts are graded for foreign material, loose-shelled kernels, and moisture content. Segregation 1 farmers stock peanuts may contain 2 percent or less damaged kernels and 1 percent or less concealed damage caused by rancidity, mold, or decay. Segregation 2 peanuts are lesser quality peanuts containing more than 2 percent damaged kernels, or more than 1 percent concealed damage. Segregation 3 peanuts are those which contain visible *Aspergillus flavus.* Segregation 2 and 3 peanuts may be shelled and entered into human consumption outlets provided the peanuts meet outgoing quality and wholesomeness requirements. Imported farmers stock peanuts must be transported directly to a buying point and subjected to incoming inspection to determine Segregation quality.

It is the handler's option to keep farmers stock peanuts segregated by category or to commingle Segregation 1,

2 and 3 peanuts in the handler's warehouse. Domestically produced and imported farmers stock peanuts, however, must be kept separate and apart because imported peanuts are subject to Customs Service redelivery demands until the imported peanuts are certified as meeting outgoing quality requirements specified in § 996.31.

Incoming inspection determines the quality of the farmers stock peanuts based on moisture content, foreign material, damage, loose-shelled kernels, and visible *Aspergillus flavus* mold. Handlers and importers must report to USDA acquisitions of all Segregation 1, 2, and 3 farmers stock peanuts. The Inspection Service issues USDA Form FV–95, ''Federal-State Inspection Service Notesheet'' designating the lot as either Segregation 1, 2, or 3 quality. Reporting requirements are discussed in more detail below.

Because USDA cannot determine whether peanuts produced and milled in a foreign country originated from Segregation 1 quality peanuts, importers do not have to provide evidence of Segregation 1 quality for foreign peanuts imported in shelled or cleaned-inshell condition.

Outgoing quality—shelled peanuts: Both domestic and imported shelled peanuts must be sampled, inspected, and certified as meeting the outgoing grade standards specified in the table in § 996.31(a) entitled ''Minimum Quality Standards B Peanuts for Human Consumption.'' The table lists, for different peanut varieties, maximum percentage tolerances for damaged kernels; unshelled kernels and kernels with minor defects; split and broken kernels and sound whole kernels (size factors); foreign material, and moisture content. All categories and tolerances in the table are the same as those in effect under the Agreement at the time the PAC was terminated.

Each shelled peanut lot also must undergo chemical testing by a USDA laboratory or a private laboratory approved by USDA. AMS' Science and Technology Programs assures that all of the laboratories conducting chemical analyses follow the same testing procedures. The maximum allowable presence of aflatoxin is 15 parts per billion (ppb)—the same standard as required under the three previous peanut programs. This tolerance has been in effect for more than 15 years and was in effect at the time the PAC was terminated.

Once certified as meeting outgoing quality standards under § 996.31(a) for shelled peanuts, a lot may not be commingled with any lot that has failed outgoing quality standards or any residual peanuts from reconditioning operations.

Outgoing quality—Cleaned-inshell peanuts: Based on the changes in the edible use of Segregation 2 and 3 peanuts, cleaned-inshell peanuts are no longer restricted to Segregation 1 peanuts. Cleaned-inshell peanuts are farmers stock peanuts that are cleaned, sorted, and prepared for human consumption markets in the U.S. and must be inspected against minimum quality standards not exceeding 2 percent damage, 10 percent moisture, and 0.5 percent foreign material. Cleaned-inshell peanuts also may not exceed more than 1 percent mold unless the lot is also chemically tested and found ''negative'' as to aflatoxin. These standards are found in paragraph (b) of § 996.31.

Handling Standards

Positive lot identification procedures are established under § 966.40. These are necessary to maintain identification of peanut lots and ensure that lots certified for edible consumption are not commingled with peanuts of lower quality. This section also establishes consistent procedures for collecting samples from peanut lots that are being inspected. Lot identification and sampling procedures must be applied consistently on all peanut lots undergoing inspection to ensure that all peanut lots are handled uniformly and lots once certified as meeting outgoing standards are maintained and shipped without loss of quality. PLI standards under this rule are the same as the positive lot identification requirements used by the Inspection Service in under the agreement, non-signer, and import peanut programs.

The Inspection Service works with domestic peanut handlers, importers, and storage warehouses to determine the most appropriate PLI or lot identity method to be used on individual peanut lots. Several factors dictate which PLI method should be used: (1) Size of the lot; (2) storage space on the dock or in the warehouse; (3) whether any further movement of the lot is required prior to certification; and (4) other needs of the handler, importer, dock or warehouse operators, or the Customs Service.

For domestic lots and repackaged import lots, PLI includes PLI stickers, tags or seals applied to each individual package or container in such a manner that is acceptable to the Inspection Service and maintains the identity of the lot. For imported lots, PLI tape may be used to wrap bags or boxes on pallets, PLI stickers may be used to cover the shrink-wrap overlap, doors may be sealed to isolate the lot, bags or boxes may be stenciled with a lot number, or any other means that is acceptable to the Inspection Service. The crop year or quota year shown on the positive lot identification tags shall be the year in which the peanuts in the lot were produced domestically or imported into the U.S., as appropriate.

PLI practices for both domestic and imported peanuts also include affixing a PLI seal to the door of a shipping container so that it cannot be opened without breaking the seal, and affixing a red tag on sewn bags of failing quality peanuts. Other methods acceptable to the Inspection Service that clearly identify the lot and prevent peanuts from being removed or added to the lot may be used. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and, if in other containers, by other means acceptable to the Inspection Service. All lots of shelled or cleaned-inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

The standard peanut lot size is 40,000 pounds, but may vary at the handler or buyer's preference. Lot size is limited to 200,000 pounds, which is the largest amount of peanuts that can be adequately sampled by the Inspection Service. The limitation was used under the agreement, non-signer, and import peanut programs.

Sampling procedures: This rule also establishes uniform sampling procedures and sample sizes that the Inspection Service follows when conducting grade inspections, and in collecting peanuts for chemical analysis. The portion of the peanuts collected for chemical analysis are sent to a USDA or USDA-approved laboratory. A portion of the peanuts sampled are held by the Inspection Service as check samples if the lot is determined to fail either grade or aflatoxin analysis. These procedures and sample sizes are the same as those used under the agreement, non-signer, and import peanut programs.

All required sampling and positive lot identification procedures are performed by inspectors of the Federal or Federal-State Inspection Service. Imported peanuts are subject to Customs Service redelivery demands if determined in violation of these quality or handling standards or Customs Service entry requirements referenced below. Handlers and importers must reimburse the Inspection Service and chemical laboratories for sampling and grade inspection and chemical analyses for aflatoxin. Incoming inspections range from $4.00 to $6.25 per ton of farmers stock peanuts. Sampling and outgoing grade inspections vary with each

Federal-State Inspection Service and range from $1.50 to $3.00 a ton. Chemical analysis for aflatoxin averages $40.00 per analysis. The fee schedule for USDA laboratories appear at 7 CFR 91.37.

Import Entry Procedures

This program establishes procedures for importing peanuts into the United States that are similar to the procedures applied under the previous peanut import program (7 CFR 999.600).

U.S. Customs Service requirements: Importers of foreign produced peanuts must follow established Customs Service entry procedures and AMS stamp-and-fax notification and inspection procedures specified below. Customs Service importation procedures and requirements are set out in title 19 of the Code of Federal Regulations. The Customs Service regulations applicable to peanut handling and processing include, but are not be limited to: bond requirements (19 CFR part 113); transfer from port of entry to another Customs Service office location (19 CFR part 112); entry of merchandise for consumption (19 CFR part 141); warehouse entry, and withdrawal from warehouse for consumption (19 CFR part 144); establishment of bonded warehouses (19 CFR 19.13 and 19.2); manipulation in bonded warehouses (19 CFR 19.11); transfer of ownership (19 CFR 141.113 and 141.20); failure to recondition (19 CFR 113.62(e); and redelivery of merchandise (19 CFR 113.62(d)). For Customs Service purposes, the term ''consumption'' means ''use in the United States.'' Customs Service entry procedures are not superseded by the import procedures in this program.

It is the importer's responsibility to file import entry documentation and notify the Inspection Service with documentation sufficient to insure inspection of all imported peanut lots. It also is the importer's responsibility to account for disposition of all failing quality peanut lots imported by the importer. A bond secured by surety or U.S. Treasury obligations must be posted by the importer with the Customs Service to guarantee the importer's performance. For more information on these procedures importers should contact their importer broker, the Customs Service office at the port where peanuts are expected to be entered, or *http://www.ustreas.gov/education/duties/bureaus/uscustoms.html.*

Safeguard procedures: The safeguard procedures in this part are similar to those in the current import regulation and provide for monitoring of imported peanut lots from entry into the U.S. to final disposition. The safeguard procedures are similar to safeguard procedures already in place for peanuts and other imported fresh agricultural commodities and are consistent with the inspection, identification, and certification requirements applied to domestically produced peanuts.

To obtain information on importing peanuts or making arrangements for necessary inspection and certification, importers may contact the Fresh Products Branch headquarters office in Washington, DC, which will direct them to the closest regional inspection office. The telephone number of headquarters office is (202) 720–5870, and the fax number is (202) 720–0393.

Stamp-and-fax procedure: Under USDA safeguard procedures established in this program, the importer must provide advanced notice of inspection needs to the Inspection Service office that will collect samples of the peanuts for inspection. The importer must file completed entry documentation (Customs Service Form 3461 or other equivalent form) with the Inspection Service office by mail or facsimile transmission. To expedite entry procedures, the filing should occur prior to, or upon, arrival of the shipment at the port of entry. The Inspection Service office will stamp, sign, and date the entry document and return it to the importer or import broker by fax or mail. The importer/broker then submits the stamped copy to the Customs Service. This ''stamp-and-fax'' procedure is the same as the procedure currently in place under the import regulation and similar to procedures in place for other imported agricultural commodities under USDA jurisdiction. Failure to file with the Customs Service a copy of the entry documentation stamped by the Inspection Service may result in a delay or denial of entry by the Customs Service.

The importer must file a copy of each stamp-and-fax entry document with USDA and forward a copy, with any conditionally released lot, to the inland destination where the lot is to be inspected or warehoused. The importer must provide sufficient information to identify the peanut lot being entered and to ensure that arrangements are made for sampling and inspection. This information must include the Customs Service entry number, container identification, weight of the peanut lot, the city, street address, and building number (if known) receiving the peanut lot, the requested date and time of inspection, and a contact name and telephone number at the destination. If the destination is changed from that listed on the stamp-and-fax document, the importer must immediately advise Inspection Service offices at both the original destination and the new destination of such change. Shipments that are not made available pursuant to entry documentation, or are not properly displayed for sampling purposes, will be reported to the Customs Service as failing to follow required entry procedures.

Boatload shipments exceeding 200,000 pounds must be entered under two or more Customs Service entry documents. Lot size and identification arrangements must be made cooperatively between the importer, Inspection Service, and the Customs Service office at the port-of-entry. This facilitates subsequent lot identification, inspection, and reporting of large imported shipments.

Release for importation: Depending on condition (shelled or inshell) and containerization, foreign-produced peanuts may be either: (1) Held at the port-of-entry until certified by the Inspection Service as meeting the edible quality requirements of this rule; or, (2) conditionally released under Customs Service entry procedures and transported inland for inspection and certification.

Under option (1), foreign-produced shelled or cleaned-inshell peanuts which are held at the port-of-entry must be presented in containers or bags that allow appropriate sampling of the lot pursuant to Inspection Service requirements. After sampling, such lots are held at the port-of-entry under Customs Service custody, under positive lot identification requirements of the Inspection Service, pending results of the inspection and chemical analysis. If determined to meet the applicable edible quality requirements of this Part, the shelled or cleaned-inshell peanuts may be entered for consumption without further inspection. Reports of such entries do not have to be filed with USDA.

If a lot is held at the port of entry under Customs Service custody and subsequently determined to fail edible quality standards, the lot, at the importer's discretion, may be: exported; entered for reconditioning and if satisfactorily remilled or blanched, used for edible consumption; or entered for non-edible consumption. Such failing peanuts that are remain under Customs Service custody until exported do not have to be reported to USDA because the peanuts were not officially entered into the U.S. Failing lots that are conditionally released for reconditioning at a remilling or blanching facility inland must be

reported to USDA. The importer is responsible for ensuring that such lots remain under PLI until reconditioned and determined to meet edible quality requirements. Disposition of residual peanuts to non-edible outlets also must be reported to USDA. Such reports must be submitted within the time frames discussed under Reporting and Recordkeeping Requirements, below.

Under option (2), foreign produced peanuts are conditionally released at the port of entry and transported inland for sampling, inspection, and certification. All imported farmers stock peanuts must be shipped inland for sampling and inspection because specialized sampling facilities at buying points are not available at ports of entry. All conditionally released lots must be maintained under PLI. Shelled and cleaned-inshell lots which are subsequently sampled and determined to meet both grade and aflatoxin quality standards may be entered directly into human consumption channels of commerce and not reported to USDA. Conditionally-released peanut lots failing to meet outgoing quality standards and their eventual disposition as edible or non-edible peanuts also are reported to USDA by the Inspection Service and/or the aflatoxin laboratory.

Peanuts transported from one port-of-entry to another port-of-entry must be transported by a carrier designated by the Customs Service under 19 U.S.C. 1551. Peanuts entered for warehousing must be stored in a Customs Service bonded warehouse. Such peanuts must remain in Customs Service custody until they are withdrawn from warehouse, entered for consumption, or released from Customs Service custody.

Peanuts entered for consumption, and peanuts withdrawn from warehouse for consumption, are released from Customs Service custody for edible or non-edible use. Release of peanuts, in both cases, is a conditional release, pending final certification that the peanuts conform to Customs Service entry requirements and meet the handling and quality standards of this program.

Peanut samples may be taken at the port-of-entry and shipped to an Inspection Service office with equipment and personnel qualified to a perform grade inspection. Imported shipments of farmers stock peanuts must be transported inland to a buying point where sampling equipment is available to conduct the sampling operation. In addition to grading the shelled peanuts against quality standards, the inspection office also sends samples from each lot to a USDA or USDA-approved laboratory for aflatoxin analysis. The laboratories must send copies of aflatoxin certificates to the USDA. Importers are required to maintain all records showing compliance with these standards and all Customs Service requirements.

Importers must not release failing lots for edible consumption until reconditioned and certified as meeting the standards of this program.

Reporting and Recordkeeping

This rule establishes reporting and recordkeeping standards under § 996.71 that are necessary for USDA to monitor compliance with program quality and handling standards.

Farmers stock acquisitions: Handlers and importers are required to report to USDA the volume of Segregation 1, 2, and 3 farmers stock peanuts acquired from growers or others, or imported. Under the previous programs, the information was used, in part, to determine the assessment owed by signatory handlers to the PAC and non-signatory handlers to USDA.

Because all farmers stock peanuts can now be shelled for human consumption use, this rule establishes that all three categories of farmers stock must be reported. This information is used for compliance purposes and in the compilation of reports by USDA. The monthly report must include the volume, by variety, of Segregation 1, 2, and 3 farmers stock peanuts acquired in the preceding month. The storage location of the peanuts also must be reported. A form similar to USDA's FV–117 and the PAC–1 will be used by handlers and importers to report their monthly farmers stock acquisitions.

To collect farmers stock information, the interim Board recommended that USDA use the form submitted by handlers to the National Peanut Board, under the Peanut Promotion Research and Information Order (7 CFR part 1216), to determine handler assessments under the national Peanut Promotion and Research Program. However, the form previously used by the Board has been discontinued and the new ''First Handler's Report'' does not require disclosure of volume handled, peanut variety, or Segregation of the peanuts acquired. The form cannot be used for the purposes needed in this rulemaking.

The new form must be sent to USDA. Facsimile or express mail deliveries may be used to ensure timely receipt of certificates and other required documentation. Mail deliveries must be addressed to the DC Marketing Field Office, MOAB, FVP, AMS, USDA, 4700 River Road, Unit 155, Riverdale, MD 20737, Attn: Report of Peanuts. The Fax number is (301) 734–5275.

Falsification of any report submitted to USDA is a violation of Federal law and is punishable by fine or imprisonment, or both.

Documentation of edible and non-edible peanuts: This program continues the procedures used under the Agreement to monitor disposition of edible and failing quality peanuts. The Inspection Service sends copies of all grade inspections and the chemical laboratories send copies of all aflatoxin assays to USDA. USDA uses this information to monitor proper disposition of all lots failing either grade or aflatoxin certification.

This represents a relaxation of reporting requirements for importers. Under the previous peanut import program, non-signatory handlers and importers were required to file copies of all failing grade and aflatoxin certificates with AMS. They are no longer required to do so, unless specifically requested by USDA or unless the Customs Service demands such documentation of importers. These certificates will be provided by the Inspection Service, USDA laboratories, or certified USDA laboratories, as the case may be.

Recordkeeping: Handlers and importers are required to maintain all relevant documentation on the disposition of inedible peanuts. If remilled, blanched, or roasted, the handler or importer must maintain grade certificate(s) and/or aflatoxin certificate(s) showing that the lot has been reconditioned and subsequently meets outgoing, edible quality standards. Grade and aflatoxin inspections conducted on reconditioned lots reference the peanuts lot number and previous grade and aflatoxin certificate numbers so that a record of the lot's reconditioning is maintained. Documents showing the disposition of non-edible residuals (pick-outs etc.) must be maintained by each handler and importer. For example, if the lot is crushed for oil the oil mill's report of crushing must be maintained. That crushing report must tie the crushed residual peanuts to their original failing lots. If the failing lot is sold for seed or for animal feed, the sales receipt of the transaction must tie the purchased lot to the failing lot through the inspection certificate number. If the failing lot is exported, an export certificate must be filed showing the inspection certificate number of the failing peanut lot. Failing peanut lots sent to a landfill or buried also must be reported with proof of such disposition through the inspection certificate number.

In total, the documentation maintained and distributed to USDA

must be sufficient to document and substantiate the proper disposition of all peanut lots failing grade or aflatoxin quality standards, as well as the residuals resulting from those failing lots.

Documentation on lot dispositions must be maintained for at least two years after the crop year of applicability.

Confidentiality

This rule includes a confidentiality provision in § 996.72 to protect handler and importer reports and records required to be submitted to USDA under this action. Confidential information includes data or information constituting a trade secret or disclosing a trade position, financial condition, or business operations of handlers or their customers. Confidentiality provisions do not extend to disclosure of peanuts lots determined to be within the provisions in § 996.74(b).

Verification of Reports

Provisions are included in § 996.73 of this Part that allows USDA access to any premises where peanuts may be held or processed, and access to any business files containing information regarding the handling, importing, and disposition of peanuts. USDA, at any time during regular business hours, is permitted to inspect any peanuts held and any and all records with respect to the acquisition, holding, or disposition of any peanuts which may be held or which may have been disposed of by that handler or importer.

Compliance Oversight

USDA will take action against any handler or importer in violation of the Act or this Part. Such action includes instances when a handler or importer: (1) Acquires farmers stock peanuts without official incoming inspection; (2) fails to obtain outgoing inspection on shelled or cleaned-inshell peanuts and ships such peanuts for human consumption use; (3) ships failing quality peanuts for human consumption use; (4) commingles failing quality peanuts with certified edible quality peanuts and ships the commingled lot for human consumption use; (5) fails to maintain PLI on peanut lots certified for human consumption use; (6) fails to maintain and provide access to records on the reconditioning or disposition of failing quality peanuts; or (7) otherwise violates any provisions of the Act or this program.

USDA will use injunctions to restrain violations and withdraw inspection services from alleged violators.

AMS will notify the FDA of the names of any handlers or importers known to have shipped un-inspected peanuts into human consumption channels and the lot numbers of such peanuts. AMS also will publish on the AMS Web site the names of any handler and importer and the failing lots not reported as reconditioned or disposed to non-edible outlets.

Initial Regulatory Flexibility Analysis

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

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

There were approximately 45 peanut handlers and 38 importers that were subject to regulation under the Agreement and non-signer program, and the peanut import regulation. An estimated two-thirds of the handlers and nearly all of the importers may be classified as small entities, based on the documents and reports received by USDA. Small agricultural service firms, which include handlers and importers, are defined by the Small Business Administration (13 CFR 121.201), as those having annual receipts of less than $5,000,000.

An approximation of the number of peanut farms that could be considered small agricultural businesses under the SBA definition (less than $750,000 in annual receipts from agricultural sales) can be obtained from the 1997 Agricultural Census, which is the most recent information on the number of farms categorized by size. There were 10,505 peanut farms with sales valued at less than $500,000 in 1997, representing 86 percent of the total number of peanut farms in the U.S. (12,221). Since the Agricultural Census does not use $750,000 in sales as a category, $500,000 in sales is the closest approximation. Assuming that most of the sales from those farms are attributable to peanuts, the percentage of small peanut farms in 1997 (less than $750,000 in sales) was likely a few percentage points higher than 86 percent, and may have shifted a few percentage points since then. Thus, the proportion of small peanut farms is likely to be between 80 and 90 percent.

Two-year average peanut production for the 2000 and 2001 crop years was 3.711 billion pounds, harvested from 1.363 million acres, yielding 2,723 pounds per acre. The average value of production for the two-year period was $948.777 million, as reported on the National Agricultural Statistics Service (NASS) Web site as of August 2002 (*http://www.nass.usda.gov:81/idepd/report.htm*). Average grower price over the two-year period was $0.26 per pound, and the average value per harvested acre was $707. Dividing the two-year average value of production ($948.177 million) by the estimated 12,221 farms yields an estimated revenue per farm of approximately $77,600.

The Agricultural Census presents farm sizes in ranges of acres, and median farm size in 1997 was between 50 and 99 acres. The median is the midpoint from the ranging from the largest to the smallest. Median farm size in terms of annual sales revenue was between $100,000 and $250,000.

Several producers may own a single farm jointly, or, conversely, a producer may own several farms. In the peanut industry, there is, on average, more than one producer per farm. Dividing the two-year average value of production of $948.777 million by an estimated 23,000 commercial producers (2002 Agricultural Statistics, USDA, Table 11–10) results in an estimate of average revenue per producer of approximately $41,251.

Oilmill operators, blanchers, and private chemical laboratories are subject to this rule to the extent that they must comply with reconditioning provisions under § 996.50 and reporting and recordkeeping requirements under § 996.71. There are several such entities in the peanut industry and these requirements are applied uniformly to these entities, whether large or small. In addition, there are currently 10 State inspection programs (FSIS) that will perform inspection under this new program.

Importers of peanuts cover a broad range of business entities, including fresh and processed food handlers and commodity brokers who buy agricultural products on behalf of others. Under the 2001 import quota, approximately 38 business entities imported approximately 126 million pounds of low duty peanuts (sometimes called ''duty free'' quota peanuts). The import quota period began January 2, 2001, for Mexico, and April 2, 2001, for Argentina, Israel, and other countries. Some large, corporate handlers are also importers of peanuts. AMS is not aware of any peanut producers who imported peanuts during any of the recent quota years. The majority of peanut importers have annual receipts under $5,000,000. Customs Service brokers provide import services to importers and are regulated

under this rule to the extent that they must comply with entry requirements under § 996.60 and reporting and recordkeeping requirements under § 996.71. These requirements are not applied disproportionately to small customs service brokers.

In view of the foregoing, it can be concluded that the majority of peanut producers, handlers, and importers may be classified as small entities. In addition, it may be assumed that many oilmill operators and blanchers also are small entities.

The quality and handling requirements of the prior peanut quality programs have been in effect for more than 36 years and for imported peanuts for more than six years. Handlers and importers have been the segment of the industry directly regulated under the three peanut programs, and they are in general agreement that the industry has changed greatly since the establishment of the Agreement in 1965.

With only a few exceptions, the quality and handling standards in this peanut program are the same as, or similar to, the requirements previously in effect for domestically produced and imported peanuts. The few exceptions are relaxations in requirements that will benefit handlers and importers. These requirements were subject to regulatory flexibility analysis and were found to not disproportionately affect small entities.

The Act requires that all peanuts marketed in the United States be officially inspected and graded by Federal or Federal-State inspectors. The Act further requires that USDA make identifying and combating the presence of all quality concerns a priority in the development of quality and handling standards and in the inspection of all peanuts in the domestic market. Finally, USDA is to ''* * * provide adequate safeguards against all quality concerns related to peanuts.'' A new peanut program is to be established in consultation with the Peanut Standards Board. Currently, members of the PAC are acting in an interim capacity for the Board.

This program establishes under new Part 996 the minimum quality and handling standards that were in effect on May 13, 2002, the date the Act became effective, with a few relaxations recommended by interim Board members and a few peanut growers and handlers. Peanuts may not be entered into human consumption channels unless the peanuts are inspected and meet minimum quality standards for size, damage, defects, foreign material and moisture, and not exceed maximum aflatoxin content specified in this rule. Handling standards include the same positive lot identification, sampling and inspection procedures, and prohibitions on commingling certified and non-edible peanuts as were in effect under the three previous programs. Peanuts failing to meet the quality standards of this Part, or which are not handled consistent with the handling standards of this Part, may not be used for human consumption in the United States.

All USDA required sampling, quality certification, and lot identification is conducted by the Inspection Service. Chemical analysis is conducted by USDA or USDA-approved laboratories. Private laboratories must, among other things, agree to send copies of all aflatoxin analyses conducted by the laboratory to USDA. Foreign produced peanuts stored in bonded warehouses are subject to Customs Service audits. Handlers and importers must reimburse the Inspection Service and USDA laboratories and approved private laboratories, for services provided and costs incurred in the sampling, grade inspection and chemical analysis of peanuts. Incoming inspections range from $4.00 to $6.25 per ton of farmers stock peanuts. Sampling and outgoing grade inspections vary with the Federal and each Federal-State Inspection Service and range from $1.50 to $3.00 a ton. Chemical analysis for aflatoxin averages $40.00 per analysis. These costs to handlers and importers also were incurred under the previous three programs. Thus, there is no net increase in financial burden attributable to these aspects of the new program.

This action will impose on handlers and importers a minor reporting requirement in addition to that imposed under the previous peanut programs (reporting acquisitions of Segregation 2 and 3 farmers stock peanuts). However, importers and non-signatory handlers under the previous programs have a minor decrease in reporting requirements, because they are no longer required to submit evidence of disposition of failing lots. That task is completed by the USDA. Recordkeeping requirements remain the same as required under the three previous peanut programs. The information collection burden under the previous programs totaled 411 reporting hours and 269 recordkeeping hours. These were approved under OMB Nos. 0581–0067 (Agreement), 0581–0163 (non-signers), and 0581–0176 (imports).

Changes affecting regulated entities: Under this program, handlers are no longer subject to payment of assessments based on the volume of farmers stock peanuts acquired. Under the Agreement and non-signer program, handlers were assessed $.33 per net farmers stock ton of peanuts acquired. This totaled over $515,000 for the 2000 crop. Assessments collected from signatory handlers provided for the administration of the PAC. Assessments collected from non-signatory handlers helped reimburse USDA for administration of the non-signer program. There are no such assessments under the new peanut program.

The previous peanut programs prohibited the use of Segregation 2 and 3 farmers stock peanuts in human consumption channels, but this rule removes that prohibition. This will allow such peanuts to be handled and marketed in higher return outlets. Handlers sought this change. As noted above, handlers believe that modern milling technologies enable handlers to remove poor quality and contaminated peanut kernels in the shelling and milling operation. This change from the previous programs' requirements will enable more peanuts to be marketed at higher market values for human consumption. Segregation 2 and 3 peanuts, in a normal crop year, average around 1 percent of total production. Thus, for the 2000 and 2001 crop years, this would have allowed an additional 37 million pounds of farmers stock peanuts to be available for human consumption channels.

Handlers stated that peanuts used in the manufacturing of imported peanut butter and peanut paste are not restricted to Segregation 1 quality peanuts in those exporting countries. They contend that use of Segregation 2 and 3 quality peanuts for human consumption, after careful and efficient sorting and milling processes, levels the playing field for the U.S. peanut industry. Outgoing inspection will ensure that poor quality peanuts do not enter domestic edible consumption market channels.

Grower and handler revenues are likely to increase slightly due to the ability to sell Segregation 2 and 3 quality peanuts for human consumption use. This change is not expected to affect small and large entities differently.

If Segregation 2 and 3 peanuts are handled for human consumption, it is reasonable to assume that fewer poor quality peanuts will be available for crushing into oil and other non-edible use such as animal feed. It can be expected that the price of oilstock quality peanuts will rise slightly. A higher percentage of sheller oilstock residuals are likely to be sorted out of Segregation 2 and 3 peanuts during the initial shelling process. Therefore, not all of the peanuts in Segregation 2 and

3 lots will be edible, and the supply of oilstock peanuts will not be cut off completely. The market value of peanuts used for crushing into oil and added to animal feed could increase.

Further, blanching operations could realize an increase in business because blanching, as a last resort in reconditioning a failing lot, will likely be used in the final preparation of shelled peanuts originating from Segregation 2 and 3 peanuts for human consumption.

Finally, handlers with blanching facilities dedicated exclusively to the handler's own peanuts may move a lot of shelled peanuts directly from the shelling operation to their dedicated blanching operations without first obtaining grade inspection and PLI on the lot. Handlers recommended removing the required inspection and PLI prior to blanching at their own, dedicated facilities because the nature of the peanuts change in the blanching process and the peanuts must be inspected immediately after blanching, rendering the first inspection redundant. This would apply only to lots blanched in the handler's own blanching facility that does not blanch peanuts belonging to others, thus eliminating the need to establish PLI prior to blanching. This streamlined handling process will increase efficiency of the handling of peanuts that the handler intends to blanch. Handler costs for such lots are reduced by inspecting the lot once, rather than twice. While this change may tend to be most beneficial to those handlers who are mostly larger operations with their own, dedicated, blanching facilities, it should not have an adverse impact on small handlers.

Reporting and recordkeeping requirements under the new peanut program are not expected to adversely impact small businesses, and there is no indication that large and small businesses would be impacted differently. Under this program, handlers and importers must report monthly acquisitions of Segregation 2 and 3 peanuts—a minor increase from the previous programs when only Segregation 1 peanuts were reported. However, the benefits of being able to handle those peanuts for possible edible consumption outweigh the increased reporting requirement. Further, this minor increase in reporting is offset by a decrease in reporting disposition of failing peanut lots for non-signatory handlers and importers. In the case of imports, few, if any, peanuts are imported in farmers stock form because of the extra weight and bulk of the peanut shell. Thus, importers will likely not be filing a monthly report of acquisitions.

The other provisions in this peanut program are the same as, or similar to, the requirements in effect for domestically produced and imported peanuts for the last several years. Those requirements were subject to prior regulatory flexibility analysis.

USDA has considered alternatives to this program. The Act provides that a new program be established for the 2002 peanut crop. An alternative would be to continue the 2001 regulations for the entire 2002 crop. However, based on industry comment, implementation of a new program as soon as possible after harvest begins is preferable to continuing the previous programs. USDA has met with the interim Board which is representative of the industry and has included nearly all of its recommendations in this rule. The initial draft prepared by USDA proposed a streamlined program with less USDA oversight of handling standards. However, the interim Board suggested that oversight provisions in the previous programs be included in this program to assure the continued high quality and wholesomeness of peanuts entered into human consumption channels in the U.S. Draft provisions were posted on the USDA Web site and comments were received. Most comments confirmed the Board's consensus that significant changes in the previous programs were not desired. For instance, one proposal included changing screen sizes to allow smaller kernels to be included in lots intended for human consumption use. Comments advised against this relaxation and it is not included in this rule. Thus, this program is substantially the same as USDA's three previous peanut programs.

Except as previously discussed, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. A small business guide on complying with AMS' fresh fruit, vegetable, and specialty crop programs similar to this peanut program may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide or compliance with this program should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Information Collection

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements under the Agreement, non-signers and import programs were approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581–0067, 0581–0163 and 0581–0176, respectively. However, with the termination of those peanut programs, reporting and recordkeeping burdens on peanut handlers and importers were terminated. The burden under the three previous programs was 680 hours. The burden under the new program is estimated to be 463 hours. An estimated 367 hours (nearly 80 percent) of the new program burden is for recordkeeping, which handlers and importers would normally do under good business practice.

The Act specifies in § 1604(c)(2)(A) that any new quality and handling standards, established pursuant to the Act, may be implemented without regard to the Paperwork Reduction Act. Nonetheless, USDA has considered the reporting and recordkeeping burden on handlers and importers under the new program.

Handlers and importers are required to complete and file only one form—a monthly acquisition of farmers stock peanuts. Acquisitions of Segregation 2 and 3 peanuts must now be reported because those peanuts can be prepared for edible markets. Because Segregation 2 and 3 peanuts normally account for around 1 percent of each peanut crop, this change is expected to represent only a minor increase in the reporting burden under the new program. Non-signatory handlers and importers are no longer required to submit evidence of disposition of failing lots, which reduces their reporting burden. Recordkeeping requirements remain the same as required under the three previous peanut programs.

AMS invites comments on this interim final rule. Any comments received by October 9, 2002, will be considered prior to finalization. A 30-day comment period is deemed appropriate because § 1308 of the Act provides that the Act's requirements take effect with the 2002 crop of peanuts.

USDA has held several meetings with the interim Board, Inspection Service supervisors, posted a draft rule on the internet for comments, and considered all comments. The program is substantially the same as the three previous peanut programs. USDA also has reviewed this rule with FSA and provided drafts to the Customs Service and FDA. The 2002 crop harvest has already begun. Section 1601 also specifies that promulgation of the standards and administration of the new peanut quality program shall be made without regard to: (A) The Paperwork Reduction Act; (B) the Statement of

Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and (C) the notice and comment provisions of section 553 of title 5, United States Code.

Nonetheless, based upon the above, USDA may find, upon good cause, that it would be impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. Further, with regard to the termination and removal of Parts 997, 998, and section 999.600, it is found that those programs no longer tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, or the purposes of that Act.

List of Subjects

7 CFR Part 996

Food grades and standards, Imports, Peanuts, Reporting and recordkeeping requirements

7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 999

Food grades and standards, Imports, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and under authority of 7 U.S.C. 601–674 and Public Law 107–171, 7 CFR Chapter IX is amended as set forth below:

1. A new Part 996 is added to read as follows:

PART 996—MINIMUM QUALITY AND HANDLING STANDARDS FOR DOMESTIC AND IMPORTED PEANUTS MARKETED IN THE UNITED STATES

Definitions

Sec.
996.1 Act and scope.
996.2 Conditionally released.
996.3 Crop year.
996.4 Handle.
996.5 Handler.
996.6 Importation.
996.7 Importer.
996.8 Incoming inspection.
996.9 Inshell peanuts.
996.10 Inspection Service.
996.11 Negative aflatoxin content.
996.12 Outgoing inspection.
996.13 Peanuts.
996.14 Person.
996.15 Positive lot identification.
996.16 Producer.
996.17 Quota year.
996.18 Secretary.
996.19 Shelled peanuts.
996.20 USDA.
996.21 USDA laboratory.
996.22 USDA-approved laboratory.

Quality and Handling Standards

996.30 Incoming quality standards.
996.31 Outgoing quality standards.
996.40 Handling standards.
996.50 Reconditioning failing quality peanuts.
996.60 Safeguard procedures for imported peanuts.

Reports and Records

996.71 Reports and recordkeeping.
996.72 Confidential information.
996.73 Verification of reports.
996.74 Compliance.
996.75 Effective time.

Authority: Sec. 1308, Pub.L. 107–171, 116 Stat. 178 (7 U.S.C. 7958).

Definitions

§ 996.1 Act and scope.

Act means Public Law 107–171, or the Farm Security and Rural Investment Act of 2002, enacted May 13, 2002. None of the definitions or provisions of this part shall apply to any other part or program (including, but not limited to, any program providing for payments or loans to peanut producers or other persons interested in peanuts or peanut quotas) unless explicitly adopted in such other part or program.

§ 996.2 Conditionally released.

Conditionally released means released from U.S. Customs Service custody for further handling, sampling, inspection, chemical analysis, and storage.

§ 996.3 Crop year.

Crop year means the 12-month period beginning with July 1 of any year and ending with June 30 of the following year, or other period established by USDA.

§ 996.4 Handle.

Handle means to engage in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of domestic or imported peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned-inshell or shelled peanuts or other activity causing peanuts to enter into human consumption channels of commerce: *Provided,* That this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s): *And provided further,* That this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

§ 996.5 Handler.

Handler means any person who handles peanuts, in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman or other intermediary between the producer and the person handling peanuts.

§ 996.6 Importation.

Importation means the arrival of foreign produced peanuts at a port-of-entry with the intent to enter the peanuts into channels of commerce of the United States.

§ 996.7 Importer.

Importer means a person who engages in the importation of foreign produced peanuts into the United States for the purposes of entering such peanuts into human consumption channels.

§ 996.8 Incoming inspection.

Incoming inspection means the sampling, inspection, and certification of farmers stock peanuts to determine segregation and grade quality.

§ 996.9 Inshell peanuts.

Inshell peanuts means peanuts, the kernels or edible portions of which are contained in the shell.

§ 996.10 Inspection Service.

Inspection Service means the Federal Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA or the Federal-State Inspection Service.

§ 996.11 Negative aflatoxin content.

Negative aflatoxin content means 15 parts per billion (ppb) or less for peanuts that have been certified as meeting edible quality grade standards.

§ 996.12 Outgoing inspection.

Outgoing inspection means the sampling, inspection, and certification of either: shelled peanuts which have been cleaned, sorted, sized and otherwise prepared for human consumption markets; or inshell peanuts which have been cleaned, sorted, and otherwise prepared for inshell human consumption markets.

§ 996.13 Peanuts.

Peanuts means the seeds of the legume *Arachis hypogaea* and includes both inshell and shelled peanuts produced in the United States or imported from foreign countries, other

than those in green form for consumption as boiled peanuts.

(a) *Farmers Stock.* ''Farmers stock peanuts'' means picked and threshed peanuts which have not been shelled, crushed, cleaned or otherwise changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the form in which customarily marketed by producers.

(b) *Segregation 1.* ''Segregation l peanuts'' means farmers stock peanuts with not more than 2.49 percent damaged kernels nor more than l.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible Aspergillus flavus.

(c) *Segregation 2.* ''Segregation 2 peanuts'' means farmers stock peanuts with more than 2.49 percent damaged kernels or more than l.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.*

(d) *Segregation 3.* ''Segregation 3 peanuts'' means farmers stock peanuts with visible *Aspergillus flavus.*

§ 996.14 Person.

Person means an individual, partnership, corporation, association, any other business unit or legal entity.

§ 996.15 Positive lot identification.

Positive lot identification is a means, approved by the Inspection Service, of relating the inspection certificate to the lot covered so that there is no doubt that the peanuts in the lot are the same peanuts described on the inspection certificate.

§ 996.16 Producer.

Producer means any person in the United States engaged in a proprietary capacity in the production of peanuts for market.

§ 996.17 Quota year.

Quota year means the 12-month period beginning January 1 and ending December 31 of the same year for peanuts produced in Mexico and the 12-month period beginning April 1 and ending March 31 of the following year for Argentina and other countries, or other such periods as may be prescribed by the U.S. Customs Service.

§ 996.18 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer, employee, or agent of the United States Department of Agriculture who is, or who may hereafter be authorized to act in the Secretary's stead.

§ 996.19 Shelled peanuts.

Shelled peanuts means the kernels or portions of kernels of peanuts after the shells are removed.

§ 996.20 USDA.

USDA means the United States Department of Agriculture, including any officer, employee, service, program, or branch of the Department of Agriculture, or any other person acting as the Secretary's agent or representative in connection with any provisions of this part.

§ 996.21 USDA laboratory.

USDA laboratory means laboratories of the Science and Technology Programs, Agricultural Marketing Service, USDA, which chemically analyze peanuts for aflatoxin content.

§ 996.22 USDA-approved laboratory.

USDA-approved laboratory means laboratories approved by the Science and Technology Programs, Agricultural Marketing Service, USDA, that chemically analyze peanuts for aflatoxin content.

Quality and Handling Standards

§ 996.30 Incoming quality standards.

(a) All farmers stock peanuts received or acquired by a handler shall be officially inspected by the Inspection Service, and certified as to segregation, moisture content, and foreign material.

(b) *Moisture.* No handler or importer shall receive or acquire farmers stock peanuts for subsequent disposition to human consumption outlets containing more than 10.49 percent moisture: *Provided,* That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling.

(c) *Foreign material.* No handler or importer shall receive or acquire farmers stock peanuts for subsequent disposition to human consumption outlets containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are held separately until milled, or moved over a *sand-screen* before storage, or shipped directly to a plant for prompt shelling. The term *sand-screen* means any type of farmers stock cleaner which removes sand and dirt.

(d) A handler may receive or acquire any peanuts from other persons for edible and non-edible use: *Provided,* That such peanuts intended for human consumption are inspected and certified pursuant to § 996.31 prior to such disposition. Non-edible uses may include, but are not limited to, seed, oilstock, animal feed, bird seed, or for export.

§ 996.31 Outgoing quality standards.

(a) *Shelled peanuts:* No handler or importer shall ship or otherwise dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, chemically analyzed by a USDA laboratory or USDA-approved laboratory and certified ''negative'' as to aflatoxin, and certified by the Inspection Service as meeting the following quality standards:

MINIMUM QUALITY STANDARDS: PEANUTS FOR HUMAN CONSUMPTION—WHOLE KERNELS AND SPLITS: MAXIMUM LIMITATIONS

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Excluding lots of ''splits''							
Runner	1.50	2.50	3.00%; 17/64 inch round screens.	3.00%; 16/64 × 3/4 inch slot screen.	4.00% Both screen	.20	9.00
Virginia (except No. 2).	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 15/64 × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia.	1.50	2.50	3.00%; 16/64, inch round screen.	3.00%; 15/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00

MINIMUM QUALITY STANDARDS: PEANUTS FOR HUMAN CONSUMPTION—WHOLE KERNELS AND SPLITS: MAXIMUM LIMITATIONS—Continued

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
No. 2 Virginia	1.50	3.00	6.00%; 17/64 inch round screen.	6.00%; 15/64 × 1 inch slot screen.	6.00% Both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 17/64 inch roundscreen.	3.00%; 16/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00
Virginia with splits (not more than 15% sound splits).	2.50	1.50	3.00%; 17/64 inch round screen.	3.00%; 15/64 × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 16/64 inch round screen.	2.00%; 15/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00
Lots of ''splits''							
Runner (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64 × 3/4 slot screen.	4.00% Both screens.	.20	9.00
Virginia (not less than 90% splits).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64 x 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 16/64 inch round screen.	3.00%; 13/64 × 3/4 inch slot screen.	4.00% Both Screens.	.20	9.00

(b) *Cleaned-inshell peanuts:* No handler or importer shall ship or otherwise dispose of cleaned-inshell peanuts for human consumption unless such peanuts are Positive lot identified and are determined by the Inspection Service to contain:

(1) Not more than l.00 percent kernels with mold unless a sample of such peanuts, drawn by an inspector of the Inspection Service, is analyzed chemically by a USDA laboratory or a USDA-approved laboratory and certified ''negative'' as to aflatoxin;

(2) Not more than 2.00 percent peanuts with damaged kernels;

(3) Not more than 10.00 percent moisture; or

(4) Not more than 0.50 percent foreign material.

§ 996.40 Handling standards.

(a) *Identification:* Each lot of shelled or cleaned inshell peanuts intended for human consumption shall be identified by positive lot identification prior to being shipped or otherwise disposed of. Positive lot identification (PLI) methods are tailored to the size and containerization of the lot, by warehouse storage or space requirements, or, by necessary further movement of the lot prior to certification. Positive lot identification is established by the Inspection Service and includes the following methods of identification. For domestic lots and repackaged import lots, PLI includes PLI stickers, tags or seals applied to each individual package or container in such a manner that is acceptable to the Inspection Service and maintains the identity of the lot. For imported lots, PLI tape may be used to wrap bags or boxes on pallets, PLI stickers may be used to cover the shrink-wrap overlap, doors may be sealed to isolate the lot, bags or boxes may be stenciled with a lot number, or any other means that is acceptable to the Inspection Service. The crop year or quota year shown on the positive lot identification tags shall be the year in which the peanuts in the lot were produced domestically or imported into the U.S., as appropriate. All lots of shelled and cleaned-inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except those lots which are reconstituted and/or commingled at the request of the buyer: *Provided,* That the reconstituted or commingled lots were previously positive lot identified and certified as meeting the outgoing standards of § 996.31.

(b) *Sampling and testing shelled peanuts for outgoing Inspection:* Prior to shipment, the following sampling and inspection procedures shall be conducted on each lot of shelled peanuts intended for human consumption. The lot size of shelled or cleaned-inshell peanuts presented for outgoing inspection in bags or bulk shall not exceed 200,000 pounds.

(1) Each handler or importer shall cause appropriate samples, based on a sampling plan approved by the Inspection Service, of each lot of shelled peanuts intended for human consumption to be drawn by the Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin chemical analysis. The three 48-pound samples shall be designated by the Inspection Service as ''Sample 1,'' ''Sample 2,'' and ''Sample 3'' and each sample shall be placed in a suitable container and positive lot identified by means acceptable to the Inspection Service. Sample 1 may be prepared for immediate testing or Sample 1, Sample 2, and Sample 3 may be returned to the handler or importer for testing at a later date. Imported peanuts shall be labeled ''Sample 1IMP,'' ''Sample 2IMP,'' and ''Sample 3IMP'' and handled accordingly.

(2) Before shipment of a lot of shelled peanuts to a buyer, the handler or importer shall cause Sample 1 to be ground by the Inspection Service, a

USDA laboratory or a USDA-approved laboratory, in a ''subsampling mill.'' The resultant ground subsample from Sample 1 shall be of a size specified by the Inspection Service and shall be designated as ''Subsample 1–AB'' and at the handler's, importer's or buyer's option, a second subsample may also be extracted from Sample 1. It shall be designated as ''Subsample 1–CD.'' Subsample 1–CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a USDA laboratory or USDA-approved laboratory that can provide analyses results on such samples in 36 hours. The cost of sampling and testing Subsample 1–CD shall be for the account of the applicant. Subsample 1–AB shall be analyzed only in a USDA laboratory or USDA-approved laboratory. Both Subsamples 1–AB and 1–CD shall be accompanied by a notice of sampling or grade certificate, signed by the inspector, containing, at least, identifying information as to the handler or importer, the buyer, if known, and the positive lot identification of the shelled peanuts.

(3) The samples designated as Sample 2 and Sample 3 shall be held as aflatoxin check-samples by the Inspection Service or the handler or importer and shall not be included in the shipment to the buyer until the analyses results from Sample 1 are known.

(4) Upon call from the laboratory, the handler or importer shall cause Sample 2 to be ground by the Inspection Service, USDA or USDA-approved laboratory in a ''subsampling mill.'' The resultant ground subsample from Sample 2 shall be of a size specified by the Inspection Service and it shall be designated as ''Subsample 2–AB.'' Upon call from the laboratory, the handler shall cause Sample 3 to be ground by the Inspection Service in a ''subsampling mill.'' The resultant ground subsample from Sample 3 shall be of a size specified by Inspection Service and shall be designated as ''Subsample 3–AB.'' ''Subsamples 2–AB and 3–AB'' shall be analyzed only in a USDA laboratory or a USDA-approved laboratory and each shall be accompanied by a notice of sampling. The results of each assay shall be reported by the laboratory to the handler and to USDA.

(5) Handlers and importers may make arrangements for required inspection and certification by contacting the Inspection Service office closest to where the peanuts will be made available for sampling. For questions regarding inspection services, a list of Federal or Federal-State Inspection Service offices, or for further assistance, handlers and importers may contact: Fresh Products Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Room 2049–S, (STOP 0240), Washington, DC, 20250–0240; Telephone: (202) 720–5870; Fax: (202) 720–0393.

(6) Handlers and importers may make arrangements for required chemical analysis for aflatoxin content at the nearest USDA or USDA-approved laboratory. For further information concerning chemical analysis and a list of laboratories authorized to conduct such analysis contact: Dr. Robert Epstein, Deputy Administrator, Science and Technology Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0270, Washington, DC 20250–0270; Telephone (202) 720–5231; Fax (202) 720–6496.

§ 996.50 Reconditioning failing quality peanuts.

(a) Lots of peanuts which have not been certified as meeting the requirements for disposition to human consumption outlets may be disposed for non-human consumption uses: *Provided,* That each such lots are positive lot identified using red tags, or other methods acceptable to the Inspection Service, and certified as to aflatoxin content (actual numerical count). However, on the shipping papers covering the disposition of each such lot, the handler or importer shall cause the following statement to be shown: ''The peanuts covered by this bill of lading (or invoice, etc.) are not to be used for human consumption.''

(b) Sheller oil stock residuals shall be positive lot identified using red tags, or other methods acceptable to the Inspection Service, and may be disposed of domestically or to the export market in bulk or bags or other suitable containers. Disposition to crushing may be to approved crushers.

(1) If such peanuts are not tested and certified as to aflatoxin content, pursuant to paragraph (a) of this section, the handler or importer shall cause the following statement to be shown on the shipping papers: ''The peanuts covered by this bill of lading (or invoice, *etc.*) are limited to crushing only and may contain aflatoxin.''

(2) If the peanuts are certified as 301 ppb or more aflatoxin content, disposition shall be limited to crushing or export.

(c) *Remilling.* Handlers and importers may remill, or cause to have remilled, lots of shelled or cleaned-inshell peanuts failing to meet the applicable outgoing quality standards in the table in § 996.31(a). If, after remilling, such peanut lot meets the applicable quality standards in § 996.31, the lot may be moved for human consumption under positive lot identification procedures and accompanied by applicable grade and aflatoxin certificates.

(d) *Blanching.* Handlers and importers may blanch, or cause to have blanched, shelled peanuts failing to meet the outgoing quality standards specified in the table in § 996.31(a). If, after blanching, such peanut lot meets the quality standards in § 996.31(a), except fall through standards as specified below, the lot may be moved for human consumption under positive lot identification procedures and accompanied by applicable grade and aflatoxin certificates. Peanut lots certified as meeting fall through standards as specified in § 996.31(a) prior to blanching shall be exempt from fall through standards after blanching.

(e) *Roasting.* Handlers or importers may roast or cause to be roasted shelled peanuts which meet the grade standards the table in § 996.31(a) but are positive to aflatoxin. Lots of peanuts moved under this provision must be accompanied by a valid grade certificate showing that the lot met grade requirements of § 996.31(a) prior to roasting and a valid aflatoxin certificate. If, after roasting, such peanut lot is certified negative as to aflatoxin and the positive lot identity has been maintained during the roasting process, the lot may be moved for human consumption.

(f) Lots of shelled peanuts moved for remilling, blanching or roasting shall be positive lot identified and accompanied by valid grade inspection certificate, *Except* That, a handler's shelled peanuts may be moved without PLI and grade inspection to the handler's blanching facility that blanches only the handler's peanuts. The title of such peanuts shall be retained by the handler or importer until the peanuts have been certified by the Inspection Service as meeting the outgoing quality standards specified in the table in § 996.31(a). Remilling, blanching, and roasting under the provisions of this paragraph shall be performed only by those remillers and blanchers approved by USDA. Such approved entities must agree to comply with the handling standards in this part and to report dispositions of all failing peanuts and residual peanuts to USDA.

(g) Residual peanuts resulting from remilling, blanching, or roasting of peanuts shall be red tagged, or identified by other means acceptable to the Inspection Service, and returned directly to the handler for further disposition or, in the alternative, such residual peanuts shall be positive lot

identified by the Inspection Service and shall be disposed of to handlers who are crushers, or to approved crushers. Handlers who are crushers and crushers approved by USDA must agree to comply with the terms and conditions of this part.

(h) *Re-inspection.* Whenever USDA has reason to believe that domestic or imported peanuts may have been damaged or deteriorated while in storage, USDA may reject the then effective inspection certificate and may require the owner of the peanuts to have a re-inspection to establish whether or not such peanuts may be disposed of for human consumption.

(i) The cost of transportation, sampling, inspection, certification, chemical analysis, and identification, as well as remilling and blanching, and further inspection of remilled and blanched lots, and disposition of failing peanuts, shall be borne by the applicant. Whenever peanuts are presented for inspection, the handler or importer shall furnish any labor and pay any costs incurred in moving, opening containers, and shipping samples as may be necessary for proper sampling and inspection. The Inspection Service shall bill the applicant or other responsible entity separately for applicable fees covering sampling and inspection, delivering aflatoxin samples to laboratories, positive lot identification measures, and other certifications as may be necessary to certify edible quality or non-edible disposition. The USDA and USDA-approved laboratories shall bill the applicant or other responsible entity separately for applicable fees for aflatoxin assays.

§ 996.60 Safeguard procedures for imported peanuts.

(a) Prior to, or upon, arrival of a foreign-produced peanut lot at a port-of-entry, the importer, or customs broker acting on behalf of the importer, shall mail or send by facsimile transmission (fax) a copy of the Customs Service entry documentation for the peanut lot or lots to the Inspection Service office that will perform sampling of the peanut shipment. More than one lot may be entered on one entry document. The documentation shall include: the Customs Service entry number; the container number(s) or other identification of the lot(s); the volume of the peanuts in each lot being entered, the inland shipment destination where the lot will be made available for inspection; and a contact name or telephone number at the destination. The inspection office shall sign, stamp, and return the entry document to the importer. The importer shall cause a copy of the relevant entry documentation to accompany each peanut lot and be presented to the Inspection Service at the time of inspection.

(b) Importers shall report to AMS the entry number, container number, and inspection certificate of those peanuts which are sampled and inspected but which are subsequently exported as excess of the peanut import quota. Peanuts for which an import application is filed with the Customs Service, and which are not sampled and inspected, but which are subsequently exported as excess of quota, shall not be reported to USDA.

(c) *Early arrival and storage.* Peanut lots sampled and inspected upon arrival in the United States, but placed in storage for more than one month prior to beginning of the quota year for which the peanuts will be entered, must be reported to USDA at the time of inspection. The importer shall file copies of the Customs Service documentation showing the volume of peanuts placed in storage and location, including any identifying number of the storage warehouse. Such peanuts should be stored in clean, dry warehouses and under cold storage conditions consistent with industry standards. The Inspection Service may require re-inspection of the lot at the time the lot is declared for entry with the Customs Service.

(d) *Additional standards.* (1) Nothing contained in this section shall preclude any importer from milling or reconditioning, prior to importation, any shipment of peanuts for the purpose of making such lot eligible for importation into the United States. However, all peanuts entered for human consumption use must be certified as meeting the quality standards specified in § 996.31(a) prior to such disposition. Failure to fully comply with quality and handling standards as required under this section, will result enforcement action by USDA.

(2) Imported peanut lots sampled and inspected at the port-of-entry, or at other locations, shall meet the quality standards of this part in effect on the date of inspection.

(3) A foreign-produced peanut lot entered for consumption or for warehouse may be transferred or sold to another person: *Provided,* That the original importer shall be the importer of record unless the new owner applies for bond and files Customs Service documents pursuant to 19 CFR 141.113 and 141.20: *And provided further,* That such peanuts must be certified and reported to USDA pursuant to § 996.71 of this part.

(4) The provisions of this section do not supersede any restrictions or prohibitions on peanuts under the Federal Plant Quarantine Act of 1912, the Federal Food, Drug and Cosmetic Act, any other applicable laws, or regulations of other Federal agencies, including import regulations and procedures of the Customs Service.

Reports and Records

§ 996.71 Reports and recordkeeping.

(a) Each handler and importer shall report acquisitions of all farmers stock peanuts, by Segregation, on a form ''Monthly Report of Acquisitions'' and such other reports or information as may be necessary to enable USDA to carry out the provisions of this part.

(b) Each handler and importer shall maintain records of all receipts and acquisitions of farmers stock peanuts, and all grade and aflatoxin certificates showing the results of milling, remilling, blanching and roasting of peanuts for human consumption and the records of the disposition of peanuts not certified as meeting Outgoing quality standards, specified in § 996.31(a) of this part. Such records shall be maintained for at least 2 years after the crop year of their applicability. Such recordkeeping shall be sufficient to document and substantiate the handler or importer's compliance with this part.

(c) USDA shall maintain copies of grade and aflatoxin certificates on all peanut lots inspected and chemically tested. USDA and USDA-approved laboratories shall file copies of all aflatoxin certificates completed by such laboratories with the DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, Suite 2A04, Unit 155, Riverdale, Maryland 20737; Telephone (301) 734–5243, Fax: (301) 734–5275, or other address as determined by USDA.

§ 996.72 Confidential information.

All reports and records furnished or submitted by handlers and importers to USDA which include data or information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular handlers or their customers shall be received by, and at all times kept in the custody and control of one or more employees of USDA, and, except as provided in § 996.74 or otherwise provided by law, such information shall not be disclosed to any person outside USDA.

§ 996.73 Verification of reports.

For the purpose of checking and verifying reports filed by handlers and importers and the operation of handlers and importers under the provisions of this Part, the officers, employees or duly authorized agents of USDA shall have access to any premises where peanuts may be held and at any time during reasonable business hours and shall be permitted to inspect any peanuts so held by such handler or importer and any and all records of such handler with respect to the acquisition, holding, or disposition of all peanuts which may be held or which may have been disposed by the handler.

§ 996.74 Compliance.

(a) A handler or importer shall be subject to withdrawal of inspection services, for a period of time to be determined by USDA, if the handler or importer:

(1) Acquires farmers stock peanuts without official incoming inspection, pursuant to § 996.30;

(2) Fails to obtain outgoing inspection on shelled or cleaned-inshell peanuts, pursuant to § 996.31, and ships such peanuts for human consumption use;

(3) Ships failing quality peanuts, pursuant to § 996.31, for human consumption use;

(4) Commingles failing quality peanuts with certified edible quality peanuts and ships the commingled lot for human consumption use;

(5) Fails to maintain positive lot identification, pursuant to § 996.40(a), on peanut lots certified for human consumption use;

(6) Fails to maintain and provide access to records, pursuant to § 996.71, on the reconditioning or disposition of peanuts acquired by such handler or importer; or

(7) Otherwise violates any provision of section 1308 of the Act or any provision of this part.

(b) Any peanut lot which fails to meet the Outgoing quality standards specified in § 996.31, and is not reconditioned to meet such standards, or is not disposed to non-human consumption outlets as specified in § 996.50, shall be reported by USDA to the Food and Drug Administration and listed on an Agricultural Marketing Service Web site.

§ 996.75 Effective time.

The provisions of this part, as well as any amendments, shall apply to the remainder of the 2002 crop year peanuts and subsequent crop year peanuts, to 2001 crop year peanuts not yet inspected, and to 2001 crop year failing peanuts that have not met disposition standards, and shall continue in force and effect until modified, suspended, or terminated. Indemnification payments for the 2001 crop peanuts will continue through December 31, 2002, under the terms and conditions of 7 CFR part 998.

PART 997—[REMOVED]

2. Part 997 is removed.

PART 998—[REMOVED]

3. Part 998 is removed, effective January 1, 2003.

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

4. The authority citation for part 999 continues to read as follows:

Authority: 7 U.S.C. 601–674; 7 U.S.C. 1445c–3, and 7 U.S.C. 7271.

§999.600 [Removed]

5. Section 999.600 is removed.

Dated: September 3, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–22700 Filed 9–6–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–48–AD; Amendment 39–12867; AD 2002–17–02]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–17–02 applicable to Pratt & Whitney JT8D series turbofan engines that was published in the **Federal Register** on August 28, 2002 (67 FR 55108). The first sentence in the amendatory language that states ''2. Section 39.13 is amended by removing Amendment 39–11940 (65 FR 65731, November 2, 2000) and by adding a new airworthiness directive to read as follows:'' is incorrect. This document corrects that sentence. In all other respects, the original document remains the same.

EFFECTIVE DATE: August 28, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive FR Doc. 02–21832 applicable to Pratt & Whitney JT8D series turbofan engines, was published in the **Federal Register** on August 28, 2002 (67 FR 55108). The following correction is needed:

§ 39.13 [Corrected]

On page 55110, in the second column, the first sentence of the amendatory language is corrected to read:

''2. Section 39.13 is amended by removing Amendment 39–11940 (65 FR 65731, November 2, 2000) and by adding a new airworthiness directive, Amendment 39–12867, to read as follows:''

Issued in Burlington, MA, on August 30, 2002.

Francis Favara,

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

[FR Doc. 02–22759 Filed 9–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–08–AD; Amendment 39–12865; AD 2002–16–26]

RIN 2120–AA64

Airworthiness Directives; Bombardier-Rotax GmbH Type 912 F and 914 F Series Reciprocating Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments, correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–16–26, applicable to Bombardier-Rotax GmbH type 912 F and 914 F series reciprocating engines. AD 2002–16–26 was published in the **Federal Register** on August 15, 2002 (67 FR 53296). The effective date in the **DATES:** section is incorrect. This document corrects that date. In all other respects, the original document remains the same.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer,

Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule; request for comments airworthiness directive FR DOC. 02–20679, applicable to Bombardier-Rotax GmbH type 912 F and 914 F series reciprocating engines, was published in the **Federal Register** on August 15, 2002 (67 FR 53296). The following correction is needed:

On page 53296, in the second column, in the **DATES:** section, ''Effective September 16, 2002'' is corrected to read ''Effective August 30, 2002''.

Issued in Burlington, MA, on August 30, 2002.

Francis A. Favara,

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

[FR Doc. 02–22760 Filed 9–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–64–AD; Amendment 39–12876; AD 97–09–02R1]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD) that is applicable to CFM International (CFMI) CFM56–5C series turbofan engines. This action establishes new life limits for certain low pressure turbine rotor (LPTR) stage 3 disks and all high pressure turbine rotor (HPTR) disks listed in the existing AD. This amendment is prompted by the results of an extensive life management program performed by the manufacturer. The actions specified in this AD are intended to prevent low-cycle-fatigue (LCF) failure of certain HPTR front shafts, HPTR front air seals, HPTR disks, booster spools, and LPTR stage 3 disks, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective September 24, 2002.

Comments for inclusion in the Rules Docket must be received on or before November 8, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–ANE–64–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On April 22, 1997, the FAA issued AD 97–09–02, Amendment 39–9998 (62 FR 23642), applicable to CFMI CFM56–5C series turbofan engines, to reduce the LCF retirement lives of certain HPTR front shafts, HPTR front air seals, booster spools, HPTR disks, and LPTR stage 3 disks. That action was prompted by results of a refined life analysis performed by the manufacturer which revealed minimum calculated LCF lives lower than published LCF retirement lives. This condition could result in LCF failure of certain HPTR front shafts, HPTR front air seals, HPTR disks, booster spools, and LPTR stage 3 disks, which could result in an uncontained engine failure and damage to the airplane. Since AD 97–09–02 was issued, the manufacturer conducted an extensive life management program for the LPTR stage 3 disks installed in CFM56–5C2/G and –5C3/G engines and HPTR disks installed in all CFM56–5C series engines. This consisted of a mission cycle based on field data, an updated 2D heat transfer and stress analysis, and a 3D finite element analysis. The results indicated higher LCF retirement lives for certain LPTR stage 3 disks and all HPTR disks than the lives published in AD 97–09–02. Therefore, this revision establishes new life limits for LPTR stage 3 disks part numbers (P/N's) 337–001–602–0 and 337–001–605–0 installed in CFM56–5C2/G and –5C3/G engines and HPTR disk P/N 1498M43P04 installed in all CFM56–5C series engines. Except for CFM56–5C4 engines, the LCF retirement lives for LPTR stage 3 disks part numbers (P/N's) 337–001–602–0 and 337–001–605–0 are now extended to 20,000 cycles-since-new (CSN) in Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8. The LCF retirement lives for HPTR disk part number 1498M43P04 are now extended to 7,800 cycles-since-new (CSN) in Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8. The cyclic lives of these LPTR stage 3 disks installed in CFM56–5C4 engines, and the cyclic lives of HPTR front shafts P/N's 1498M40P03, 1498M40P05, and 1498M40P06; HPTR front air seals, P/N's 1523M34P02 and 1523M34P03; and booster spools, P/N 337–005–210–0, remain unchanged.

FAA's Determination of an Unsafe Condition and Required Actions

Although these affected engine models are not used on any airplanes that are registered in the United States, the possibility exists these engine models could be used on airplanes that are registered in the United States in the future. This AD establishes new life limits for certain LPTR stage 3 disks and all HPTR disks listed in the existing AD.

Immediate Adoption of This AD

Since there are currently no domestic operators of CFM56–5C series turbofan engines, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to

modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–ANE–64–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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 the 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 by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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 39–9998 (62 FR 23642, May 1, 1997), and by adding a new airworthiness directive, Amendment 39–12876, to read as follows:

97–09–02R1 CFM International: Amendment 39–12876. Docket No. 95–ANE–64–AD. Revises AD 97–09–02, Amendment 39–9998.

Applicability

This airworthiness directive (AD) is applicable to CFM International (CFMI) CFM56–5C2/G, –5C3/G, and –5C4 series turbofan engines. These engines are installed on, but not limited to Airbus Industrie A340 series airplanes.

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

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent a low-cycle-fatigue (LCF) failure of the high pressure turbine rotor (HPTR) front shaft, HPTR front air seal, HPTR disk, booster spool, and low pressure turbine rotor (LPTR) stage 3 disk, which could result in an uncontained engine failure and damage to the airplane, do the following:

(a) Remove from service HPTR front shafts, part numbers (P/N's) 1498M40P03, 1498M40P05, and 1498M40P06, before accumulating 8,400 cycles-since-new (CSN), and replace with a serviceable part.

(b) Remove from service HPTR front air seals, P/N's 1523M34P02 and 1523M34P03, before accumulating 4,000 CSN, and replace with a serviceable part.

(c) Remove from service HPTR disks, P/N 1498M43P04, before accumulating 7,800 CSN, and replace with a serviceable part.

(d) Remove from service booster spools, P/N 337–005–210–0, before accumulating 13,000 CSN, and replace with a serviceable part.

(e) For CFM56–5C4 engines only, remove from service LPTR stage 3 disks, P/N's 337–001–602–0 and 337–001–605–0, before accumulating 7,000 CSN, and replace with a serviceable part.

(f) For CFM56–5C2/G and –5C3/G engines only, remove from service LPTR stage 3 disks P/N's 337–001–602–0 and 337–001–605–0, before accumulating 20,000 CSN, and replace with a serviceable part.

(g) This action establishes the new LCF retirement lives stated in paragraphs (a) through (f) of this AD, which are published in Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8.

(h) For the purpose of this AD, a serviceable part is one that has not exceeded its respective new life limit as set out in this AD.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). The request must be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

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

Effective Date

(k) This amendment becomes effective on September 24, 2002.

Issued in Burlington, Massachusetts, on August 29, 2002.

Francis A. Favara,

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

[FR Doc. 02–22761 Filed 9–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–021]

Drawbridge Operating Regulations; Ouachita River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad vertical lift drawbridge across the Ouachita River, mile 114.3, near Riverton, Caldwell Parish, Louisiana. This deviation allows the draw to remain closed to navigation from 8 a.m. on Monday, September 23, 2002 until 5 p.m. on Thursday, September 26, 2002. The deviation is necessary to allow for the installation of new diesel-powered generators and

some modifications of the gears in the driveline.

DATES: This deviation is effective from 8 a.m. on September 23, 2002 until 5 p.m. on September 26, 2002.

ADDRESSES: Materials referred to in this deviation are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obc), 501 Magazine Street, New Orleans, Louisiana, 70130–3396. Appointment hours are between 7 a.m. and 3 p.m. Monday through Friday except federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Johnson, Bridge Administration Branch, at the address given above or telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad vertical lift drawbridge across the Ouachita River, mile 114.3, near Riverton, Caldwell Parish, Louisiana, has a vertical clearance of 7 feet above mean high water, elevation 71.0 feet NGVD, in the closed-to-navigation position and 57 feet above mean high water in the open-to-navigation position. Navigation on the waterway consists of tugs with tows and occasional recreational craft. Presently, the draw opens on signal for the passage of vessels.

The Union Pacific Railroad requested a temporary deviation for the operation of the drawbridge to accommodate the replacement of diesel-powered generators and to modify the gears in the driveline. This work is essential for continued operation of the draw span of the bridge.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 29, 2002.

Roy J. Casto,

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

[FR Doc. 02–22828 Filed 9–6–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME056–1–7005a; FRL–7269–6]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Reasonably Available Control Technology for Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This SIP revision establishes and requires Reasonably Available Control Technology (RACT) at stationary sources of nitrogen oxides (NO_X) in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Lincoln, and Knox counties. The intended effect of this action is to approve regulatory provisions and source specific air emissions licenses which require major stationary sources of NO_X to reduce their emissions in accordance with requirements of the Clean Air Act.

DATES: This direct final rule is effective on November 8, 2002 without further notice, unless EPA receives adverse comment by October 9, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address your comments to Mr. David Conroy, Unit Manager, Air Quality Planning Unit, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

FOR FURTHER INFORMATION CONTACT: Dan Brown, Environmental Engineer, Air Quality Planning Unit (CAQ), U.S. EPA, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023; (617) 918–1532; *brown.dan@epa.gov.*

SUPPLEMENTARY INFORMATION: This document is organized according to the following Table of Contents.

I. What Action Is EPA Taking Today?
II. Why Is the EPA Taking This Action?
III. What Did Maine Submit as Part of Its SIP?
A. Chapter 138
B. Miscellaneous NO_X RACT and the Alternative NO_X RACT for Pioneer Plastics Corporation in Auburn, Maine
C. Miscellaneous NO_X RACT for Dragon Products Company, Inc., in Thomaston, Maine
D. Alternative NO_X RACT for Tree Free Fiber Company, LLC, (formerly Statler Tissue) in Augusta, Maine
E. Alternative NO_X RACT for Mid-Maine Waste Action Corporation's Facility in Auburn, Maine
F. Alternative NO_X RACT for Maine Energy Recovery Company in Biddeford, Maine
G. Miscellaneous and Alternative NO_X RACT for Portsmouth Naval Shipyard in Kittery, Maine
H. Capacity Limitations and the Testing, Monitoring, Recordkeeping, and Reporting Requirements for S.D. Warren Company in Westbrook, Maine
I. Testing, Monitoring, Recordkeeping and Reporting Requirements for FMC Corporation—Food Ingredients Division in Rockland, Maine
J. Alternative NO_X RACT and Testing, Monitoring, Recordkeeping and Reporting Requirements for the Chinet Company in Waterville, Maine
K. Testing, Monitoring, Recordkeeping and Reporting Requirements for Scott Paper Company in Winslow, Maine
L. Testing, Monitoring, Recordkeeping and Reporting Requirements for FPL Energy's (formerly Central Maine Power) W.F. Wyman Station in Yarmouth, Maine
IV. What Is the Relationship Between the Chapter 138 NO_X RACT Rule and the Chapter 117 Source Surveillance Rule?
V. What Are the Administrative Requirements?

I. What Action Is EPA Taking Today?

The EPA is approving Chapter 138 as well as the air emissions licenses for Pioneer Plastics Corporation in Auburn; Dragon Products, Incorporated, in Thomaston; Tree Free Fiber Company, LLC, (formerly Statler Tissue) in Augusta; Mid-Maine Waste Action Corporation in Auburn; Maine Energy Recovery Company in Biddeford; Portsmouth Naval Shipyard in Kittery; S.D. Warren Company in Westbrook; FMC Corporation—Food Ingredients Division in Rockland; the Chinet Company in Waterville; Scott Paper Company in Winslow; and FPL Energy's (formerly Central Maine Power) W.F. Wyman Station in Yarmouth, as collectively meeting the CAA requirements for NO_X RACT in the moderate nonattainment areas of Maine. This approval action will incorporate these documents into the Maine SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective November 8, 2002 without further notice unless the Agency receives relevant adverse comments by October 9, 2002.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 8, 2002 and no further action will be taken on the proposed rule.

II. Why Is the EPA Taking This Action?

The EPA is approving Maine's SIP submittals because they comply with EPA's NO_X RACT related policies, including the ''Nitrogen Oxides Supplement to the General Preamble'' (57 FR 55620) and additional EPA guidance memoranda, such as those included in the ''NO_X Policy Document for the Clean Air Act of 1990,'' (EPA–452/R–96–005, March 1996). Review of the NO_X RACT SIP submittals, including Chapter 138, the miscellaneous NO_X RACT determinations, the alternative NO_X RACT determinations, as well as the licenses containing testing, monitoring, recordkeeping, and reporting requirements, indicate that Maine has sufficiently defined the NO_X RACT requirements for major stationary sources of NO_X located in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Lincoln, and Knox counties in Maine. These seven counties make up the three areas of Maine classified as moderate nonattainment for the one-hour national ambient air quality standards for ozone.

The Clean Air Act (CAA) requires that States develop Reasonably Available Control Technology (RACT) regulations for all major stationary sources of NO_X in areas classified as ''moderate,'' ''serious,'' ''severe,'' and ''extreme'' ozone nonattainment areas, and in all areas of the Ozone Transport Region (OTR). This requirement is established by sections 182(b)(2), 182(f), and 184(b) of the CAA as described below.

Section 182(b)(2) of the CAA requires States to require implementation of RACT with respect to all major sources of volatile organic compounds (VOCs) in moderate ozone nonattainment areas or in areas with higher than moderate nonattainment classifications as expeditiously as practicable but no later than May 31, 1995. Furthermore, section 182(f) states that, ''the plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 302 and subsections (c), (d), and (e) of the section) of oxides of nitrogen.'' Additionally, section 184(b)(2) requires major stationary sources in the OTR, which includes all of Maine, to meet the requirements applicable to major sources as if the area is classified as a moderate nonattainment area (unless already classified at a higher nonattainment level) as well. These sections of the CAA, taken together, establish the requirements for Maine to submit a NO_X RACT regulation which covers major sources statewide.

Section 302 of the CAA generally defines ''major stationary source'' as a facility or source of air pollution which has the potential to emit 100 tons per year or more of air pollution. This definition applies unless another provision of the CAA explicitly defines major source differently. For NO_X, in marginal and moderate areas, and attainment areas in the OTR, a major source is one with the potential to emit 100 tons per year or more. Therefore, for purposes of applicability to NO_X RACT in Maine, a major stationary source of NO_X is a facility with the potential to emit 100 tons or more per year of NO_X.

At the time of adoption of Chapter 138, Maine had four areas which were designated as ozone nonattainment: the Hancock and Waldo area, which was classified as marginal nonattainment; the Knox and Lincoln county area, which was classified as moderate nonattainment; the Lewiston-Auburn area, which was classified as moderate nonattainment; and, the Portland area, which was classified as moderate nonattainment (see 40 CFR Part 81 for the list of affected towns). On February 28, 1997, the EPA approved a request by the State of Maine to redesignate the Hancock and Waldo area from marginal nonattainment to attainment (62 FR 9081).

On December 26, 1995, EPA approved Maine's Chapter 138 NO_X RACT rule as it applied to the Hancock and Waldo area as well as the other non-moderate counties in Maine (*i.e.*, Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, and Aroostook) that collectively make up the Northern Maine Area (see 60 FR 66748). The December 26, 1995, approval also included a NO_X waiver under section 182(f) of the Clean Air Act. The waiver was limited in that it did not require anything above the Chapter 138 NO_X RACT rule for the nine counties making up the northern Maine area at that time. Section 182(f) allows the Administrator to issue such a waiver upon making a determination that air quality benefits would be greater in the absence of NO_X reductions from sources in a RACT subject area.

In today's action we are approving Chapter 138 as it applies in the three current moderate nonattainment areas: Knox and Lincoln area, Lewiston-Auburn area (Androscoggin and Kenebeck Counties) and Portland area (York, Cumberland and Sagadahoc Counties). With this action Chapter 138 will be approved statewide and, therefore, will meet requirements that Maine submit a NO_X RACT regulation which covers major sources statewide.

III. What Did Maine Submit as Part of Its SIP?

On August 5, 1994, the State of Maine formally submitted Chapter 138 as a SIP revision. On July 1, 1997, Maine submitted case-specific NO_X RACT determinations as single source SIP revisions for the following facilities: Pioneer Plastics Corporation in Auburn (Pioneer); Mid-Maine Waste Action Corporation in Auburn (MMWAC); Tree Free Fiber Company, LLC, (formerly Statler Tissue) in Augusta (TF/ST); Dragon Products, Incorporated in Thomaston (Dragon); and Maine Energy Recovery Company in Biddeford (MERC). On August 14, 1998, Maine submitted case-specific NO_X RACT determinations as single source SIP revisions for the following facilities: FPL Energy's (formerly Central Maine Power) W.F. Wyman Station in Yarmouth (FPL); FMC Corporation—Food Ingredients Division's Rockland facility (FMC); Portsmouth Naval Shipyard (PSNY) in Kittery; the Chinet Company's Waterville facility (Chinet); Scott Paper Company's Winslow facility (Scott); and S.D. Warren Company's Westbrook facility (S.D. Warren). On October 9, 1997, Maine submitted an amendment to the case specific NO_X RACT determination for PSNY in Kittery.

The following is a description of the Maine SIP revisions being approved in this action, including regulations and

case-specific NO_X RACT determinations. For a more detailed discussion of Maine's submittals and EPA's proposed action, the reader should refer to, ''Technical Support Document—Maine NO_X RACT in the Moderate Nonattainment Areas'' (TSD), dated December 14, 1998. Copies of the TSD are found in the rulemaking docket (see **ADDRESSES**).

A. Chapter 138

Chapter 138 of Maine's regulations contains five general sections. Section 1 deals with applicability and exemptions of facilities and equipment. In general, Chapter 138 applies to any existing stationary source that has potential to emit quantities of NO_X emissions greater than or equal to 100 tons per year statewide. Subsections 1(A)(1) and (2) of the regulation further define the applicability of various control technology requirements for sources subject to Chapter 138 depending on the ozone nonattainment classification of their location.

Subsection 1(A)(1) states that, ''[B]y May 31, 1995, any source located in any area designated by the Federal Government under 40 Code of Federal regulations, Part 81 as a moderate nonattainment area for ozone shall comply with the standards specified in Section 3.'' Prior to May 31, 1995, EPA designated the following counties in Maine as moderate nonattainment: York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Lincoln, and Knox counties.

Section 1(A)(2) states that, ''[B]y May 31, 1995, any source located in an area in the state that is not designated by the Federal Government under 40 Code of Federal Regulations, Part 81 as a moderate nonattainment area for ozone shall comply with the standards specified in Sections 3(A), 3(C)–3(O), and Section 4.'' By May 31, 1995, the areas that were not designated as moderate areas in Maine included: Aroostook, Penobscot, Piscataquis, Washington, Somerset, Franklin, and Oxford counties, classified as attainment areas, as well as Hancock and Waldo counties, classified as marginal non-attainment areas. The reader should note that on December 26, 1995, EPA published a document in the **Federal Register** (60 FR 66748) approving Chapter 138, as it applies to the non-moderate areas of the State, into the Maine SIP.

Section 1(B) of the regulation contains provisions to exempt equipment and facilities where the NO_X emitting equipment has the potential to emit less than 10 tons per year of NO_X or where emergency standby engines operate for less than 500 hours during any consecutive 12 month period and the ignition timing is set and maintained at four degrees retarded to standard timing.

Section 2 of Chapter 138 contains a number of definitions. Several are particular to Maine's regulation and are not related to a federal requirement. These include: large boiler, small boiler, mid-size boiler, lime kiln, MgO recovery boiler, auxiliary/standby boiler, and kraft recovery boiler. Chapter 138 also contains definitions of several terms that have been defined in EPA regulations or guidance. These terms include: potential to emit, and, repowering project unit.

Section 3 defines NO_X emission limitations, technology standards, or work practice standards for RACT subject sources. Section 3 sets NO_X emission limitations for large boilers, *i.e.*, boilers with an energy input capacity of 1500 million Btu per hour (mmBtu/hr). These limits are set on a 24 hour basis and compliance must be demonstrated through the use of a continuous emissions monitoring system (CEMS).

Section 3 defines NO_X emission limits or technology standards for mid-size boilers (*i.e.*, boilers with energy input capacities greater than or equal to 50 mmBtu/hr but less than 1500 mmBtu/hr). Section 3 requires mid-size boilers with heat input capacities greater than 200 mmBtu/hour or greater to demonstrate compliance on a 24 hour block average basis through the use of continuous emission monitoring systems.

For small boilers (*i.e.*, units with heat input capacities greater than 20 mmBtu/hour but less than 50 mmBtu/hour), section 3 of Chapter 138 requires that annual tune-ups be performed on the boilers. The regulations specify the types of records to be kept during the tune-up procedure as well as a requirement for the periodic verification of the parameter settings. Similarly, for auxiliary or standby boilers (*i.e.*, boilers limited to less than 100 tons per year, 12 month rolling average, and 20 tons per month), section 3 defines RACT as the same annual tune-up and recordkeeping procedures for small boilers.

For kraft recovery boilers, magnesium oxide (MgO) recovery boilers, and lime kilns, section 3 of Chapter 138 sets NO_X emission limitations. For the recovery boilers, the regulation requires compliance to be demonstrated on a 24 hour basis by a CEMS. For lime kilns, compliance is determined by stack testing. Section 3 of Chapter 138 sets NO_X emission limits for refuse derived fuel (RDF) municipal solid waste (MSW) incinerators and mass burn MSW incinerators as well with compliance demonstrations on a 24 hour basis using a CEMS.

For NO_X emitting units located at major stationary sources not covered by the specific standards of sections 3(A) through 3(G), *i.e.*, miscellaneous RACT sources, section 3 of Chapter 138 requires that the source conduct a RACT alternatives analysis. Section 3 also requires sources seeking alternative RACT determinations to submit an application to revise the facility's air emission license, including a description of the NO_X emitting equipment at the facility, an examination of the technical and economic feasibility of various NO_X control options, the option chosen, including emission limits, test methods, and means of assessing compliance, the amount of NO_X to be reduced, and a schedule for implementation. In order for these determinations to satisfy the SIP requirements of the CAA, the RACT orders must be submitted and approved as case-specific SIP revisions.

Section 3 of Chapter 138 also allows sources to comply with alternative emission limitations through the seasonal combustion of different fuels (*i.e.*, ''fuel-switching'') or through the use of emissions averaging. Additionally, section 3 allows a facility to delay the installation of NO_X controls on existing NO_X emitting equipment in order to complete the dismantling and repowering of any of its equipment. In order to eligible for such ''repowering'' provisions,'' the facility have an enforceable agreement with the DEP by January 1, 1995, committing them to shut down and repower the equipment by May 15, 1999. Furthermore, the replacement unit must have a BACT or LAER limit in place. The regulations contain a presumptive NO_X RACT control requirement that units to be repowered perform annual tune-ups between March 15 and June 15 of each year, starting in 1995, until the new unit is in place.

Section 4 of Chapter 138 only applies to NO_X sources in the non-moderate areas of the State. As noted above, EPA published a **Federal Register** notice on December 26, 1995, approving that section into the Maine SIP. Therefore, no further action is necessary for that section of Chapter 138.

Section 5 of the regulations include provisions for the submittal and approval of NO_X RACT applications for facilities subject to section 3 of Chapter 138. These provisions also lay out the process by which DEP issues RACT orders, including the public comment

process. Section 5 requires units to specify testing, monitoring, recordkeeping, and reporting procedures, which are subject to State and EPA approval as part of the RACT order application and issuance process. However, in order for the testing, monitoring, record keeping, and reporting requirements to be enforceable, as they apply to units for which Chapter 138 does not define such requirements, those requirements must be made part of final RACT orders in air emission licenses and subsequently submitted to EPA as SIP revisions.

B. Miscellaneous NO_X RACT and the Alternative NO_X RACT for Pioneer Plastics Corporation in Auburn, Maine

Pioneer Plastics is a plastics manufacturing company with a facility which is subject to Chapter 138. The Pioneer Plastics' Auburn facility includes a thermal oxidizer unit (incinerator) used to destroy volatile organic compounds (VOCs) and hazardous air pollutants (HAPs). Chapter 138, section 3(H) requires owners of miscellaneous stationary sources to submit an analysis of NO_X RACT options and for Maine to determine RACT for those sources on a case by case basis.

In its RACT analysis, Pioneer demonstrated that because the use of add-on NO_X controls would reduce the destruction efficiency incinerator, those methods are considered technically infeasible as RACT options. Therefore, Maine issued air emissions licenses A–448–72–K–A/R and A–448–71–O–M, amendment #2, on August 23, 1995, and March 10, 1997, respectively, requiring annual inspection and repair of the duct work, including the seals of the doors of the unit, as well as of the burner components, as NO_X RACT for this unit.

Pioneer also has a boiler, Boiler #6, which meets the Chapter 138 definition of a mid-size boiler. However, Pioneer applied for an alternative NO_X RACT determination which examined a number of NO_X control technologies for the boiler. As a result, Maine issued licenses A–448–72–K–A/R and A–448–71–O–M, amendment #2, which define alternative RACT as optimizing the boiler and using natural gas whenever available at the interruptible purchase rate (approximately 8 months of the year). The licenses were submitted to EPA as a SIP revision on July 1, 1997.

C. Miscellaneous NO_X RACT for Dragon Products Company, Inc., in Thomaston, Maine

Dragon Products Company in Thomaston, Maine, (Dragon) has a cement making facility subject to Chapter 138. Chapter 138 does not define NO_X RACT explicitly for cement kilns but rather section 3(H) requires owners of such miscellaneous stationary sources to submit an analysis of NO_X RACT options from which Maine can define RACT on a case by case basis.

Dragon submitted an analysis of NO_X controls to Maine which demonstrated that post combustion controls were not economically feasible. On June 5, 1996 and March 5, 1997, Maine issued air emission licenses A–326–72–N–A, amendment #5, and A–326–71–P–M, amendment #7, which require the implementation of a variety of combustion and process changes, including the installation of a low-NO_X burner system. The license was submitted to EPA as a SIP revision on July 1, 1997.

D. Alternative NO_X RACT for Tree Free Fiber Company, LLC, (Formerly Statler Tissue) in Augusta, Maine

Tree Free Fiber Company's facility in Augusta (formerly Statler Tissue) is subject to Chapter 138. Statler Tissue applied for alternative NO_X RACT determinations for two of the mid-size boilers at the facility, Boilers #3, and #5. In their application, Statler analyzed a number of RACT options for boilers #3 and #5 but no option was shown to be economically feasible. Therefore, Maine DEP determined that for boilers #3 and #5, annual boiler tune-ups was RACT.

In February 1995, operations at the Statler Tissue (ST) facility were suspended. The property and licenses were transferred to Tree Free Fiber Company (TF). Subsequently, TF/ST requested several minor revisions to the air emission license for the facility. On June 12, 1996, the Maine DEP issued air emission license A–195–71–G–M which superseded a number of conditions found in the earlier license. For example, license A–195–71–G–M requires TF/ST to reevaluate the RACT alternatives within 6 months of the facility exceeding a capacity utilization threshold of 3,000,000 gallons on a 12 month rolling average basis of fuel oil burned. The license was submitted to EPA as a SIP revision on July 1, 1997.

E. Alternative NO_X RACT for Mid-Maine Waste Action Corporation's Facility in Auburn, Maine

Mid-Maine Waste Action Corporation (MMWAC) has a facility in Auburn, Maine which includes two refractory lined, mass-burn municipal waste combustors (MWCs) which are subject to Chapter 138, section 3(G). Mid-Maine Waste Action Corporation submitted a RACT application pursuant to Chapter 138, section (I) which examined a number of NO_X control techniques. The NO_X controls were found to be technically and economically infeasible. On October 16, 1996, Maine issued license A–378–72–E–A, Amendment #2 to MMWAC which was submitted to EPA as a SIP revision on July 1, 1997.

F. Alternative NO_X RACT for Maine Energy Recovery Company in Biddeford, Maine

Maine Energy Recovery Company (MERC) has a facility in Biddeford, Maine which includes two refuse-derived fuel (RDF) boilers which are subject to the NO_X RACT emissions limit in Chapter 138, section 3(F) for RDF units. In this case, the proposed alternative NO_X RACT determination expresses the emission standard in another form and does not result in an increase in actual NO_X emissions from the NO_X RACT limit defined in Chapter 138. Therefore, it was not necessary that MERC analyze alternative NO_X control systems. Air emissions license A–46–71–L–A was submitted to EPA as a SIP revision on July 1, 1997.

G. Miscellaneous and Alternative NO_X RACT for Portsmouth Naval Shipyard in Kittery, Maine

Portsmouth Naval Shipyard (PNSY) is subject to Chapter 138. The NO_X emitting equipment at the Kittery facility include four boilers and eleven diesel fired internal combustion (IC) engines. PNSY has eleven IC engines which operate more than 500 hours per year. However, Chapter 138 does not define NO_X RACT for engines that operate more than 500 hours. Therefore, these engines are considered miscellaneous stationary sources under Chapter 138, section 3(H). In February 1995, PNSY submitted to Maine a RACT analysis for the eleven engines which examined a variety of NO_X reducing techniques. Of all the techniques studied, only the ignition timing retard was shown to be economically and technically feasible for the three air compressor engines. For the eight crane engines, however, a number of safety concerns make even the use of ignition timing retard technically infeasible as RACT.

The PNSY facility also has four boilers which are subject to Chapter 138, section 3(B). Chapter 138 section 3(I), however, allows owners of stationary sources at RACT subject facilities to apply for an alternative RACT determination. As part of its alternative NO_X RACT application, PNSY examined a number of NO_X control techniques prior to the time when each boiler will be converted to natural gas-firing.

On October 21, 1996, Maine DEP issued license A–452–71–D–A, amendment #2, to PNSY which contained a schedule to convert the four boilers to natural gas, requirements for the boilers to meet the interim equipment standards and emission limits, as well as requirements for the IC engines. On August 14, 1998, Maine submitted the license A–452–71–D–A, amendment #2, to EPA as a SIP revision. On July 25, 1997, Maine DEP issued license A–452–71–F–M, amendment #4, to PNSY in which a minor revision was made to include the boiler optimization procedures in the Order section of the license (they were previously listed in the ''Findings of Fact'' section). On October 9, 1997, Maine submitted the license A–452–71–F–M, amendment #4, to EPA as a SIP revision.

H. Capacity Limitations and the Testing, Monitoring, Recordkeeping, and Reporting Requirements for S.D. Warren Company in Westbrook, Maine

S.D. Warren Company (S.D. Warren) has a facility in Westbrook, Maine which is subject to Chapter 138. At the Westbrook facility, there are three boilers for which S.D. Warren has requested capacity limitations on Power Boiler #17 (PB 17), Power Boiler #18 (PB 18), and Power Boiler #20 (PB 20) in order to avoid triggering the requirement for the installation and operation of NO_X continuous emission monitoring systems under Chapter 138, section 3(B). On June 12, 1996, Maine DEP issued S.D. Warren air emission license A–29–71–Y–A, amendment #13, which limits the firing capacities of each of these boilers.

Additionally, Chapter 138 does not define the testing, monitoring, recordkeeping, and reporting requirements for all emission units at facilities subject to the regulation. Therefore, on August 14, 1998, Maine submitted to EPA air emission license A–29–71–Y–A, amendment #13, which contains the additional monitoring, recordkeeping, and reporting requirements necessary to fully define RACT for the boilers at S.D. Warren. The license was submitted to EPA as a SIP revision on August 14, 1998.

I. Testing, Monitoring, Recordkeeping and Reporting Requirements for FMC Corporation—Food Ingredients Division in Rockland, Maine

The FMC Corporation—Food Ingredients Division's (FMC) Rockland facility is subject to Chapter 138. However, Chapter 138 does not define the testing, monitoring, recordkeeping, and reporting requirements for all the emission units at facilities subject to the regulation. Therefore, on February 7, 1996, Maine issued air emission license A–366–72–H–A, amendment #5, to FMC which defines additional testing, monitoring, recordkeeping, and reporting requirements for the three boilers. The license was submitted to EPA as a SIP revision on August 14, 1998.

J. Alternative NO_X RACT and Testing, Monitoring, Recordkeeping and Reporting Requirements for the Chinet Company in Waterville, Maine

Chinet Company's Waterville facility (Chinet) is subject to Chapter 138 of Maine's regulations. A number of boilers at the facility are subject to the NO_X RACT requirements of section 3(L) for small boilers, including Boiler #1 and Boiler #4. However, Boilers #1 and #4 are rarely used. Therefore, Chinet has proposed that only if either of these boilers operates at a capacity factor of greater than 2%, must they comply with the requirements of section 3(L). If and when the threshold is exceeded, Chinet proposed to comply with the requirements of section 3(L) at both boilers within 90 days. On January 15, 1996, Maine issued air emission license A–416–72–B–A to Chinet formalizing the capacity trigger for Boilers #1 and #4, including the recordkeeping requirements.

Also, Chapter 138 does not define the testing, monitoring, recordkeeping, and reporting requirements for Boiler #5 at Chinet's Waterville facility. Therefore, on January 18, 1996, Maine issued air emission license A–416–72–B–A to Chinet which defines the testing, monitoring, recordkeeping, and reporting requirements for Boiler #5. The final license for Chinet was submitted to EPA as a SIP revision on August 14, 1998.

K. Testing, Monitoring, Recordkeeping and Reporting Requirements for Scott Paper Company in Winslow, Maine

Scott Paper Company's Winslow Facility (Scott) is subject to Chapter 138. However, Chapter 138 does not define the testing, monitoring, recordkeeping, and reporting requirements for Boiler #1, Boiler #2, and Boiler #4 at Scott. Therefore, on November 15, 1995, Maine issued air emission license A–188–72–E–A, amendment #2, to Scott which defines additional testing, monitoring, recordkeeping, and reporting requirements for Boilers #1, #2, and #4. The license was submitted to EPA as a SIP revision on August 14, 1998.

L. Testing, Monitoring, Recordkeeping and Reporting Requirements for FPL Energy's (formerly Central Maine Power) W.F. Wyman Station in Yarmouth, Maine

FPL Energy's W.F. Wyman Station in Yarmouth (FPL) is subject to Chapter 138. However, Chapter 138 does not define the testing, monitoring, recordkeeping, and reporting requirements for Boiler #5. Therefore, on May 18, 1995, and February 16, 1996, Maine issued air emission license A–388–71–C–A, amendment #1, and A–388–71–D–M, amendment #1, respectively, to FPL which define additional testing, monitoring, recordkeeping, and reporting requirements for Boiler #5. The licenses were submitted to EPA as SIP revisions on August 14, 1998.

IV. What Is the Relationship Between the Chapter 138 NO_X RACT Rule and the Chapter 117 Source Surveillance Rule?

For large boilers, mid-size boilers with input capacities greater than 200 mmBtu/hour, kraft recovery boilers, MgO recovery boilers, mass burn and RDF incinerators, and units using emissions averaging for compliance, Chapter 138 requires the source to demonstrate compliance through the use of a NO_X CEMS that satisfies the requirements of Chapter 117. Chapter 117 was first adopted by Maine on August 9, 1988 and approved it into the SIP on March 21, 1989. Chapter 117 contains the performance specifications, record keeping, reporting, and compliance schedule requirements for NO_X sources.

On May 9, 1994, Maine revised Chapter 117 and submitted the adopted revisions to EPA on June 20, 1994. The revised Chapter 117 contains additional performance specifications, recordkeeping, reporting, compliance schedule, quality assurance/quality control, data availability, and compliance/enforcement requirements which apply to sources using a CEMS. The current, revised state version of Chapter 117 would apply to sources covered by Chapter 138. Through a separate rulemaking in the future the EPA will take action on the revised version Chapter 117.

V. What Are the Administrative Requirements?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2002. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 16, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

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

PART 52—[AMENDED]

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

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

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraphs (c)(46) and (c)(47) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(46) Revision to the State Implementation Plan submitted by the Maine Department of Environmental Protection on August 5, 1994.

(i) Incorporation by reference.

(A) Chapter 138 of the Maine Department of Environmental Protection Regulations, ''Reasonably Available Control Technology For Facilities That Emit Nitrogen Oxides.'' Affects sources in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Lincoln, and Knox counties. This rule was adopted and effective in the State of Maine on August 3, 1994.

(ii) Additional materials.

(A) Letter from the Maine Department of Environmental Protection dated August 5, 1994 submitting a revision to the Maine State Implementation Plan.

(47) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on July 1, 1997, October 9, 1997, and August 14, 1998.

(i) Incorporation by reference.

(A) Air emission license A–388–71–C–A, Amendment #1, condition (q); and A–388–71–D–M, amendment #1, conditions 19 and 23 for FPL Energy's (formerly Central Maine Power) W.F. Wyman Station issued by Maine Department of Environmental Protection on May 18, 1995, and February 16, 1996, respectively.

(B) Air emission licenses A–195–71–G–M, Amendment #1, and A–195–71–D–A/R, section (II)(D), paragraphs (II)(F)(1) and (3), and conditions 12(A), 12(C), (13), (14) and (15) for Tree Free Fiber Company, LLC, (formerly Statler Industries Inc.) issued by Maine Department of Environmental Protection on June 12, 1996, and, June 16, 1995, respectively.

(C) Air emission licenses A–448–72–K–A/R, paragraphs (II)(D)(2), (II)(D)(3) and conditions (13)(f) and 14(k); and A–448–71–O–M, Amendment #2, condition (14)(k), for Pioneer Plastics Corporation issued by Maine Department of Environmental Protection on August 23, 1995, and March 10, 1997, respectively.

(D) Air emission license A–188–72–E–A, Amendment #2, conditions 8, paragraph 1, and 9, paragraphs 1, 2 and 4, for Scott Paper Company issued by Maine Department of Environmental Protection on November 15, 1995.

(E) Air emission license A–416–72–B–A, conditions (l) 1, 2, 3a, 3b, 3c, 3e, and (m) for The Chinet Company issued by Maine Department of Environmental Protection on January 18, 1996.

(F) Air emission license A–366–72–H–A, Amendment #5, conditions 3, 4, 5, 7, 9, 11, 12, 15, 16, and 18 for FMC Corporation—Food Ingredients Division issued by Maine Department of Environmental Protection on February 7, 1996.

(G) Air emission licenses A–326–72–N–A, Amendment #5, and A–326–71–P–M, Amendment #7, for Dragon Products Company, Inc., issued by Maine Department of Environmental Protection on June 5, 1996, and March 5, 1997, respectively.

(H) Air emission license A–29–71–Y–A, Amendment #13, conditions (k)2, (k)3, (q)8 and (p) for S.D. Warren Company issued by Maine Department of Environmental Protection on June 12, 1996.

(I) Air emission license A–378–72–E–A, Amendment #2, for Mid-Maine Waste Action Corporation issued by Maine Department of Environmental Protection on October 16, 1996.

(J) Air emission licenses A–452–71–D–A, Amendment #2, conditions 3, 4, 5, 7, 9, 11, 16, 17, 18, 19, and 20; and A–452–71–F–M, Amendment #4, condition 4 for Portsmouth Naval Shipyard issued by Maine Department of Environmental Protection on October 21, 1996, and July 25, 1997, respectively.

(K) Air emission license A–46–71–L–A, Amendment #4, for Maine Energy Recovery Company issued by Maine Department of Environmental Protection on November 12, 1996.

(ii) Additional materials.

(A) Letters from the Maine Department of Environmental Protection dated July 1, 1997, October 9, 1997, and August 14, 1998, submitting case-specific NO_X RACT determinations.

3. In § 52.1031 Table 52.1031 is amended by adding new entries under the existing state citation Chapter 138 to read as follows:

§ 52.1031—EPA—approved Maine Regulations

* * * * *

TABLE 52.1031—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
*	*	*	*	*	*	*
138	NO_X RACT ..	8/3/94	9/9/02	[Insert FR citation from published date].	(c)(46)	Affects sources in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Lincoln, and Knox counties.
138	NO_X RACT ..	5/18/95 & 2/16/96	9/9/02	[Insert FR citation from published date].	(c)(47)	Case-specific NO_X RACT for FPL Energy's (formerly Central Maine Power) W.F. Wyman Station.
138	NO_X RACT ..	6/16/95 & 6/12/96	9/9/02	[Insert FR citation from published date].	(c)(47)	Case-specific NO_X RACT for Tree Free Fiber Company, LLC. (formerly Statler Tissue).
138	NO_X RACT ..	8/23/95 & 3/10/97	9/9/02	[Insert FR citation from published date].	(c)(47)	Case-specific NO_X RACT for Pioneer Plastics Corporation.
138	NO_X RACT ..	11/15/95	9/9/02	[Insert FR citation from published date].	(c)(47)	Case-specific NO_X RACT for Scott Paper Company.
138	NO_X RACT ..	1/18/96	9/9/02	[Insert FR citation from published date].	(c)(47)	Case-specific NO_X RACT for Chinet Company. date]
138	NO_X RACT ..	2/7/96	9/9/02	[Insert FR citation from published date].	(c)(47)	Case-specific NO_X RACT for FMC Corporation—Food from Ingredients Division.
138	NO_X RACT ..	6/5/96 & 3/5/97	9/9/02	[Insert FR citation from published date].	(c)(47)	Case-specific NO_X FR RACT for Dragon Products Company, Inc.
138	NO_X RACT ..	6/12/96	9/9/02	[Insert FR citation from published date].	(c)(47)	Case-specific NO_X RACT for S.D. Warren Company.
138	NO_X RACT ..	10/16/96	9/9/02	[Insert FR citation from published date].	(c)(47)	Case-specific NO_X RACT for Mid-Maine Waste Action Corporation.
138	NO_X RACT ..	10/21/96 & 7/25/97	9/9/92	[Insert FR citation from published date].	(c)(47)	Case-specific NO_X RACT for Portsmouth Naval Shipyard.
138	NO_X RACT ..	11/12/96	9/9/02	[Insert FR citation from published date].	(c)(47)	Case-specific NO_X RACT for Maine Energy Recovery Company.
*	*	*	*	*	*	*

[FR Doc. 02–22359 Filed 9–6–02; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–172–4194a; FRL–7271–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to the State Implementation Plan (SIP) Addressing Sulfur Dioxide in Philadelphia County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP) submitted by the Pennsylvania Department of Environmental Protection (PADEP). The revisions consists of Operating Permits modifying the sulfur dioxide (SO_2) allowable emissions at four facilities in Philadelphia County, Pennsylvania. The Operating Permits were issued to Trigen-Philadelphia Energy Corporation, Schuylkill Station, Grays Ferry Cogeneration Partnership, PECO Energy Company, Schuylkill Generating Station, and Sunoco, Inc. (R&M) Philadelphia Refinery. EPA is approving these revisions to incorporate the four Operating Permits into the Federally-approved SIP. The intention of this action is to regulate SO_2 emissions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on November 8, 2002, without further notice, unless EPA receives adverse written comment by October 9, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW, Room B108, Mail Code 6102T, Washington, DC 20460; the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and the Department of Public Health, Air Management Services (AMS), 321 University Avenue, Philadelphia, Pennsylvania 19104.

FOR FURTHER INFORMATION CONTACT: Denis Lohman, (215) 814–2192, or Ellen Wentworth, (215) 814–2034, or by e-mail at *lohman.denny@epa.gov* or *wentworth.ellen@epa.gov.* Please note that while questions may be posed via e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On March 23, 2001, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). These revisions apply to sources in Philadelphia County, Pennsylvania, subject to Air Management Regulation (AMR) XIII under the authority of 25 PA Code Chapter 127, ''Construction, Modification, Reactivation and Operation of Sources,'' to prevent and control air pollution from the emissions of SO_2. The SIP revisions consist of four Operating Permits issued by the Philadelphia Department of Public Health, AMS, with authority under 25 PA Code Chapter 127, for four facilities in the County.

A. What Action Is EPA Taking in This Rulemaking?

The EPA is approving as SIP revisions and incorporating by reference into the Pennsylvania SIP, four Operating Permits containing new SO_2 emission limits for four facilities located in Philadelphia County. The facilities are Trigen-Philadelphia Energy Corporation, Schuylkill Station, Grays Ferry Cogeneration Partnership, PECO Energy Company, Schuylkill Generating Station, and Sunoco, Inc. (R&M) Philadelphia Refinery. This action approves these Operating Permits into the SIP and makes them Federally-enforceable.

B. Why Were Changes in Emission Rates Necessary?

A modeling analysis for a Prevention of Significant Deterioration (PSD) permit for replacement boilers at the Philadelphia Naval Shipyard revealed potential exceedances of the 24-hour SO_2 National Ambient Air Quality Standards (NAAQS). Preliminary modeling indicated that these four sources at their existing allowable emission rates, were substantial contributors to violations of the NAAQS for SO_2. The Philadelphia Department of Public Health, AMS, required each of the sources with significant contributions to the exceedances to re-evaluate their emissions and, if necessary, to define new emission limitations to ensure attainment and maintenance of the SO_2 standards. The PSD permit was issued to the Philadelphia Naval Shipyard in 1996 when it was determined that the facility did not have a significant contribution to the modeled exceedances.

With the authority under the Pennsylvania Code Title 25, Philadelphia Code Title III, and AMR XIII, AMS issued these permits to address the potential deficiencies of the Philadelphia portion of the Pennsylvania SIP. Three of the sources, Trigen-Philadelphia Energy Corporation, Schuylkill Station, Grays Ferry Cogeneration Partnership, and PECO Energy Company, Schuylkill Generating Station are at a common location in what is termed, the Philadelphia Energy Complex (PEC). The fourth source is the Sunoco Inc. (R&M) Philadelphia Refinery which includes a combined cycle project PSD analysis.

C. What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by the EPA. These ambient air quality standards are established under the Clean Air Act and they address six criteria air pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable SIP. Each state has a SIP designed to protect its air quality. These SIPs are extensive, containing regulations, enforceable emission limits, emission inventories, monitoring networks, and modeling demonstrations. The Pennsylvania SIP contains various permits to meet the SIP requirements and other state statutory requirements. The permits are developed to contain specific conditions for a particular source and can provide specific conditions such as, emission limits, hours of operation, recordkeeping requirements, production rates, compliance demonstration requirements, etc. Once properly issued, state-enforceable Operating Permits are approved by EPA as SIP revisions and

are incorporated by reference into the SIP and become Federally-enforceable.

D. What Are the Procedural Requirements Pennsylvania Must Follow for Approval?

The CAA requires states to observe certain procedural requirements while developing SIP revisions for submission to and approval by EPA. Section 110(1) of the CAA requires that a revision to a SIP must be adopted by such state after reasonable notice and public hearing. The EPA must also determine whether a submittal is complete and warrants further action (*see* section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP revision submittals are found at 40 Code of Federal Regulations (CFR) part 51, appendix V.

Pennsylvania's March 23, 2001 submittal for Philadelphia County was determined to be administratively complete by EPA through a letter to the Director of PADEP, Bureau of Air Quality, dated July 17, 2001. The Commonwealth of Pennsylvania held a public hearing on this SIP revision on April 18, 2000. The SIP revision was then submitted by PADEP to EPA by cover letter dated March 23, 2001. The SIP revision demonstrates attainment of the SO_2 NAAQS in Philadelphia County, Pennsylvania.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the 40 CFR part 52. The actual state regulations and permits which are approved as SIP revisions are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' with a specific effective date.

E. What Are the Health Effects Associated With This Criteria Pollutant?

Sulfur dioxide belongs to the family of sulfur oxide gases. These gases are formed when fuel containing sulfur, such as coal and oil, is burned, and during metal smelting, and other industrial processes. Sulfur dioxide is a rapidly-diffusing reactive gas that is very soluble in water. Sulfur dioxide and oxides of nitrogen are the major precursors to acidic deposition (acid rain), and are associated with the acidification of lakes and streams, corrosion of buildings and monuments. They are also associated with reduced visibility. Sulfur dioxide in the Philadelphia area is emitted principally from combustion or processing of sulfur-containing fossil fuels and ores. At elevated concentrations, sulfur dioxide can adversely affect human health. The major health concerns associated with exposure to high concentrations of SO_2 include effects on breathing, respiratory illness, alterations in the lungs' defenses, and aggravation of existing cardiovascular disease. Sulfur dioxide can also produce damage to the foliage of trees and agricultural crops.

F. What Are the NAAQS for SO_2?

The primary NAAQS for sulfur oxides, measured as SO_2, are 0.14 parts per million (ppm), or 365 micrograms per cubic meter ($\mu g/m^3$), averaged over a period of 24 hours and not to be exceeded more than once per year, and an annual standard of 0.030 ppm, or 80 $\mu g/m^3$ never to be exceeded. The secondary standard for SO_2 is 0.50 ppm, or 1300 $\mu g/m^3$ averaged over a three-hour period. The secondary standard may not be exceeded more than once per year.

II. Summary of the SIP Revisions

1. The purpose of these revisions is to ensure the Federal-enforceability of Operating Permits entered between the City of Philadelphia, Department of Public Health, AMS, and four sources in Philadelphia County, Pennsylvania. The essential special compliance provisions of the four Operating Permits are presented below. Each Operating Permit also contains generic provisions requiring compliance with AMR III, the Control of Emission Oxides of Sulfur Compounds, as well as good air pollution control practices.

(1) Trigen-Philadelphia Energy Corporation, Schuylkill Station SO_2 Operating Permit # SO2–95–002

The Trigen-Philadelphia Energy Corporation, Schuylkill Station, operates a steam generating facility in Philadelphia, Pennsylvania. The SO_2 emission limits defined in the Operating Permit mandate that Boilers 23, 24, and 26, may not burn fuel oil that contains sulfur in excess of 0.5 percent by weight. Work practice standards require that no more than four of the following units can be operated at the same time: Boilers 23, 24, 25 and 26, and the Combustion Turbine/Heat Recovery Steam Generator (CT/HRSG). Boilers 23 or 24 can be operated at any load when only one unit is operating at a time. Boilers 23 and 24 are limited to 73.7 percent of full load when both units are operating simultaneously. Boilers 23, 24, 25, 26 and the CT/HRSG are to be operated in accordance with the stack and diameter parameters established in the dispersion model submitted to AMS on December 1, 1997.

Monitoring requirements stated in the permit require the facility to monitor the percent sulfur in each fuel oil upon delivery. In addition, an oil sample must be tested for each barge delivery and a daily composite tested for each truck delivery. Reporting requirements require any violation of an emission limitation to be reported (by phone call or facsimile transmission) to AMS within 24 hours of detection and followed by written notification within thirty-one (31) days. The facility must also submit to AMS semiannual reports of the performance of the facility using the City of Philadelphia Monitoring Report Form. These reports shall consist of a description of any deviations from permit requirements that occurred during the six-month reporting period, the probable cause of such deviations, and corrective actions or preventive measures taken.

(2) Grays Ferry Cogeneration Partnership SO_2 Operating Permit # SO2–95–002A

The Grays Ferry Cogeneration Partnership owns and operates an electrical and steam generating facility in Philadelphia, Pennsylvania. The SO_2 emission limits defined in the Operating Permit mandate that the CT/HRSG and Boiler 25 may not burn fuel oil that contains sulfur in excess of 0.2 percent by weight. Work practice standards require that no more than four of the following units can be operated simultaneously: Boilers 23, 24, 25, 26 and the CT/HRSG. Boiler 23 or 24 can be operated at any load when only one unit is operating at a time. Boilers 23 and 24 are limited to 73.7 percent of full load when both units are operating simultaneously. Boilers 23, 24, 25, 26 and the CT/HRSG are to be operated in accordance with the stack and diameter parameters established in the dispersion model submitted to AMS on December 1, 1997.

Monitoring requirements defined in the permit require the facility to monitor the percent sulfur in each fuel oil upon delivery. In addition, an oil sample must be tested for each barge delivery and a daily composite tested for each truck delivery. The permit also mandates that the CT and HRS cannot be connected to FML02 (the fuel oil storage tank for the boilers). Reporting requirements require any violation of an emission limitation to be reported (by phone call or facsimile transmission) to AMS within 24 hours of detection and followed by written notification within thirty-one (31) days. The facility must also submit to AMS semiannual reports of the performance of the facility using the City of Philadelphia Monitoring

Report Form. These reports shall consist of a description of any deviations from permit requirements that occurred during the six-month reporting period, the probably cause of such deviations, and the corrective actions or preventive measures taken.

(3) PECO Energy Company Schuylkill Generating Station SO_2 Operating Permit # SO2–95–006

PECO Energy Company owns and operates an electrical generation facility in Philadelphia, Pennsylvania. The SO_2 emission limits defined in the Operating Permit mandate that Boiler 1 may not burn fuel oil that contains sulfur in excess of 0.5 percent by weight. In addition, the CT #10 and #11 may not burn fuel oil that contains sulfur in excess of 0.09 percent by weight, and the emergency Diesel Generator may not burn fuel oil that contains sulfur in excess of 0.2 percent by weight. Work practice standards require that the facility operate its sources in accordance with the stack and diameter parameters established in the dispersion model submitted to AMS on December 1, 1997.

Monitoring requirements defined in the permit require the facility to monitor the percent sulfur in each fuel oil upon delivery. In addition, an oil sample must be tested for each #6 fuel oil delivery and a daily composite tested for each #2 fuel oil delivery. The CT cannot be connected to the fuel oil storage tank for the boilers or the Emergency Diesel Generator. The Operating Permit also states that the Emergency Diesel Generator can not be connected to the fuel oil storage tank for the boilers. Reporting requirements require any violation of an emission limitation to be reported (by phone call or facsimile transmission) to AMS within 24 hours of detection followed by written notification within thirty-one (31) days. The facility is required to submit to AMS semiannual reports of the performance of the facility using the City of Philadelphia Monitoring Report Form. These reports shall consist of a description of any deviations from permit requirements that occurred during the six-month reporting period, the probable cause of such deviations, and corrective actions or preventive measures taken.

(4) Sunoco Inc. (R&M) Philadelphia Refinery SO_2 Operating Permit # SO2–95–039

Sunoco, Inc. (R&M) owns and operates a refinery in Philadelphia, Pennsylvania. The SO_2 emission limits defined in the Operating Permit mandate that the CO Boiler at Girard Point—CD–004 (the CO boiler at the 1232 FCCU) not exceed 500 parts per million dry volume (ppmvd) SO_2 at any time. In addition, the permit establishes an emission limit for the heaters and boilers at Girard Point of 0.53 lb. SO_2 /MMBTU and a rolling 365 day average emission limit of 0.33 lb.SO_2/MMBTU.

The SO_2 emission limits for the sources at Point Breeze as defined in the Operating Permit, require that the C–129 (heater 8H101) not exceed 0.1 gr.H_2S/dscf. In addition, the combined SO_2 emission rate from P–659 & P–660 (the Sulfur Recovery units) cannot exceed 31.72 lb./hour, and the SO_2 emission rate from P–661 (FCCU) cannot exceed 358 lb./hour. The permit also establishes emission limits for the boilers and heaters at Point Breeze of 0.034–0.53–lb.SO_2/MMBTU and a rolling 365 day average emission limit of 0.33–0.034 lb.SO_2 /MMBTU. Work practice standards require that the facility operate its sources consistent with all parameters established in the dispersion model submitted to AMS on August 6, 1999. These parameters are explicitly defined in the Operating Permit. Monitoring requirements defined in the permit require that the facility monitor the process rates for sources P–661 (FCCU 868), P–659, and P–660 (SRU 867) on a daily basis. The facility must demonstrate compliance with the SO_2 emission limitations through use of Continuous Emission Monitors (CEM) in accordance with 25 PA Code Chapter 139 procedure. For all other combustion units excluding flares, the facility must monitor the fuel type and fuels usage for each combustion unit, boiler, process heater, etc., on a daily basis. The facility shall demonstrate compliance with the SO_2 emission limitations by monitoring the sulfur content of the fuel burned. For sources P–117 (the Flare for Unit 1231), P–118 (the Flare for Unit 1232), P–642 (North Flare), and P–643 (South Flare), the facility must monitor the fuel type and fuels usage and sulfur content of the fuel burned for each flare pilot on a daily basis. The facility must also monitor that the feed to the flares does not exceed the worst case scenario used in the modeling demonstration. The facility shall determine SO_2 emissions using the same analysis and calculations used in the modeling demonstration.

Reporting requirements require the facility to submit to AMS, the CEM report for SO_2 in accordance with 25 PA Code Chapter 139 procedure, quarterly. The report must contain, at a minimum, the date, time, duration, and magnitude of excess emissions; the reason for any excessive emissions; corrective action taken; for each day, the number of valid monitoring hours, the causes for any invalid monitoring hours contained in daily average and corrective actions taken; and the results of all quality control and quality assurance actions taken. The permit also requires the facility to submit to AMS, quarterly reports of the performance of the facility using the City of Philadelphia Monitoring Report Form. These reports shall consist of a description of any deviations from permit requirements that occurred during the three-month reporting period; the probable cause of such deviations, and corrective actions or preventive measures taken; a description of any malfunction of processes, air pollution control equipment, or monitoring equipment that occurred during the three month reporting period; the date and duration of the incidents; the probable cause of the incidents, and actions taken to remediate such incidents; a description of any sources which have not operated in more than one year; and annual compliance certification.

2. Two dispersion modeling analyses are included with the SIP submittal, each of which uses the Industrial Source Complex—Short Term (ISCST) model specified as preferred in appendix W to 40 CFR part 51 (Guideline on Air Quality Models). One analysis is for the PEC. The second analysis is for the combined cycle energy project at the Sunoco Refinery.

The final dispersion modeling, based upon current SIP allowable SO_2 emission limits and the SO_2 emission limits of sources amended through Operating Permits, demonstrate that the maximum SO_2 impacts [1] do not violate the SO_2 NAAQS. The modeled impacts, including background concentrations are as follows:

[1] The SO_2 3-hour and 24-hour NAAQS are determined by the highest second-highest concentration in a year. One exceedance per year does not constitute a violation.

PREDICTED HIGH SECOND-HIGH SULFUR DIOXIDE IMPACTS

[micrograms per cubic meter]

Period	ISCST3	Background	Total	NAAQS	% of NAAQS
3-hour	734.84	20.11	754.95	1300	58.07
24-hour	332.58	31.58	364.36	365	99.82
Annual	51.91	27.86	79.77	80	99.71

III. Evaluation

Section 110 of the CAA identifies what each SIP should contain. Each SIP must have the following elements: (1) A description of the air quality, (2) a comprehensive emissions inventory, (3) emission limitations and compliance schedules necessary for NAAQS attainment, (4) a permit program for new sources, (5) monitoring and reporting requirements, and (6) enforcement procedures. These required SIP elements are discussed here and in greater detail in the Technical Support Document (TSD) prepared for this rulemaking.

The modeling demonstration shows that the maximum annual average and the highest second-high 24-hour concentrations approach but do not exceed the NAAQS. All of these concentrations include an estimate of background SO_2. The modeling demonstration with the SIP contained two detailed emissions inventories. One inventory listed the nearby sources modeled for the PEC attainment demonstration. The second inventory listed the nearby sources modeled for the Sun attainment demonstration.

The Operating Permits for the four sources all contain emission limitations. The emission limitations became effective as of the date of the signing of the Operating Permit.

The Sun Oil analysis includes a dispersion modeling protocol and analysis for a combined cycle energy project at the Sunoco refinery. The existing AMS Regulation XIII under the authority of 25 PA Code Chapter 127, adequately provides for review and permitting of new sources. AMS Regulation XIII continues to apply throughout the city and County of Philadelphia.

IV. Final Action

EPA is approving these SIP revisions because they satisfy all the requirements of Section 110 of the CAA and contain an acceptable demonstration that the NAAQS for sulfur dioxide are attained and will continue to be maintained in Philadelphia, Pennsylvania. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment given the fact that the affected sources have all agreed to the SIP revision's provisions. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions if adverse comments are filed. This rule will be effective on November 8, 2002, without further notice unless EPA receives adverse comment by October 9, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. 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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for four named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving revisions to the Commonwealth of Pennsylvania SIP for SO_2 for Philadelphia County, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 16, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraphs (c)(193) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(193) Revisions to the Pennsylvania regulations to attain and maintain the sulfur dioxide National Ambient Air Quality Standards (NAAQS) in Philadelphia County, submitted on March 23, 2001, by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) Letter of March 23, 2001 from the Pennsylvania Department of Environmental Protection transmitting a revision to the State Implementation Plan (SIP) for Attainment and Maintenance of Sulfur Dioxide National Ambient Air Quality Standards for Philadelphia County.

(B) The following companies' Operating Permits:

(*1*) Trigen-Philadelphia Energy Corporation, Schuylkill Station, OP–SO2–95–002, effective July 27, 2000.

(*2*) Grays Ferry Cogeneration Partnership, OP–SO2–95–002A, effective July 27, 2000.

(*3*) PECO Energy Company, Schuylkill Generating Station, OP SO2–95–006, effective July 27, 2000.

(*4*) Sunoco, Inc. (R&M) Philadelphia Refinery, OP–SO2–95–039, effective July 27, 2000.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revision listed in paragraph (c)(193)(i) of this section.

[FR Doc. 02–22727 Filed 9–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–7271–3]

RIN 2060–A190

National Emission Standards for Hazardous Air Pollutants; National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities; National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H; Final Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the National Emission Standards for Hazardous Air Pollutants (NESHAPs), which regulate the air emissions of radionuclides other than radon-222 and radon-220 from facilities owned or operated by the Department of Energy (DOE) (Subpart H) and from Federal Facilities other than Nuclear Regulatory Commission (NRC) licensees and not covered by Subpart H (Subpart I). These regulations require that emissions of radionuclides to the ambient air shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 millirem per year (mrem/yr). Also, for non-DOE federal facilities, emissions of iodine shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 3 mrem/yr. Regulated facilities demonstrate compliance with the standard by sampling and monitoring radionuclide emissions from all applicable point sources. Currently, radionuclide emissions from point sources are measured in accordance with the American National Standards Institutes's (ANSI) ''Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities,'' ANSI N13.1–1969. In 1999, the American National Standards Institute substantively revised ANSI N13.1–1969 and renamed it ''Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities,'' ANSI/HPS N13.1–1999. Today's action amends 40 CFR Part 61, subparts H and I to require the use of ANSI/HPS N13.1–1999 for all applicable newly constructed or modified facilities. Today's action also imposes additional inspection requirements on existing facilities subject to subparts H and I of 40 CFR Part 61.

DATES: This rule will be effective October 9, 2002. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of October 9, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Anderson, Center for Waste Management, Radiation Protection Division, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, Mailstop 6608J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail: *anderson.robin@epa.gov* or by phone (202) 564–9385.

SUPPLEMENTARY INFORMATION:

Docket

All documents relevant to this rulemaking have been placed in Docket A–94–60 in EPA's Air Docket. The Air Docket is located at 1200 Pennsylvania Avenue, NW., 20460, in room B–102, Mail Code 6102T and is open between the hours of 8:30 am and 4:30 pm, Monday through Friday. A reasonable fee may be charged for copying. EPA is also publishing a response to comments document (entitled ''Response to Comments: Amendment to Radionuclide NESHAPs–40 CFR Part 61, Subpart H and Subpart I'' (Docket No. A–94–60, Item V–A–2)), which responds in detail to all the public comments that were received on the proposed rule. Copies of the response to comments document may be obtained from Eleanor Thornton-Jones at the U.S. Environmental Protection Agency, Center for Waste Management, Radiation Protection Division, Office of Radiation and Indoor Air, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; Mail code: 6608J or by e-mail: *thornton.eleanord@epa.gov* or by phone (202) 564–9773.

Incorporation by Reference

All subject facilities must demonstrate compliance with subparts H and I in accordance with the procedures set forth in ANSI/HPS N13.1–1999, ''Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities' (Docket No. A–94–60, Item II–D–3). The Health Physics Society (HPS) approved ANSI/HPS N13.1–1999 on January 12, 1999, and published it as a supplement to the May 1999 Health Physics Society Journal. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You may obtain a copy of the ANSI/HPS N13.1–1999 standard from the American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, New York 10036. You may inspect a copy at EPA's Air Docket (address above), or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Table of Contents

I. Today's Action
A. Affected Facilities
B. Current Requirements
C. Description of Today's Action
D. Expected Cost Impacts Associated With Today's Action
II. Background
A. Regulatory History
B. Proposed Rule
III. Discussion of Comments
A. Evaluation of Whether Upgrades Would Lead to More Accurate Samples
B. Cost Information To Upgrade Existing Sources
C. Accidental Releases
IV. Conclusion
V. Regulatory Analyses
A. Regulatory Flexibility Analysis
B. Unfunded Mandates Reform Act
C. Paperwork Reduction Act
D. Executive Order 12866—Regulatory Planning and Review
E. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
F. Executive Order 13132—Federalism
G. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
H. The National Technology Transfer and Advancement Act of 1995 (NTTAA)
I. Executive Order 13211—Energy Effects
J. Congressional Review Act (CRA)

I. Today's Action

A. Affected Facilities

This rule applies to operations at any facility owned or operated by DOE that emits any radionuclide other than radon-222 and radon-220 into the air (radionuclide NESHAPs—40 CFR part 61, subpart H) and to non-DOE federal facilities (radionuclide NESHAPs—40 CFR part 61, subpart I).

B. Current Requirements

The NESHAPs regulations at 40 CFR part 61, subparts H and I require emissions sampling, monitoring and calculations to identify compliance with the standard. The standard for both subparts H and I requires that emissions of radionuclides to the ambient air shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 mrem/yr. Also, for non-DOE federal facilities, emissions of iodine shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 3 mrem/yr. Under radionuclide NESHAPs, major sources are those that have the potential to discharge radionuclides into the air in quantities that could cause an effective dose equivalent in excess of 0.1 mrem/yr.

Currently, for major sources, subparts H and I require measurement of radionuclide emissions to air in accordance with the guidance presented in the ANSI ''Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities,'' ANSI N13.1–1969 (Docket No. A–94–60, Item II–D–1). The American National Standards Institute substantively revised ANSI N13.1–1969 in 1999, and renamed it ''Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities,'' ANSI/HPS N13.1–1999 (Docket No. A–94–60, Item II–D–3).

C. Description of Today's Action

With today's action, EPA amends 40 CFR part 61, subparts H and I to require the use of ANSI/HPS N13.1–1999 in place of the older ANSI N13.1–1969 for all applicable newly constructed or modified facilities. The principal feature of ANSI/HPS N13.1–1999 is that it is a performance-based standard, rather than a prescriptive standard, as was ANSI N13.1–1969. As a performance-based standard, ANSI/HPS N13.1–1999 provides guidance for the design and use of systems for sampling the releases of airborne radioactive substances from the ducts and stacks of nuclear facilities. The ANSI/HPS N13.1–1999 standard includes the following features:

- Criteria for determining suitability of a sampling location based on the uniformity of the velocity and contaminant concentration profiles,
- A criterion for an acceptable level of flow swirl,
- A maximum relative level of contaminant at any location across the cross section of the stack or duct,
- Performance criteria for an acceptable probe,
- A numerical criterion on the minimum fraction of aerosol particles that penetrate the sampling system from the stack gas to the collector or analyzer,
- A statement that the number of bends in the sample transport line must be minimized,
- Periodic checks and maintenance criteria, and
- A quality assurance program that covers personnel, equipment, and data handling.

In developing the final rule, EPA considered all information that was before the Agency. EPA gave substantial consideration to all the public comments (both written and oral) submitted at a public hearing and during the comment period on the proposed rule. EPA also sought and considered additional information related to several issues raised by commenters. EPA has based its regulatory decisions on the information obtained and comments received during the rulemaking process. Thus, today's final action does three things:

(1) The final amendment to subpart H and subpart I requires the use of the ANSI/HPS N13.1–1999 standard for new sources as defined in 40 CFR part 61, subpart A. Facilities will be required to use ANSI/HPS N13.1–1999 for the reporting period beginning January 1, 2003.

(2) The final rule also provides the option of using ANSI/HPS N13.1–1999 for existing sources. EPA believes that some existing sources not undergoing modification could benefit from upgrades that would be necessary to meet the ANSI/HPS N13.1–1999 standard. In those instances, EPA encourages all applicable Federal facilities to make such necessary upgrades to meet ANSI/HPS N13.1–1999.

(3) The final rule also includes more stringent inspection requirements for facilities that will remain subject to ANSI N13.1–1969. EPA is amending 40 CFR part 61, Appendix B, Method 114—Test Methods for Measuring Radionuclide Emissions from Stationary Sources to impose these more stringent inspection requirements. (Both subparts H and I require applicable sources to implement the Quality Assurance Methods in Appendix B, Method 114 when conducting a quality assurance assessment.) These requirements will ensure that existing sampling systems are regularly inspected and continue to function as designed. The new inspection requirements are based on similar guidelines found in ANSI/HPS N13.1–1999. Incorporating updated requirements into Appendix B, Method 114 ensures that key components of the sampling systems are inspected at least on an annual basis to prevent degradation of sampling systems.

Significant comments on the proposed rule are discussed in the preamble section entitled ''Discussion of Comments.''

D. Expected Cost Impacts Associated With Today's Action

The Agency estimated the cost impacts resulting from the amendments to 40 CFR part 61 subparts H and I being promulgated today. These costs derive from (1) Any incremental costs to new facilities from the adoption of the newer ANSI/HPS N13.1–1999 standard instead of the older ANSI N13.1–1969 standard; (2) costs incurred by existing facilities undergoing modification from the upgrading of their sampling systems; and (3) the costs incurred by facilities to meet additional inspection requirements.

In general, the cost for new facilities installing a sampling system compliant with the newer ANSI/HPS N13.1–1999 standard is the same as the cost of installing a system compliant with the older ANSI N13.1–1969. Therefore, although DOE estimates that, over the next 5 years, approximately 50 new sources will be constructed, these facilities will face no additional costs associated with the adoption of ANSI/HPS N13.1–1999 as required in today's amendments (Docket No. A–94–60, Item IV–G–4).

For those facilities undergoing modification, there will be a cost associated with upgrading their sampling systems. As discussed further in Section II.B. of this preamble, this cost is estimated at $100,000 per source. The Department of Defense (DoD) stated that nearly all of their existing sources and probably future sources will result in an effective dose equivalent below 1% of the standards and therefore are not subject to either ANSI standard (Docket No. A–94–60, Item IV–D–2). DOE estimates that approximately 10 existing sources over the next five years will be upgraded to meet the ANS/HPS N13.1–1999 standard (Docket No. A–94–60, Item IV–D–40). Assuming that these 10 sources are modified evenly across the 5 years, then the annual cost to install a sampling system compliant with the newer ANSI/HPS N13.1–1999 standard will be 2 × $100,000 totaling $200,000 per year.

Appendix B, Method 114—Test Methods for Measuring Radionuclide Emissions from Stationary Sources has additional inspection requirements taken directly from ANSI/HPS N13.1–1999. The DOE and DoD have estimated that a total of approximately 510 sources will be affected by these new inspection requirements at some point during the next 5 years (500 existing sources plus the 10 sources assumed to be built) (Docket No. A–94–60, Items IV–D–39 and IV–D–40). The State of Washington estimated that there would be a one time cost of approximately $5,000 per source to implement the new inspection requirement and an annual operational cost of $7,000 (Docket No. A–94–60, Item IV–D–41). Therefore, inspection costs are estimated to be $2.55 million as an initial investment with an additional annual operating and maintenance cost of $3.57 million.

II. Background

A. Regulatory History

On October 31, 1989, EPA promulgated NESHAPs under Section 112 of the Clean Air Act to control radionuclide emissions to the ambient air from a number of different source categories (54 FR 51654, December 15, 1989 (Docket A–94–60, Item II–A–1)). Subpart H of 40 CFR part 61 defines facilities owned and operated by the DOE as one of the source categories subject to a NESHAP. DOE administers many facilities, including government-owned/contractor-operated facilities, across the country. Some facilities conduct nuclear energy and weapons research and development, some enrich uranium and produce plutonium for nuclear weapons and reactors, and some process, store and dispose of radioactive wastes. As DOE facilities mature and complete their mission, some facilities are now faced with decontamination and decommissioning.

In general, certain DOE facilities handle significant amounts of radioactive material and can emit radionuclides into the air. Some of the DOE facilities emitting radionuclides are on large sites covering hundreds of square miles in remote locations. Some of the smaller facilities resemble typical industrial facilities and are located in suburban areas. DOE facilities emit a wide variety of radionuclides in various physical and chemical states. The purpose of subpart H is to limit radionuclide emissions (not including radon) from the stacks and vents at DOE facilities so that no member of the public receives an effective dose equivalent of more than 10 mrem/yr.

Subpart I sets forth the NESHAP for non-DOE federal facilities (excluding NRC licensees). The facilities in this category can emit a variety of radionuclides. These radionuclides affect individuals by inhalation, ingestion, ground deposition and immersion pathways. The purpose of subpart I is to limit radionuclide emissions, including iodine, from the stacks and vents at non-DOE federal facilities including DoD and other federal research and industrial facilities so that no member of the public receives an effective dose equivalent of more than 10 mrem/yr. and so that no member of the public receives an effective dose equivalent of more than 3 mrem/yr. from exposure to emissions of iodine.

Both subparts H and I require emissions sampling, monitoring and calculations to identify compliance with the standard. Section 61.93 of subpart H and § 61.107 of subpart I require continuous sampling and monitoring of radionuclide emissions at all release points that have a potential to discharge radionuclides into the ambient air in amounts that could cause an effective dose equivalent in excess of 1% of the standard. In evaluating the potential of a release point to discharge radionuclides into the air, the estimated radionuclide release rates shall be based on the discharge of the effluent stream that would result if all pollution control equipment did not exist, but the facility's operations were otherwise normal. Subparts H and I currently incorporate by reference ANSI N13.1–1969, ''Guide to Sampling Airborne Radioactive Materials in Nuclear

Facilities'' (Docket A–94–60, Item II–D–1). However, in 1999, the American National Standards Institute revised ANSI N13.1–1969. The new ANSI/HPS N13.1–1999, ''Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities,'' was published as a supplement to the Health Physics Journal in May 1999 (Docket A–94–60, Item II–D–3).

B. Proposed Rule

A proposed amendment to incorporate ANSI/HPS N13.1–1999 into subparts H and I was published in the May 9, 2000, **Federal Register** (65 FR 29934) (Docket No. A–94–60, Item III–A–3). In developing the proposal, EPA reviewed the ANSI/HPS N13.1–1999 standard, conducted a comparative analysis of ANSI/HPS N13.1–1999 with ANSI N13.1–1969, assessed the compatibility of ANSI/HPS N13.1–1999 with subparts H and I, held discussions with DOE and members of the ANSI work group, and reviewed and analyzed ANSI/HPS N13.1–1999 supporting materials. Based on this analysis, EPA proposed amendments to require that ANSI/HPS N13.1–1999 be used for sampling any newly constructed source and any source undergoing a modification that would result in an effective dose equivalent to any member of the public greater than 1% of the standard.

The comment period for the proposed amendment initially lasted 30 days (from May 9, 2000 to June 9, 2000). EPA also received a request for a public hearing, which was held on July 12, 2000. After the public hearing, the comment period was extended to August 14, 2000. Upon receiving another request for an extension of the comment period, EPA extended it to October 6, 2000 (65 FR 21198) (Docket No. A–94–60, Item III–A–3). All comments were received before October 6, 2000, and were reviewed, analyzed and fully considered in developing the final amendment. Detailed responses to comments can be found in ''Response to Comments Amendment to Radionuclide NESHAPs (40 CFR part 61), Subpart H and Subpart I'' (Docket No. A–94–60, Item V–A–2).

III. Discussion of Comments

Comments concerning the proposed amendment were received from DOE, DoD, members of the ANSI working group, environmental groups, various state departments of health and environmental protection, and private citizens. The most significant issue raised in the comments was EPA's proposal to ''grandfather'' existing sources (that is, not require upgrades to existing sampling systems). Aspects of this issue addressed in the comments include: whether upgrades would lead to more accurate samples, how costs were evaluated, and how the use of ANSI/HPS N13.1–1999 might affect unplanned releases. These issues are discussed below.

Several commenters raised issues such as the dose limits established in Subparts H and I, and aspects of computer modeling used to estimate doses. EPA determined that these issues do not relate to sampling procedures or systems and, thus, are outside the scope of this rulemaking.

A. Evaluation of Whether Upgrades Would Lead to More Accurate Samples

To address the issue of whether to ''grandfather'' existing sources, EPA conducted an analysis of the ANSI/HPS N13.1–1999 standard. EPA compared the ANSI N13.1–1969 standard with the ANSI/HPS N13.1–1999 standard. The significant differences between the two standards are that the ANSI/HPS N13.1–1999 standard:

1. Does not include the requirements for multiple sampling nozzles and isokinetic sampling;
2. Provides performance criteria for selecting between sampling locations, as well as specifying methods for measuring velocity profiles;
3. Provides information on where to obtain assistance in designing sampling lines; and
4. Describes a graded approach in the sampling efforts.

EPA concluded that, ''In practice, both standards will result in sampling locations at the same spot. For either standard, if velocity profiles are made and a uniform concentration of particles measured, there would be no difference in the required sampling location. The only difference would be in the number of sample nozzles specified. The implications to past and future compliance data generated at DOE facilities is minor, in that the changes in sampling location criteria between the two standards will not significantly change the representativeness of the sample extracted.'' (Docket No. A–94–60, Item II–A–3) Therefore, EPA concluded, unless any field data indicated otherwise, that upgrading existing sources would not change the representativeness of the sample extracted. However, EPA also believed that ANSI/HPS N13.1–1999 incorporates significant advances in sampling and monitoring methodology that have occurred over the last 30 years and that its performance-based approach allows greater flexibility while still ensuring representative sampling. For new sources, the cost of installing systems compliant with ANSI/HPS N13.1–1999 are likely to be comparable to the cost of installing systems compliant with ANSI N13.1–1969 (refer to section B, Cost Information to Upgrade Existing Sources for additional information). For these reasons, the Agency determined that it was justified and prudent to require use of ANSI/HPS N13.1–1999 for new and modified sources.

Comments on the proposal, including claims that regulatory violations or health threats might result from not upgrading existing stacks, emphasized the importance of accurately assessing the real world implications of changes to sampling systems. Initially, EPA did not have actual field data indicating whether the compliance status of any existing source is likely to be changed by the adoption of the requirement of ANSI/HPS N13.1–1999. Therefore, EPA solicited field data pertaining to the comparative performance of ANSI/HPS N13.1–1999. EPA requested such data and information from the chairperson of the ANSI committee that developed the new sampling standard (Docket No. A–94–60, Item II–C–3), members of the ANSI committee, DOE, and attendees of the July 12, 2000, public hearing (Docket No. A–94–60, Item IV–D–18).

In response to these requests, DOE provided data that permitted a direct comparison of the effect of using ANSI N13.1–1969 versus ANSI/HPS N13.1–1999 to determine compliance at existing sources. The DOE sent data from Los Alamos National Laboratory, the Savannah River Site, and Rocky Flats that indicated that for stacks retrofitted with a shrouded probe as expected by ANSI/HPS N13.1–1999, sampling results were similar to those obtained with the use of the multiple nozzle rake (required by ANSI N31.1–1969). For example, DOE described the results of installing single point sampling systems on over 40 radionuclide air emission sources at the Savannah River Site as follows:

> A shrouded probe was installed on these sources as part of upgrades done for operational purposes. Both the ANSI/HPS N13.1–1999 suggested inventory method and the Appendix D to 40 CFR 61 method have been used to evaluate the potential to emit radionuclide (PEDE). Therefore, they allow for direct comparison of results using the ANSI N13.1–1969 and ANSI/HPS N13.1–1999 methodologies. The actual measured emissions both before and after the upgrade to single point sampling are on the order of 0.00001 mrem/yr. These sources are considered major sources which represent a wide range and number of DOE sources across its facilities. Based on these 41

sources, during normal operations, there is no noticeable difference in the before and after alpha and beta/gamma data. Therefore, the installation of the single point sampling systems did not significantly affect the sample results and would not significantly affect compliance with Subpart H.'' (Docket No. A–94–60, Item IV–D–22)

Another factor EPA considered in determining whether to grandfather existing DOE sources was an evaluation of recently reported radionuclide emission data from DOE facilities. In accordance with 40 CFR 61.94, DOE demonstrates compliance with the subpart H NESHAP by determining the highest effective dose equivalent (EDE) to any member of the public at any offsite location where there is a residence, school, business, or office. All DOE facilities subject to subpart H must annually report such monitoring results. Twenty-seven DOE facilities submitted subpart H reports to EPA headquarters for the year 2000 (these reports are located in Docket No. A–94–60, check the Index beginning with section V–B) . None of the reporting facilities were out of compliance. Four of these facilities (15%) reported an EDE to the nearest maximally exposed individual (MEI) to be greater than 1% of the 10 mrem/yr standard while 23 facilities (85%) reported a total EDE to the nearest MEI to be less than 10% of the 10 mrem/yr standard. Note that the highest EDE came from DOE's Fernald facility. Releases from this facility were measured at 1 mrem/yr, primarily due to removal or processing of a large volume of thorium-bearing waste pit material for shipment and off-site disposal.[1]

To further understand the compliance and public health implications of upgrading (or not upgrading) existing sampling systems, EPA examined the Hanford facility 2000 report (Docket No. A–94–60, Item V–B–2). EPA picked Hanford for this particular analysis because it is one of DOE's largest facilities. The report noted that there were 26 major sources at the Hanford site (a source is designated as major when its potential maximum emissions after all treatment controls have been hypothetically removed can cause the highest potential exposure to be greater than 0.1 mrem/yr EDE). The reported EDE for the MEI ranged from 7.4×10^{-13} to 4.5×10^{-2} mrem/yr. Currently, estimated doses from emissions sampled under ANSI N13.1–1969 at Hanford are ten to thousands of times lower than EPA's dose limits. Therefore, upgrading the existing sampling systems to comply with ANSI/HPS N13.1–1999 would result in detection of releases exceeding EPA's standards only if actual emissions were orders of magnitude higher than those found by current systems. Available data provide no basis to conclude that, in general, there would be any measurable difference in detected emissions using ANSI/HPS N13.1–1999 as opposed to ANSI N13.1–1969. These reported doses confirm EPA's conclusion reached during the proposal development that there are likely no detrimental impacts on regulatory compliance of DOE facilities or public health from allowing existing sampling systems to remain in operation.

B. Cost Information To Upgrade Existing Sources

Another significant factor that EPA considered in determining whether to require all facilities to meet the requirements of ANSI/HPS N13.1–1999 was the cost associated with such an effort. EPA received cost estimates from both DOE and the ANSI work group (Docket No. A–94–60, Items IV–D–7 and IV–D–3). The estimated cost to upgrade an existing system ranged from $65,000 to $2.5 million per sampling system. Because of the widely divergent cost estimates, EPA commissioned a third party expert to conduct an independent analysis of the expected cost of upgrades that would be necessary to meet ANSI/HPS N13.1–1999. EPA contacted Andersen Instruments, Inc., a well-established company responsible for the design, construction and placement of the shrouded probe at several DOE facilities, to determine the cost of upgrading existing sampling systems to meet the ANSI/HPS N13.1–1999 standard.[2] The following statement was presented to EPA by Andersen Instruments, Inc.:

''Any existing sampling system even though it meets the multi-point criteria of U.S. EPA Method 1 and Appendix A of ANSI/HPS N13.1–1999 must, at a minimum, conduct the single-point sampling qualification testing [finding a suitable location for placement of the shrouded probe]. Andersen Instruments feels this task can be accomplished at a cost of $5,000 per stack. Since May 1996, over 45 sources have been upgraded from the ANSI type isokinetic sample probe to a single point sampling probe utilizing the shrouded probe technology. The actual cost for installing a shrouded probe and a simple sample box with manual flow control was $100,000 per source. Andersen Instruments feels this cost is accurate if this cost includes labor, engineering and hardware.'' (Docket No. A–94–60, Item IV–C–2)

If the Agency were to require the approximately 500 existing DOE and DoD sources (see Section I.D. of this preamble) to upgrade to the newer ANSI/HPS N13.1–1999 standard, these costs would be approximately $50 million. Given that EPA's analysis demonstrates that, in general, there would not be any measurable difference in detected emissions using ANSI/HPS N13.1–1999 rather than ANSI N13.1–1969, EPA concludes that the expected benefit of requiring use of ANSI/HPS N13.1–1999 at all existing sources does not justify the resource expenditures that would be required to effect this change.

C. Accidental Releases

The emissions limitations in subparts H and I apply to all releases, whether incident to normal operations or accidental. Therefore, EPA examined whether certain facets of ANSI/HPS N13.1–1999 could help prevent or reduce accidental releases of radioactivity from regulated facilities. A number of commenters suggested that application of ANSI/HPS N13.1–1999 could result in fewer accidental or unplanned releases of radionuclides. Oftentimes, accidental releases bypass control equipment, as a result, emissions may have particles sizes associated with the aerosol upstream of the control equipment, rather than that typically encountered downstream of control equipment. These larger particles can often be sampled more effectively using the shrouded probes encouraged by ANSI/HPS N13.1–1999. For these reasons, EPA evaluated the potential effects of accidental releases when using ANSI/HPS N13.1–1999.

To begin, EPA sought to characterize unplanned releases. There were 37 unplanned releases reported in the subpart H reports from 1994–1997 and 1999. The average dose resulting from these accidental releases was 0.034 mrem/yr.[3] Nineteen (51%) unplanned releases were attributed to human error. Nine (24%) unplanned releases were considered a result of poor inspections. Two (5%) unplanned releases occurred outside of the stack and seven (19%)

[1] The waste pit area contains approximately 1 million tons of radioactive waste from Fernald's uranium production operations. Most production-era processing involved extracting uranium from ores, resulting in waste with elevated levels of thorium, radium, and residual uranium.

[2] Following the guidance in ANSI/HPS N13.1–1999, the expected method for obtaining a representative sample is the use of a properly placed shrouded probe in place of a multi-point sampling system.

[3] Only 1 unplanned release resulted in the dose being greater than 10% of the standard but not exceeding the standard. This was a tritium release that occurred at the Savannah River Site in 1995. Current regulation cites methods for sampling tritium in the non-particulate form that are the same as discussed in ANSI/HPS N13.1–1999.

unplanned releases were not sufficiently described for classification (due to the withholding of sensitive information).

EPA concluded that utilizing ANSI/HPS N13.1–1999 rather than ANSI N13.1–1969 would not have reduced the occurrence of accidental releases due to human error, nor would it have affected releases occurring outside the stack. Furthermore, doses from unplanned releases were so low (on average, almost 1000 times lower than the applicable standard) that even significant increases in sampled emissions, if found, would have had minimal public health impact and would have been unlikely to affect radionuclide NESHAPs compliance.

EPA determined, however, that 24% of unplanned releases may not have occurred if more stringent inspection requirements, such as those in ANSI/HPS N13.1–1999, were required by subparts H and I. Properly functioning sampling systems—as ensured by regular, rigorous inspections—can provide an early indication of an otherwise unapparent failure of emissions control equipment or other conditions contributing to unplanned releases. EPA therefore imposed only those provisions of ANSI/HPS N13.1–1999 affecting inspections, but determined that other aspects of ANSI/HPS N13.1–1999 would not affect these kinds of unplanned releases. To implement these inspection requirements as part of subparts H and I, EPA has amended the Quality Assurance Methods in Appendix B, Method 114—Test Methods for Measuring Radionuclides Emissions from Stationary Sources to include a table that specifies when each component of the sampling system must be inspected. This table is based on a similar table found in ANSI/HPS N13.1–1999.

IV. Conclusion

EPA determines that any potential improvement in sampling from existing sources subject to 40 CFR part 61, subparts H and I, when viewed against the substantial cost of upgrading all existing sources to meet ANSI/HPS N13.1–1999, does not justify imposing such an expenditure across the entire Federal complex. EPA acknowledges, however, that application of ANSI/HPS N13.1–1999 to certain existing DOE sources may result in a cost-effective net environmental benefit. In those instances, EPA encourages DOE to make the necessary changes to further ensure protection of human health and the environment. To promote such changes, EPA plans to pursue a Memorandum of Understanding with DOE that would aid in identifying sources that should be upgraded to meet the ANSI/HPS N13.1–1999 standard. Moreover, EPA has concluded that application of more stringent inspection requirements, as set forth in ANSI/HPS N13.1–1999, could potentially result in a significant decrease in unplanned releases of radionuclides to the air. Therefore, EPA is amending Appendix B of subparts H and I to incorporate such improved inspection requirements.

To conclude, the final amendment to subpart H and subpart I requires the use of the ANSI/HPS N13.1–1999 standard for new sources as defined in subpart A, including any modified sources that require continuous monitoring. For existing sources, ANSI/HPS N13.1–1999 can be used as a pre-approved alternative methodology as defined in Section 61.93 of subpart H and Section 61.107 of subpart I. The final rule also includes more stringent inspection requirements for ANSI N13.1–1969 systems in 40 CFR part 61 Appendix B, Method 114—Test Methods for Measuring Radionuclide Emissions from Stationary Sources (both subparts H and I require implementing the Quality Assurance Methods in Appendix B, Method 114 when conducting a quality assurance assessment). These requirements will ensure that existing sampling systems, where continuous monitoring is required, are regularly inspected and continue to function as designed.

V. Regulatory Analyses

A. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that meets the Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule only imposes requirements on DOE facilities emitting specific radionuclides and non DOE federal facilities. This rule will not impose any requirements on small entities.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements. Today's action contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector; this amendment applies only to facilities owned or operated by DOE and non-DOE federal facilities.

C. Paperwork Reduction Act

This action does not impose any new information collection burden. The purpose of this amendment is to place in an existing regulation, new sampling and monitoring procedures. Thus this action will not impose any new

information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 61, Subparts B, H, I, K, R, T, W) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0191 (EPA ICR No. 1101.11).

Copies of the ICR document may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.* Please include the ICR and/or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

D. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51736 (October 4, 1993), EPA must determine whether a regulation is ''significant'' and therefore subject to review by the Office of Management and Budget. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

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

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

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

E. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA determines that this rule is not subject to Executive Order 13045. As described above, this action does not constitute an economically significant rule as defined by Executive Order 12866. Further, EPA determines that the matter addressed in this rule, *i.e.*, whether to apply ANSI/HPS N13.1–1999 as the sampling and monitoring standard for Federal radionuclide existing sources, does not involve a decision on environmental health or safety risks that may disproportionately affect children.

F. Executive Order 13132—Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This amendment applies only to facilities owned or operated by DOE and non-DOE federal facilities. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' 65 FR 67249 (November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This final rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments are directly regulated by this regulatory action and the nature of these amendments will impose no substantial direct effects on one or more Indian tribes. This rule does not affect the emission limits of any facility, nor will it have any impact on facility emissions, and therefore will have no impact on populations near any regulated facility. Thus, Executive Order 13175 does not apply to this rule.

H. The National Technology Transfer and Advancement Act of 1995 (NTTAA)

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, Section 12 (d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking is intended to increase the use of the ANSI/HPS N13.1–1999, a consensus standard developed by the American National Standards Institute (ANSI) Working Group. Thus, it is consistent with the goals of the NTTAA.

The American National Standards Institute (ANSI) has served as administrator and coordinator of the United States private sector voluntary standardization system for 80 years, by promoting and facilitating voluntary consensus standards and conformity assessment systems and by promoting their integrity.

I. Executive Order 13211—Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

J. Congressional Review Act (CRA)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective 30 days after date of publication in the **Federal Register**.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Incorporation by reference, Radon, Radionuclides, Reporting and recordkeeping requirements.

Dated: August 22, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 40 CFR Part 61 as follows:

PART 61—[AMENDED]

1. The authority citation for 40 CFR part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601, and 7602.

Subpart A—[Amended]

2. Section 61.18 is amended by revising the introductory text, paragraphs (a) introductory text, (c), and (d) introductory text to read as follows:

§ 61.18 Incorporations by reference.

The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for inspection at the corresponding address noted below, and at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC and the Library (MD–35), or at U.S. EPA's Air Docket at 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM) International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

* * * * *

(c) The following material is available for purchase from the American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, New York 10036.

(1) ANSI N13.1–1969, ''Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities.'' IBR approved for 61.93(b)(2)(ii) and 61.107(b)(2)(ii).

(2) ANSI/HPS N13.1–1999 ''Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities,'' IBR approved [insert date 30 days after date of publication in **Federal Register**] for §§ 61.93(c); 61.107(d) and Method 114, paragraph 2.1 of Appendix B to 40 CFR part 61.

(d) The following material is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800 or outside of Washington, DC area: 1–866–512–1800.

* * * * *

Subpart H—[Amended]

3. Section 61.93 is amended by revising paragraph (b) introductory text, (b)(1)(i), (b)(1)(ii), (b)(2)(i), and by adding paragraphs (c), (d), (e), (f) and (g) to read as follows:

§ 61.93 Emission monitoring and test procedures.

* * * * *

(b) Radionuclides emission rates from existing point sources (stacks or vents) shall be measured in accordance with the following requirements or with the requirements of paragraph (c) of this section, or other procedures for which EPA has granted prior approval:

(1) * * *

(i) Reference Method 2 of appendix A to part 60 of this chapter shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(ii) Reference Method 2A of appendix A to part 60 of this chapter shall be used to measure flow rates through pipes and small vents.

* * * * *

(2) * * *

(i) Reference Method 1 of appendix A to part 60 of this chapter shall be used to select monitoring or sampling sites.

* * * * *

(c) Radionuclide emission rates from new point sources (stacks or vents) as defined in subpart A shall be measured in accordance with the following requirements, or other procedures for which EPA has granted prior approval:

(1) Effluent flow rate measurements shall be made using the following methods:

(i) ANSI/HPS N13.1–1999 ''Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities' (incorporated by reference—see § 61.18) shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(ii) ANSI/HPS N13.1–1999 shall be used to measure flow rates through pipes and small vents.

(iii) The frequency of the flow rate measurements shall depend upon variability of the effluent flow rate. For variable flow rates, continuous or frequent flow rate measurements shall be made. For relatively constant flow rates only periodic measurements are necessary.

(2) Radionuclide shall be directly monitored or extracted, collected and measured using the following methods:

(i) ANSI/HPS N13.1–1999 shall be used to select monitoring or sampling sites.

(ii) The effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance presented in ANSI/HPS N13.1–1999. The requirements for continuous sampling are applicable to batch

processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval. Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant. In such cases, grab samples shall be collected with sufficient frequency so as to provide a representative sample of the emissions.

(iii) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in appendix B, Method 114 of this part. Use of methods based on principles of measurement different from those described in appendix B, Method 114 of this part must have prior approval from the Administrator. EPA reserves the right to approve measurement procedures.

(iv) A quality assurance program shall be conducted that meets the performance requirements described in ANSI/HPS N13.1–1999.

(d) When it is impractical to measure the effluent flow rate at a source in accordance with the requirements of paragraph (b)(1) or (c) of this section or to monitor or sample an effluent stream at a source in accordance with the site selection and sample extraction requirements of paragraph (b)(2) or (c) of this section, the facility owner or operator may use alternative effluent flow rate measurement procedures or site selection and sample extraction procedures provided that:

(1) It can be shown that the requirements of paragraph (b)(1) or (2) or (c) of this section are impractical for the effluent stream.

(2) The alternative procedure will not significantly underestimate the emissions.

(3) The alternative procedure is fully documented.

(4) The owner or operator has received prior approval from EPA.

(e) Radionuclide emission measurements in conformance with the requirements of paragraph (b) or (c) of this section shall be made at all release points that have a potential to discharge radionuclides into the air in quantities that could cause an effective dose equivalent in excess of 1% of the standard. All radionuclides that could contribute greater than 10% of the potential effective dose equivalent for a release point shall be measured. With prior EPA approval, DOE may determine these emissions through alternative procedures. For other release points that have a potential to release radionuclides into the air, periodic confirmatory measurements shall be made to verify the low emissions.

(f) To determine whether a release point is subject to the emission measurement requirements of paragraph (b) or (c) of this section, it is necessary to evaluate the potential for radionuclide emissions for that release point. In evaluating the potential of a release point to discharge radionuclides into the air for the purposes of this section, the estimated radionuclide release rates shall be based on the discharge of the effluent stream that would result if all pollution control equipment did not exist, but the facilities operations were otherwise normal.

(g) Environmental measurements of radionuclide air concentrations at critical receptor locations may be used as an alternative to air dispersion calculations in demonstrating compliance with the standard if the owner or operator meets the following criteria:

(1) The air at the point of measurement shall be continuously sampled for collection of radionuclides.

(2) Those radionuclides released from the facility that are the major contributors to the effective dose equivalent must be collected and measured as part of the environmental measurement program.

(3) Radionuclide concentrations that would cause an effective dose equivalent of 10% of the standard shall be readily detectable and distinguishable from background.

(4) Net measured radionuclide concentrations shall be compared to the concentration levels in Table 2 appendix E of this part to determine compliance with the standard. In the case of multiple radionuclides being released from a facility, compliance shall be demonstrated if the value for all radionuclides is less than the concentration level in Table 2 of appendix E of this part, and the sum of the fractions that result when each measured concentration value is divided by the value in Table 2 of appendix E of this part for each radionuclide is less than 1.

(5) A quality assurance program shall be conducted that meets the performance requirements described in appendix B, Method 114 of this part.

(6) Use of environmental measurements to demonstrate compliance with the standard is subject to prior approval of EPA. Applications for approval shall include a detailed description of the sampling and analytical methodology and show how the above criteria will be met.

Subpart I—[Amended]

4. Section 61.107 is amended by revising paragraphs (b) introductory text, (b)(1)(i), (b)(1)(ii), (b)(2)(i), and by adding paragraphs (d), (e), (f), (g), and (h) to read as follows:

§ 61.107 Emission determination.

* * * * *

(b) Radionuclide emission rates from existing point sources (stacks or vents) shall be measured in accordance with the following requirements or within the requirements of paragraph (d) of this section, or other procedures for which EPA has granted prior approval:

(1) * * *

(i) Reference Method 2 of appendix A to part 60 of this chapter shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(ii) Reference Method 2A of appendix A to part 60 of this chapter shall be used to measure flow rates through pipes and small vents.

* * * * *

(2) * * *

(i) Reference Method 1 of appendix A part 60 of this chapter shall be used to select monitoring or sampling sites.

* * * * *

(d) Radionuclide emission rates from new point sources (stacks or vents) as defined in subpart A shall be measured in accordance with the following requirements, or other procedures for which EPA has granted prior approval:

(1) Effluent flow rate measurements shall be made using the following methods:

(i) ANSI/HPS N13.1–1999 ''Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities'' (incorporated by reference—see § 61.18) shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(ii) ANSI/HPS N13.1–1999 shall be used to measure flow rates through pipes and small vents.

(iii) The frequency of the flow rate measurements shall depend upon variability of the effluent flow rate. For variable flow rates, continuous or frequent flow rate measurements shall be made. For relatively constant flow rates only periodic measurements are necessary.

(2) Radionuclide shall be directly monitored or extracted, collected and measured using the following methods:

(i) ANSI/HPS N13.1–1999 shall be used to select monitoring or sampling sites.

(ii) The effluent stream shall be directly monitored continuously with an in-line detector or representative

samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance presented in ANSI/HPS N13.1–1999. The requirements for continuous sampling are applicable to batch processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval. Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant. In such cases, grab samples shall be collected with sufficient frequency so as to provide a representative sample of the emissions.

(iii) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in appendix B, Method 114 of this part. Use of methods based on principles of measurement different from those described in appendix B, Method 114 of this part must have prior approval from the Administrator. EPA reserves the right to approve measurement procedures.

(iv) A quality assurance program shall be conducted that meets the performance requirements described in ANSI/HPS N13.1–1999.

(e) When it is impractical to measure the effluent flow rate at a source in accordance with the requirements of paragraph (b)(1) or (d) of this section or to monitor or sample an effluent stream at a source in accordance with the site selection and sample extraction requirements of paragraph (b)(2) or (d) of this section, the facility owner or operator may use alternative effluent flow rate measurement procedures or site selection and sample extraction procedures provided that:

(1) It can be shown that the requirements of paragraph (b)(1) or (2) or (d) of this section are impractical for the effluent stream.

(2) The alternative procedure will not significantly underestimate the emissions.

(3) The alternative procedure is fully documented.

(4) The owner or operator has received prior approval from EPA.

(f) Radionuclide emission measurements in conformance with the requirements of paragraph (b) or (d) of this section shall be made at all release points that have a potential to discharge radionuclides into the air in quantities that could cause an effective dose equivalent in excess of 1% of the standard. All radionuclides that could contribute greater than 10% of the potential effective dose equivalent for a release point shall be measured. With prior EPA approval, DOE may determine these emissions through alternative procedures. For other release points that have a potential to release radionuclides into the air, periodic confirmatory measurements shall be made to verify the low emissions.

(g) To determine whether a release point is subject to the emission measurement requirements of paragraph (b) or (d) of this section, it is necessary to evaluate the potential for radionuclide emissions for that release point. In evaluating the potential of a release point to discharge radionuclides into the air for the purposes of this section, the estimated radionuclide release rates shall be based on the discharge of the effluent stream that would result if all pollution control equipment did not exist, but the facilities operations were otherwise normal.

(h) Environmental measurements of radionuclide air concentrations at critical receptor locations may be used as an alternative to air dispersion calculations in demonstrating compliance with the standard if the owner or operator meets the following criteria:

(1) The air at the point of measurement shall be continuously sampled for collection of radionuclides.

(2) Those radionuclides released from the facility that are the major contributors to the effective dose equivalent must be collected and measured as part of the environmental measurement program.

(3) Radionuclide concentrations that would cause an effective dose equivalent of 10% of the standard shall be readily detectable and distinguishable from background.

(4) Net measured radionuclide concentrations shall be compared to the concentration levels in Table 2 of appendix E of this part to determine compliance with the standard. In the case of multiple radionuclides being released from a facility, compliance shall be demonstrated if the value for all radionuclides is less than the concentration level in Table 2 of appendix E of this part, and the sum of the fractions that result when each measured concentration value is divided by the value in Table 2 of appendix E of this part for each radionuclide is less than 1.

(5) A quality assurance program shall be conducted that meets the performance requirements described in appendix B, Method 114 of this part.

(6) Use of environmental measurements to demonstrate compliance with the standard is subject to prior approval of EPA. Applications for approval shall include a detailed description of the sampling and analytical methodology and show how the above criteria will be met.

Appendix B to Part 61—[Amended]

5. Method 114-Test Methods for Measuring Radionuclide Emissions from Stationary Sources is amended by:

a. revising Section 2.1;

b. redesignating paragraphs 4.7 through 4.10 as 4.8 through 4.11 and adding new paragraph 4.7;

c. revising newly designated paragraphs 4.8 through 4.11.

The addition and revisions read as follows:

Appendix B to Part 61—Test Methods

Method 114—Test Methods for Measuring Radionuclide Emissions from Stationary Sources

* * * * *

2. Stack Monitoring and Sample Collection Methods

* * * * *

2.1 Radionuclides as Particulates. The extracted effluent stream is passed through a filter media to remove the particulates. The filter must have a high efficiency for removal of sub-micron particles. The guidance in ANSI/HPS N13.1–1999 (section 6.6.2 Filter media) shall be followed in using filter media to collect particulates (incorporated by reference—see § 61.18 of this part).

* * * * *

4. Quality Assurance Methods

* * * * *

4.7 Regular maintenance, calibration and field checks shall be performed for each sampling system in use by satisfying the requirements found in Table 2: Maintenance, Calibration and Field Check Requirements.

TABLE 2.—MAINTENANCE, CALIBRATION AND FIELD CHECK REQUIREMENTS

Sampling system components	Frequency of activity
Cleaning of thermal anemometer elements	As required by application.
Inspect pitot tubes for contaminant deposits	At least annually.

TABLE 2.—MAINTENANCE, CALIBRATION AND FIELD CHECK REQUIREMENTS—Continued

Sampling system components	Frequency of activity
Inspect pitot tube systems for leaks	At least annually.
Inspect sharp-edged nozzles for damage	At least annually or after maintenance that could cause damage.
Check nozzles for alignment, presence of deposits, or other potentially degrading factors.	Annually.
Check transport lines of HEPA-filtered applications to determine if cleaning is required.	Annually.
Clean transport lines	Visible deposits for HEPA-filtered applications. Surface density of 1 g/cm^3.
Inspect or test the sample transport system for leaks	At least annually.
Check mass flow meters of sampling systems with a secondary or transfer standard.	At least quarterly.
Inspect rotameters of sampling systems for presence of foreign matter	At the start of each sampling period.
Check response of stack flow rate systems	At least quarterly.
Calibration of flow meters of sampling systems	At least annually.
Calibration of effluent flow measurement devices	At least annually.
Calibration of timing devices	At least annually.

4.8 Periodic internal and external audits shall be performed to monitor compliance with the quality assurance program. These audits shall be performed in accordance with written procedures and conducted by personnel who do not have responsibility for performing any of the operations being audited.

4.9 A corrective action program shall be established including criteria for when corrective action is needed, what corrective actions will be taken and who is responsible for taking the corrective action.

4.10 Periodic reports to responsible management shall be prepared on the performance of the emissions measurements program. These reports should include assessment of the quality of the data, results of audits and description of corrective actions.

4.11 The quality assurance program should be documented in a quality assurance project plan that should address each of the above requirements.

* * * * *

[FR Doc. 02–22361 Filed 9–6–02; 8:45 am]

BILLING CODE 6560–50–U

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 107]

RIN 3090–AH65

Federal Travel Regulation; Maximum Per Diem Rates for the States of Florida and Georgia

AGENCY: Office of Governmentwide Policy, Transportation and Personal Property (MTT), GSA.

ACTION: Final rule.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. An analysis of FPLP contracting actions and the lodging rate survey data reveal that the maximum per diem rate for the State of Florida, city of Miami including Dade and Palm Beach Counties, cities of Tampa/St. Petersburg including Pinellas and Hillsborough Counties, and the State of Georgia, city of Atlanta including Fulton, Clayton, Cobb, DeKalb and Gwinnett Counties should be changed. A new entry for Gwinnett County is added. This final rule changes the maximum lodging amounts in the prescribed areas.

EFFECTIVE DATE: September 1, 2002.

FOR FURTHER INFORMATION CONTACT: Joddy P. Garner, Office of Governmentwide Policy, Travel Management Policy, at 202–501–4857.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to better meet its overall room night demand, and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amounts are being changed in Miami, and Tampa/St. Petersburg, Florida; and Atlanta, Georgia.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

This Final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, 41 CFR chapter 301 is amended as follows:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

1. Amend the table in Appendix A to chapter 301 currently in effect as follows:

a. Remove the entries for Miami, Florida, including Dade County, and Palm Beach, Florida.

b. Add a new entry for Miami/Palm Beach, Florida, including Dade and Palm Beach Counties.

c. Revise the entry for Tampa/St. Petersburg, Florida, including Pinellas and Hillsborough Counties.

d. Revise the entry for Atlanta, Georgia.

e. Add a new entry for Gwinnett County, Georgia.

The revised pages containing the amendments to the table set forth above read as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * * * *

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Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
(May 1-September 30)		115		38		153
(October 1-April 30)		59		38		97
Jacksonville/Mayport	Duval; Mayport Naval Station	81		34		115
Key West	Monroe					
(January 1-April 30)		180		46		226
(May 1-December 31)		109		46		155
Kissimmee	Osceola					
(February 1-April 30)		77		34		111
(May 1-January 31)		64		34		98
Lakeland	Polk	71		34		105
Leesburg	Lake					
(November 1-April 15)		68		30		98
(April 16-October 31)		55		30		85
Miami/Palm Beach (also includes the cities of Boca Raton, Delray Beach, Jupiter Beach, Palm Beach Gardens, Palm Beach Shores, Singer Island and West Palm Beach)	Dade and Palm Beach	98		46		144
Naples	Collier					
(December 16-April 15)		109		38		147
(April 16-December 15)		69		38		107
Ocala	Marion	59		30		89
Orlando	Orange	95		42		137
(January 1-April 30)		129		46		175
(May 1-December 31)		70		46		116
Panama City	Bay	74		38		112
Pensacola	Escambia	60		30		90
Punta Gorda	Charlotte					
(December 15-April 15)		75		38		113
(April 16-December 14)		55		38		93
Sarasota	Sarasota					
(January 1-April 30)		80		38		118
(May 1-December 31)		70		38		108
Sebring	Highlands	64		30		94
St. Augustine	St. Johns	65		38		103
Stuart	Martin	57		38		95
Tallahassee	Leon	65		34		99
Tampa/St. Petersburg	Pinellas and Hillsborough	93		38		131
Vero Beach	Indian River					
(December 15-April 15)		99		38		137
(April 16-December 14))		59		38		97
GEORGIA						
Albany	Dougherty	57		34		91
Athens	Clarke	69		34		103

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Atlanta	Fulton, Cobb and DeKalb	112		38		150
Clayton County	Clayton	89		30		119
Columbus	Muscogee	63		34		97
Conyers	Rockdale	69		34		103
Gwinnett County	Gwinnett	69		38		107
Savannah	Chatham	89		38		127
IDAHO						
Boise	Ada	61		38		99
Coeur d'Alene	Kootenai	56		34		90
Ketchum	Blaine (except Sun Valley)					
(May 1-November 30)		84		42		126
(December 1-April 30)		74		42		116
McCall	Valley	62		38		100
Sun Valley	City limits of Sun Valley (see Blaine County)	149		42		191
ILLINOIS						
Aurora	Kane (except Elgin)	66		30		96
Chicago	Cook and Lake	155		46		201
Du Page County	Du Page	89		38		127
Elgin	City limits of Elgin (see Kane County)	60		30		90
Rockford	Winnebago	60		30		90
INDIANA						
Carmel	Hamilton	65		38		103
Ft. Wayne	Allen	58		30		88
Indianapolis	Marion County; Fort Benjamin Harrison	70		42		112
Lafayette	Tippecanoe	59		30		89
Michigan City	La Porte	65		34		99
Nashville	Brown					
(April 1-November 15)		75		38		113
(November 16-March 31)		59		38		97
South Bend	St. Joseph	61		34		95
Valparaiso/Burlington Beach	Porter	89		34		123
IOWA						
Cedar Rapids	Linn	60		34		94
Des Moines	Polk	67		34		101
KANSAS						
Kansas City/Overland Park	Wyandotte and Johnson	85		38		123
Wichita	Sedgwick	59		38		97
KENTUCKY						
Covington	Kenton	80		38		118
Lexington	Fayette	65		30		95
Louisville	Jefferson	69		38		107
LOUISIANA						
Baton Rouge	East Baton Rouge Parish	78		38		116

* * * * *

Dated: August 26, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–22415 Filed 9–6–02; 8:45 am]

BILLING CODE 6820–14–C

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Fairfield (FEMA Docket No. D–7521).	Town of Greenwich	February 11, 2002, February 18, 2002, *Greenwich Times*.	Mr. Richard Bergstresser First Selectman for the Town of Greenwich, 101 Field Point Road, Greenwich, Connecticut 06830.	February 4, 2002 ...	090008 C
Illinois: Kane (FEMA Docket No. D–7523).	City of Geneva	March 6, 2002, March 13, 2002, *Kane County Chronicle*.	The Honorable Kevin Burns, Mayor of the City of Geneva, 22 South First Street, Geneva, Illinois 60134.	June 12, 2002	170325 B
Kentucky: Jefferson (FEMA Docket No. D–7521).	Unincorporated Areas.	January 3, 2002, January 10, 2002, *Courier-Journal*.	The Honorable Rebecca Jackson, Jefferson County Judge Executive, Jefferson County Courthouse, 527 West Jefferson Street, Suite 400, Louisville, Kentucky 40202.	April 11, 2001	210120 D
Maryland: Howard (FEMA Docket No. D–7523).	Unincorporated Areas.	December 13, 2001, December 20, 2001, *The Howard County Times*.	Mr. James N. Robey, Howard County Executive, 3430 Courthouse Drive, Ellicott City, Maryland 21043.	November 28, 2001	240044 B
Maryland: Montgomery (FEMA Docket No. D–7523).	City of Rockville	March 6, 2002, March 13, 2002, *Rockville Gazette*.	The Honorable Larry Giammo, Mayor of the City of Rockville, Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland 20850.	February 22, 2002	240051 B
Pennsylvania: Lehigh (FEMA Docket No. D–7523).	Township of Salisbury.	March 11, 2002, March 18, 2002, *Morning Call*.	Mr. Gabriel Khalife, Manager of the Township of Salisbury, 2900 South Pike Avenue, Allentown, Pennsylvania 18103.	June 17, 2002	420591 D
Puerto Rico: (FEMA Docket No. D–7523).	Commonwealth	November 16, 2001, November 23, 2001, *The San Juan Star*.	The Honorable Sila Maria Calderon, Governor of the Commonwealth of Puerto Rico, Office of the Governor, P.O. Box 9020082, San Juan, Puerto Rico 00901.	November 7, 2001	720000 E
Virginia: Fauquier (FEMA Docket No. D–7523).	Town of Warrenton	March 21, 2002, March 28, 2002, *Fauquier Citizen*.	Mr. John Anzivino, Warrenton Town Manager, Municipal Building, 18 Court Street, Warrenton, Virginia 20186.	March 5, 2002	510057 B

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

Dated: August 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–22824 Filed 9–6–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7527]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

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

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

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

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

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

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

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

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

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

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain

qualified for participation in the National Flood Insurance Program (NFIP).

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Lee	City of Auburn	August 1, 2002, August 8, 2002, *Opelika-Auburn News*.	The Honorable Bill Ham, Jr., Mayor of the City of Auburn, 144 Tichenor Avenue, Auburn, Alabama 36830.	May 20, 2002	010144 E
Connecticut: Fairfield.	City of Danbury	June 6, 2002, June 13, 2002 *The News-Times*.	The Honorable Mark D. Boughton, Mayor of the City of Danbury, 155 Deer Hill Avenue, Danbury, Connecticut 06810.	September 12, 2002.	090004 B
Florida: Broward	City of Parkland	July 8, 2002, July 15, 2002, *Sun-Sentinel*.	The Honorable Sal Pagliara, Mayor of the City of Parkland, 6600 University Drive, Parkland, Florida 33067.	July 1, 2002	120051 F
Florida: Broward	Unincorporated Areas.	July 8, 2002, July 15, 2002, *Sun-Sentinel*.	Mr. Roger J. Desjarlais, Broward County Administrator, 115 South Andrews Avenue, Room 409, Fort Lauderdale, Florida 33301.	July 1, 2002	125093 F
Florida: Clay	Unincorporated Areas.	July 24, 2002, July 31, 2002, *The Florida Times-Union*.	Mr. Robert M. Wilson, Clay County Manager, P.O. Box 1366, Green Cove Springs, Florida 32043.	July 17, 2002	120064 D
Florida: Lee	Unincorporated Areas.	June 28, 2002, July 5, 2002, *News-Press*.	Mr. Robert Janes, Chairman of the Lee County, Board of Commissioners, P.O. Box 398, Fort Myers, Florida 33902–0398.	June 21, 2002	125124 D&E
Florida: Polk	City of Lakeland	April 3, 2002, April 10, 2002, *The Ledger*.	Mr. Roger D. Haar, City Manager for the City of Lakeland, Lakeland City Hall, 228 South Massachusetts Avenue, Lakeland, Florida 33801–5086.	March 27, 2002	120267 F
Florida: Polk	Unincorporated Areas.	August 1, 2002, August 8, 2002, *The Ledger*.	Mr. Jim W. Keene, Polk County Manager, 330 West Church Street, P.O. Box 9005, Drawer CA01, Bartow, Florida 33831–9005.	May 14, 2002	120261 F
Illinois: LaSalle	City of Ottawa	July 3, 2002, July 10, 2002, *The Daily Times*.	The Honorable Robert Eschbach, Mayor of the City of Ottawa, City Hall, 301 West Madison Street, Ottawa, Illinois 61350.	July 25, 2002	170405 E
Kentucky: Daviess	City of Owensboro	August 5, 2002, August 12, 2002, *Messenger-Inquirer*.	The Honorable Waymond O. Morris, Mayor of the City of Owensboro, P.O. Box 1003, Owensboro, Kentucky 42303–9003.	November 11, 2002	210063 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maine: Penobscot ...	City of Brewer	June 4, 2002, June 11, 2002, *Bangor Daily News*.	The Honorable Michael Celli, Mayor of the City of Brewer, City Hall, 80 North Main Street, Brewer, Maine 04412.	September 10, 2002.	230104 B
Maryland: Frederick	Unincorporated Areas.	July 22, 2002, July 29, 2002, *Frederick News Post*.	Mr. Ron Hart, Frederick County Manager, 12 East Church Street, Frederick, Maryland 21701.	.....	240027 A
Michigan: Oakland ..	City of Novi	July 4, 2002, July 11, 2002, *Novi News*.	The Honorable Richard Clark, Mayor of the City of Novi, Civic Center, 45175 West Ten Mile Road, Novi, Michigan 48375–3024.	June 25, 200	260175 C
Michigan: Macomb ..	City of Sterling Heights.	June 9, 2002, June 16, 2002, *The Source*.	The Honorable Richard J. Notte, Mayor of the City of Sterling Heights, P.O. Box 8009, 40555 Utica Road, Sterling Heights, Michigan 48311–8009.	July 3, 2002	260128 E
Mississippi: Lafayette.	City of Oxford	May 22, 2002, May 29, 2002, *Oxford Eagle*.	The Honorable Richard Howorth, Mayor of the City of Oxford, City Hall, 107 Courthouse Square, Oxford, Mississippi 38655.	August 21, 2002	280094 B
New York: Steuben	Town of Campbell	June 28, 2002, July 5, 2002, *The Leader*.	Mr. Thomas O. Bosket, Supervisor of the Town of Campbell, 8529 Main Street, Campbell, New York 14821.	December 20, 2002	360768 C
Ohio: Franklin	Unincorporated Areas.	June 5, 2002, June 12, 2002, *Daily Reporter*.	Ms. Arline Shoemaker, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, Ohio 43215.	September 11, 2002.	390167 G
Ohio: Franklin	Village of Urbancrest.	June 5, 2002, June 12, 2002, *Grove City Record*.	The Honorable Marlin R. West, Mayor of the Village of Urbancrest, 3357 Central Avenue, Urbancrest, Ohio 43123.	September 11, 2002.	390893 G
Pennsylvania: Allegheny.	City of Pittsburgh ...	July 9, 2002, July 16, 2002, *Pittsburgh Post Gazette*.	The Honorable Thomas Murphy, Mayor of the City of Pittsburgh, 5th Floor, City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219.	October 15, 2002 ..	4200063
Pennsylvania: Bucks	Borough of Richland.	August 14, 2002, August 21, 2002, *The Intelligencer*.	Mr. Steven Tamburri, Chairman of the Township of Richland, Board of Supervisors, Suite A, 1328 California Road, Quakertown, Pennsylvania 18951.	November 20, 2002	421095 F
Rhode Island: Washington.	Town of Westerly ..	June 19, 2002, June 26, 2002, *The Westerly Sun*.	Mr. Samuel Azzinaro, Westerly Town Council President, Westerly Town Hall, 45 Broad Street, Westerly, Rhode Island 02891.	June 12, 2002	445410 E
Tennessee: Fayette	Unincorporated Areas.	May 22, 2002, May 29, 2002, *The Fayette Falcon*.	The Honorable Jim Voss, Mayor of Fayette County, P.O. Box 218, Somerville, Tennessee 38068.	August 28, 2002	470352 B
Tennessee: Sumner and Davison.	City of Goodlettsville.	August 5, 2002, August 12, 2002, *The Tennessean*.	The Honorable Bobby T. Jones, Mayor of the City of Goodlettsville, 105 South Main Street, Goodlettsville, Tennessee 37072.	November 22, 2002	470287 F
Virginia: Loudoun	Unincorporated Areas.	June 12, 2002, June 19, 2002, *Loudoun Times Mirror*.	Mr. Kirby Bowers, Loudoun County Administrator, 1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, Virginia 20177–7000.	June 3, 2002	510090 D
Virginia: Henrico	Unincorporated Areas.	July 19, 2002, July 26, 2002, *The Richmond Times*.	Mr. James B. Donati, Jr., Chairman of the Henrico County, Board of Supervisors, P.O. Box 27032, Richmond, Virginia 23273.	October 25, 2002 ..	510077 B
Virginia: Prince William.	Town of Dumfries ..	August 9, 2002, August 16, 2002, *Potomac News*.	The Honorable Melvin Bray, Mayor of the Town of Dumfries, P.O. Box 56, Dumfries, Virginia 22026.	July 31, 2002	510120 D
Virginia: Fauquier ...	Town of Warrenton	August 15, 2002, August 22, 2002, *Fauquier Citizen*.	Mr. Kenneth L. McLawhon, Warrenton Town Manager, 18 Court Street, Warrenton, Virginia 20186.	July 16, 2002	510057 B

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

Dated: August 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–22823 Filed 9–6–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR part 67

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

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
CONNECTICUT	
New Haven (Town), New Haven County (FEMA Docket No. D–7524)	
Maloney Brook:	
Approximately 10 feet upstream of the confluence with Farm River	*36
Approximately 50 feet upstream of Foxon Hill Road	*105
Maps available for inspection at the East Haven Public Works Building, 461 North High Street, East Haven, Connecticut.	
ILLINOIS	
Champaign County (Unincorporated Areas) (FEMA Docket No. D–7528)	
Sangamon River:	
Approximately 1,000 feet downstream from the Township Road 2000 North (Shively) bridge	*676
At Lake of the Woods covered bridge	*689
Maps available for inspection at the Champaign County Department of Planning and Zoning, Brookens Administrative Center, 1776 East Washington Street, Urbana, Illinois.	
Elburn (Village), Kane County (FEMA Docket No. D–7516)	
Blackberry Creek:	
At the confluence of Blackberry Creek Tributary D	*741
Approximately 1,050 feet upstream of Hughes Road	*747
Blackberry Creek Tributary D:	
Approximately 600 feet upstream of confluence with Blackberry Creek	*742
Approximately 2,550 feet downstream of Keslinger Road	*799

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Maps available for inspection at the Elburn Village Hall, 301 East North Street, Elburn, Illinois.	
Elgin (City), Kane County (FEMA Docket No. D–7516)	
Sandy Creek:	
At Randall Road	*826
Approximately 325 feet upstream of Randall Road	*826
Tyler Creek:	
Approximately 500 feet upstream of confluence with Fox River	*715
Approximately 120 feet downstream of Soo Line Railroad	*839
Maps available for inspection at the City of Elgin Public Works Department, Engineering Division, 150 Dexter Court, Elgin, Illinois.	
Gilberts (Village), Kane County (FEMA Docket No. D–7516)	
Tyler Creek:	
Just upstream of Big Timber Road	*867
Approximately 200 feet downstream of McCornack Road	*866
Maps available for inspection at the Gilberts Village Hall, 87 Galligan Road, Gilberts, Illinois.	
Kane County (Unincorporated Areas) (FEMA Docket No. D–7516)	
Blackberry Creek Tributary F:	
Approximately 0.6 mile upstream of confluence with Blackberry Creek Tributary B	*703
Approximately 250 feet downstream of Bliss Road	*727
Main Street Ditch:	
At confluence with Blackberry Creek Tributary F	*707
Approximately 130 feet upstream of Main Street	*709
Tyler Creek:	
Approximately 375 feet downstream of Eagle Road East	*793
Approximately 200 feet upstream of Illinois Route 72	*898
Pingree Creek:	
At confluence with Tyler Creek	*893
Approximately 325 feet upstream of U.S. Route 20	*906
Mastadon Lake:	
Approximately 300 feet southeast of the intersection of Parker Avenue and Hinman Street	*662
Sandy Creek:	
Approximately 130 feet downstream of Randall Road	*821
Just downstream of U.S. Route 20	*889
Indian Creek:	
Approximately 0.41 mile upstream of Wood Street	*676
At downstream side of East-West Tollway	*717
Indian Creek Tributary B:	
Approximately 0.61 mile upstream of confluence with Indian Creek	*716
Approximately 0.86 mile upstream of confluence with Indian Creek	*716
South Tributary:	
At confluence with Indian Creek	*684
Approximately 680 feet upstream of confluence with Indian Creek	*688
Welch Creek:	
Approximately 1,110 feet downstream of Fay's Lane	*680
Just upstream of Burlington Northern Railroad	*692
Welch Creek Tributary 1:	
Just upstream of Aurora Municipal Airport	*693
Approximately 2,600 feet upstream of Aurora Municipal Airport	*694
Blackberry Creek Tributary H:	
Approximately 750 feet southwest of Lake View Court and Lake View Drive intersection	*670
Selmarten Creek:	
At confluence with Indian Creek	*716
At county boundary	*720
Maps available for inspection at the Kane County Water Resources Department, Kane County Government Center Building ''A,'' 719 Batavia Avenue, Geneva, Illinois.	
Lily Lake (Village), Kane County (FEMA Docket No. D–7516)	
Ferson Creek:	
Approximately 100 feet downstream of Great Western Trail Railroad	*862
Just downstream of Route 64	*872
Maps available for inspection at the Lily Lake Village Hall, 43W680 Empire Road, St. Charles, Illinois.	
Mahomet (Village), Champaign County (FEMA Docket No. D–7528)	
Sangamon River:	
Approximately 800 feet downstream of downstream corporate limits	*677
Approximately 1,800 feet downstream of upstream corporate limits	*689
Maps available for inspection at the Mahomet Village Hall, 503 East Main Street, Mahomet, Illinois.	
Montgomery (Village), Kane County (FEMA Docket No. D–7516)	
Blackberry Creek Tributary G:	
Approximately 2,050 feet downstream of Aucutt Road	*661
Approximately 550 feet downstream of Jericho Road	*666
Blackberry Creek:	
Approximately 0.4 mile downstream of Jericho Road	*664
At Jericho Road	*666
Maps available for inspection at the Montgomery Village Clerk's office, 1300 South Broadway, Montgomery County, Illinois.	
Pingree Grove (Village), Kane County (FEMA Docket No. D–7516)	
Pingree Creek:	
Approximately 1,000 feet upstream of Highland Avenue	*901
Approximately 800 feet upstream of Soo Line Railroad	*902
Maps available for inspection at the Pingree Grove Village Hall, 14N042 Reinking Road, Hampshire, Illinois.	
Sugar Grove (Village), Kane County (FEMA Docket No. D–7516)	
Blackberry Creek:	
Approximately 1,050 feet upstream of Densmore Road	*678
Approximately 1,800 feet upstream of Bliss Road	*690
Blackberry Creek Tributary E:	
At confluence with Blackberry Creek	*680
At Mankes Road	*680
Maps available for inspection at the Sugar Grove Village Office, 10 Municipal Drive, Sugar Grove, Illinois.	
MAINE	
Wells (Town), York County (FEMA Docket No. D–7504)	
Atlantic Ocean:	
Approximately 300 feet east of the intersection of Bourne Avenue and Ocean Avenue	*20
Approximately 100 feet west of the intersection of Mile Road and Webhannet Drive	*10

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Approximately 50 feet northwest of the intersection of Seaview Drive and Webhannet Drive	#1
Approximately 100 feet southeast of the intersection of Drakes Island Road and Drakes Island Beach Road	#2
At intersection of Furbush Road and Ocean Avenue	#1
Approximately 200 feet southeast of the intersection of Webhannet Drive and Folsom Street	#2
Depot Brook:	
Approximately 0.38 mile downstream of U.S. Route 1	*10
Approximately 0.25 mile downstream of U.S. Route 1	*10
Little River:	
Approximately 0.62 mile upstream of mouth	*10
At confluence of Merriland River	*10
Merriland River:	
At confluence with the Little River	*10
Approximately 125 feet downstream of Lords Road	*10
Ogunquit River:	
At confluence of Stevens Brook	*10
Approximately 260 feet downstream of U.S. Route 1	*10
Stevens Brook:	
Approximately 2.00 miles above confluence with Ogunquit River	*10
Approximately 0.31 mile downstream of U.S. Route 1	*10
Webhannet River:	
Approximately 0.72 mile downstream of U.S. Route 1	*10
Approximately 215 feet downstream of U.S. Route 1	*10
Maps available for inspection at the Wells Town Hall, Planning & Code Enforcement Office, 208 Sanford Road, Wells, Maine.	
MASSACHUSETTS	
Worcester (City), Worcester County (FEMA Docket No. D–7524)	
Broad Meadow Brook:	
Approximately 240 feet downstream of U.S. Highway 20	*450
Approximately 1.6 miles upstream of U.S. Highway 20	*484
Beaver Brook:	
Approximately 175 feet downstream of Mill Street bridge	*480
At Maywood Street	*481
Maps available for inspection at the Worcester Environmental/Land Use Planner's Office, 25 Meade Street, Worcester, Massachusetts.	
NEW JERSEY	
Florham Park (Borough), Morris County (FEMA Docket No. D–7524)	
Spring Garden Brook:	
Approximately 200 feet downstream of Brooklake Road	*175
At the upstream corporate limits	*182
Maps available for inspection at the Florham Park Municipal Building, Public Works Office, 111 Ridgedale Avenue, Florham Park, New Jersey.	
Rahway (City), Union County (FEMA Docket No. D–7524)	
Rahway River:	
At the downstream corporate limits	*9
Approximately 30 feet upstream of Monroe Street	*11
South Branch:	
At the confluence with the Rahway River	*11
Approximately 528 feet downstream of East Inman Avenue	*11
Maps available for inspection at the Rahway City Hall, Department of Engineering, City Hall Plaza, Rahway, New Jersey.	
Weymouth (Township), Atlantic County (FEMA Docket No. D–7528)	
Tuckahoe River:	
At the downstream corporate limits	*56
At the upstream corporate limits	*77
Great Egg Harbor River:	
At the confluence of the South River	*9
At the upstream corporate limits	*9
South River:	
At Walkers Forge Avenue	*16
Approximately 500 feet upstream of upstream corporate limits	*38
Maps available for inspection at the Weymouth Township Hall, 45 South Jersey Avenue, Dorothy, New Jersey.	
NEW YORK	
Mina (Town), Chautauqua County (FEMA Docket No. D–7524)	
Findley Lake:	
Entire shoreline of Findley Lake	*1,423
Maps available for inspection at Mina Town Community Center, 2883 North Road, Findley Lake, New York.	
Sardinia (Town), Erie County (FEMA Docket No. D–7528)	
Hosmer Brook:	
Approximately 0.83 mile downstream of State Route 39	*1,320
Approximately 80 feet upstream of Genesee Road	*1,408
Maps available for inspection at the Sardinia Community Center, 12320 Savage Road, Sardinia, New York.	
TENNESSEE	
Fairview (City), Williamson County (FEMA Docket No. D–7524)	
Hunting Camp Creek:	
At upstream side of Fernvale Road	*703
A point approximately 0.75 mile upstream of Chester Road	*822
Hunting Camp Creek Tributary No. 2:	
At Fernvale Road	*701
Approximately 30 feet upstream of Chester Road	*794
Hunting Camp Creek Tributary No. 3:	
At Fernvale Road	*701
Approximately 275 feet upstream of State Route 100	*804
Hunting Camp Creek Tributary No. 4:	
At the confluence with Hunting Camp Creek Tributary No. 3	*721
Approximately 200 feet upstream of Chester Road	*798
Hunting Camp Creek Tributary No. 5:	
At the confluence with Hunting Camp Creek Tributary No. 2	*790
Approximately 20 feet upstream of Chester Road	*794
Maps available for inspection at the Fairview City Hall, 1874 Fairview Boulevard, Fairview, Tennessee.	
Franklin (City), Williamson County (FEMA Docket No. D–7283)	
Watson Branch:	
Approximately 1,625 feet upstream of confluence with Harpeth River	*644
Approximately 75 feet downstream of Murfreesboro Pike	*699
South Prong Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Approximately 75 feet upstream of confluence with Spencer Creek	*663
Approximately 1,100 feet upstream of Liberty Pike	*729
Unnamed Tributary to South Prong Creek:	
At confluence with South Prong Creek	*682
Approximately 715 feet upstream of confluence with South Prong Creek	*689
Maps available for inspection at the Franklin City Hall, Code Department, 109 Third Avenue South, Franklin, Tennessee.	
Murfreesboro (City), Rutherford County (FEMA Docket No. D–7524)	
Lytle Creek:	
At the confluence with West Fork Stones River	*573
At a point approximately 200 feet upstream of Country Club Drive	*602
Sinking Creek:	
At the confluence with West Fork Stones River	*547
Approximately 0.6 mile upstream of Thompson Lane	*547
Unnamed Tributary of West Fork Stones River:	
At the confluence with West Fork Stones River	*586
Approximately 0.54 mile upstream of confluence with West Fork Stones River	*586
West Fork Stones River:	
Approximately 0.7 mile upstream of I–840	*543
At the confluence of Middle Fork Stones River	*595
Todds Lake:	
Entire shoreline within the community	*613
Sink Hole #1:	
Entire perimeter of the sink hole	*607
Middle Fork Stones River:	
At the confluence with West Fork Stones River	*595
Approximately 0.5 2 mile upstream of confluence with West Fork Stones River	*596
Sink Hole #2:	
Entire perimeter of the sink hole	*595
Sink Hole #3:	
Entire perimeter of the sink hole	*585
Maps available for inspection at the City of Murfreesboro Planning Department, City Hall, 111 West Vine Street, Murfreesboro, Tennessee.	
Rutherford County (Unincorporated Areas) (FEMA Docket No. D–7524)	
Lytle Creek:	
At a point approximately 455 feet upstream of Sanbyrn Drive	*599
At a point approximately 1.26 miles upstream of Dilton-Mankin Road	*656
West Fork Stones River:	
At a point approximately 0.35 mile upstream of Sulphur Springs Road	*525
At a point approximately 1.28 miles upstream of Stones River Road	*675
Sinking Creek:	
At the confluence with West Fork Stones River	*547
Approximately 250 feet downstream of Thompson Lane	*547
Lees Spring Branch:	
At the confluence with Lytle Creek	*620
Approximately 500 feet upstream of confluence with Lytle Creek	*620
Unnamed Tributary of West Fork Stones River:	
Approximately 0.54 mile upstream of confluence with West Fork Stones River	*586
Approximately 106 feet upstream of State Highway 99	*588
Todds Lake:	
Entire shoreline within the community	*613
Middle Fork Stones River:	
At the confluence with West Fork Stones River	*595
Approximately 0.52 mile upstream of confluence with West Fork Stones River	*596
Maps available for inspection at the Rutherford County Planning Department, #1 Southside Square, Murfreesboro, Tennessee.	
Williamson County (Unincorporated Areas) (FEMA Docket Nos. D–7283 and D–7524)	
Brush Creek:	
At county boundary	*548
Approximately 1.57 miles upstream of Old Brush Creek Road	*676
Harrison Branch Creek:	
Confluence with Brush Creek	*556
Approximately 125 feet downstream of unnamed road	*668
Hunting Camp Creek:	
Approximately 55 feet downstream of the confluence with Hunting Camp Creek Tributary No. 3	*680
At upstream side of Fernvale Road	*703
Hunting Camp Creek Tributary No. 2:	
At the confluence with Hunting Camp Creek	*684
At Fernvale Road	*701
Hunting Camp Creek Tributary No. 3:	
At the confluence with Hunting Camp Creek	*681
At upstream side of Fernvale Road	*702
Leipers Fork:	
Just upstream of Bailey Road	*670
At downstream side of Bear Creek Road	*727
East Fork Creek:	
At county boundary	*587
Approximately 900 feet upstream of most upstream crossing of Big East Fork Road	*692
Beech Creek:	
Confluence with Little Harpeth River	*600
Approximately 700 feet downstream of Murry Lane	*649
Trace Creek:	
Approximately 50 feet downstream of county boundary	*569
Approximately 100 feet downstream of Natchez Bend Road	*642
Mill Creek:	
Approximately 520 feet upstream of Concord Road	*557
Approximately 264 feet upstream of Rocky Fork Road	*612
Owl Creek:	
Approximately 0.46 mile upstream of Ragsdale Road	*650
At downstream side of Split Log Road	*677
Unnamed Tributary of Mill Creek:	
Approximately 100 feet upstream of confluence with Mill Creek	*600
Approximately 1,150 feet upstream of confluence with Mill Creek	*603
Watson Branch:	
Approximately 275 feet downstream of Murfreesboro Road	*698
Approximately 75 feet downstream of Murfreesboro Road	*699
Maps available for inspection at the Williamson County Complex, Planning Department, 1320 West Main Street, Suite 125, Franklin, Tennessee.	
VIRGINIA	
Grottoes (Town), Augusta and Rockingham Counties (FEMA Docket No. D–7524)	
Miller Run:	
Approximately 160 feet downstream of 21st Street	*1,090
Approximately 60 feet upstream of Cary Street	*1,152

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Maps available for inspection at the Grottoes Town Office, 601 Dogwood Avenue, Grottoes, Virginia.	

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

Dated: August 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–22825 Filed 9–6–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 99–216, FCC 02–103]

2000 Biennial Regulatory Review of Adopting Technical Criteria and Approving Terminal Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration.

SUMMARY: In this document, the Commission addresses requests to reconsider portions of the Commission's *Report and Order* published Wednesday, January 24, 2001 (66 FR 7579) that modified its rules governing the connection of terminal equipment to the public switched telephone network to streamline the standards development and approval processes for terminal equipment.

DATES: Effective October 9, 2002.

FOR FURTHER INFORMATION CONTACT: John Hays, Industry Analysis and Technology Division, Wireline Competition Bureau, voice 202–418–0875, fax 202–418–0520.

SUPPLEMENTARY INFORMATION: In the Order on Reconsideration, the Commission addressed several issues raised in *ex parte* comments or in petitions for reconsideration and subsequent pleadings.

The Commission clarified, pursuant to a request by the Administrative Council for Terminal Attachments (Administrative Council) seeking clarification of § 68.602(c), that a formal contract is not required between the Administrative Council and its sponsors. In establishing § 68.602(c), the Commission intended to ensure that the nature of the arrangement between the Administrative Council and its sponsor(s) is subject to public disclosure. The Administrative Council states that it will develop a statement of work or similar document pertaining to its relationship with its sponsors, and make the document available online and from the secretariat upon request. The Commission found that this would be sufficient for purposes of compliance with § 68.602(c).

The Commission denied petitions to reconsider the supplier's declaration of conformity (SDoC) procedure established in the *Report and Order,* stating that the Commission has long permitted testing of part 68 equipment by non-accredited laboratories, with few documented problems, and has required laboratory accreditation only in instances where the test procedures are sufficiently complex so as to raise concerns about the tests being performed properly. The Commission found no such concerns with the tests required for part 68 terminal equipment. Moreover, the Commission stated that commenters' concerns that use of the SDoC process will lead to non-compliant equipment are unfounded.

The Commission granted Industry Canada's request to delete the requirement in § 68.321 of the rules that responsible parties be located within the United States. The Commission amended § 68.321 to specify that responsible parties must designate an agent for service of process that maintains an office within the United States.

The Commission denied the petition by the American National Standards Institute to accept standards development by the Canvass method of consensus for technical criteria, but granted the American National Standards Institute petition as to appeals procedures. The Commission found that the Organization and Standards Committee methods of development provide additional assurance of public participation, similar to that provided in a rulemaking proceeding, by allowing open participation. Thus, the Commission intends to ensure that interested parties have a voice in drafting the standards at an early stage in the standards development process. Notwithstanding the American National Standards Institute's finding that the Canvassing method ultimately provides a similar level of due process afforded by the other two methods, the Commission found that for the purpose of developing technical criteria, it is essential for all interested parties to have an opportunity to enjoy full participation in the standards development process from the outset of that process.

In addition, the Commission clarified on its own motion that after technical criteria are published, and the 30-day public notice period passes, technical criteria will be deemed to be presumptively valid and remain so during appeal, unless they are subsequently invalidated by the standards development organization, the Administrative Council, the American National Standards Institute, or the Commission.

The Commission granted the requests of several petitioners to eliminate the provisions in §§ 68.354(d) and 68.612 requiring the manufacturer(s) of terminal equipment to be identified on the label and in the database of approved terminal equipment. The Commission found that current business practices often are that the licensing entity, whose name is on the product, contracts with several manufacturers to produce the equipment. In such case the relevant entity is the licensing party, not the manufacturer. These contract manufacturers are numerous and may change frequently and, perhaps most importantly, their identities are proprietary information for the licensing entity.

The Commission also denied petitions to retain the technical rules for type B surge requirements. The Commission stated that the privatized system is the most efficient and responsive method for addressing future updates to the technical criteria for terminal equipment. It found that BellSouth's concerns, that the Type B surge requirements would be eliminated under the privatized system, are unfounded. The Commission pointed out that the Administrative Council has no discretion unilaterally to remove the Type B surge requirements. Standards development organizations that meet the requirements of the *Report and Order* are the only entities that may formulate changes to, or ultimately eliminate, technical criteria. Such standards development organizations must permit open participation in the development or amendment of technical requirements, and they must follow consensus procedures. The Administrative Council merely publishes these criteria after ensuring the Commission's requirements were met. Moreover, the Commission retains *de novo* review, appeals and enforcement jurisdiction in the event of an appeal of technical criteria.

On its own motion, the Commission amended § 68.162(e)(5)(i) to clarify that the Administrative Council is responsible for publishing technical

criteria, and § 68.162(g) to provide that certificates issued by Telecommunications Certification Bodies be given to the Administrative Council rather than to the Commission.

The Commission declined to take further action on a 1998 Biennial Review proceeding regarding signal power limitations, but allowed the industry to develop standards if it determines such standards are appropriate and reasonable. In addition, the Commission clarified that the Administrative Council shall publish the technical criteria that have been the subject of its streamlined waiver proceedings.

Procedural Matters

Paperwork Reduction Act

The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found not to impose new or modified reporting and recordkeeping requirements or burdens on the public.

Final Regulatory Flexibility Certification

In the *Report and Order,* the Commission concluded that privatizing the terminal equipment registration process would reduce unnecessary costs and delays currently imposed upon suppliers and the Commission without measurably increasing the possibility of harm to the network. The Commission found that registration of terminal equipment shall continue, but that suppliers may show compliance with the technical criteria through one of two means. First, suppliers may seek approval of terminal equipment's compliance with the relevant technical criteria from private Telecommunications Certification Bodies. In the alternative, suppliers may show compliance through the SDoC method of equipment approval. Upon weighing the substantial benefits of accelerating the terminal equipment approval process against the unlikely possibility of any cost increases associated with harm to the PSTN that may result from a decreased presence of the Commission in the approval process, the Commission concluded that is no longer in the public interest for it to continue its Part 68 registration functions.

This Order on Reconsideration affirms the Commission's findings with regard to these provisions, and hence the economic effect on small businesses will not change from that discussed in the *Report and Order.* Therefore, we certify that the requirements of this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Order on Reconsideration including a copy of this Certification, in a report to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, this Order on Reconsideration and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. See 5 U.S.C. 605(b).

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in Sections 1–4, 201–205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205 and 303(r), this *order on reconsideration in CC Docket No. 99–216 and order terminating proceeding in CC Docket No. 98–163* is hereby *adopted* and Part 68 of the Commission's rules *are amended* as set forth. *It is further ordered* that the amendments of the Commission's rules as set forth *are adopted,* effective October 9, 2002.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 68

Communications common carriers, Terminal equipment, Technical criteria.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends part 68 of the Code of Federal Regulations as follows:

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for part 68 continues to read as follows:

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

2. Section 68.162(f)(5)(i) and (g)(1) are revised to read as follows:

§ 68.162 Requirements for Telecommunication Certification Bodies.

* * * * *

(f) * * *

(5) * * *

(i) Grant a waiver of Commission rules or technical criteria published by the Administrative Council, or certify equipment for which Commission rules or requirements, or technical criteria do not exist, or for which the application of the rules or requirements, or technical criteria is unclear.

* * * * *

(g) * * *

(1) A Telecommunications Certification Body shall supply a copy of each approved application form and grant of certification to the Administrative Council for Terminal Attachments.

* * * * *

3. Section 68.321 is revised to read as follows:

§ 68.321 Location of responsible party.

The responsible party for a Supplier's Declaration of Conformity must designate an agent for service of process that is physically located within the United States.

4. Section 68.354(d) is revised to read as follows:

§ 68.354 Numbering and labeling requirements for terminal equipment.

* * * * *

(d) Labeling developed for terminal equipment by the Administrative Council on Terminal Attachments shall contain sufficient information for providers of wireline telecommunications, the Federal Communications Commission, and the U.S. Customs Service to carry out their functions, and for consumers to easily identify the responsible party of their terminal equipment. The numbering and labeling scheme shall be nondiscriminatory, creating no competitive advantage for any entity or segment of the industry.

* * * * *

5. Section 68.602(c) is revised to read as follows:

§ 68.602 Sponsor of the Administrative Council for Terminal Attachments.

* * * * *

(c) After the Administrative Council for Terminal Attachments is populated, the sponsors are responsible for fulfilling secretariat positions as determined by the Administrative Council for Terminal Attachments. The Administrative Council shall post on a publicly available web site and make available to the public in hard copy form the written agreement into which it enters with the sponsor or sponsors.

6. Section 68.612 is revised to read as follows:

§ 68.612 Labels on terminal equipment.

Terminal equipment certified by a Telecommunications Certification Body or approved by the Supplier's Declaration of Conformity under this part shall be labeled. The Administrative Council for Terminal Attachments shall establish appropriate labeling of terminal equipment. Labeling shall meet the requirements of the Federal Communications Commission and the U.S. Customs Service for their respective enforcement purposes, and of consumers for purposes of identifying the responsible party and model number.

[FR Doc. 02–22784 Filed 9–6–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 082802G]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea subarea

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

ACTION: Reallocation.

SUMMARY: NMFS is reallocating projected unused amounts of Bering Sea subarea (BS) pollock from the incidental catch account to the directed fisheries. This action is necessary to allow the 2002 total allowable catch (TAC) of pollock to be harvested.

DATES: Effective September 4, 2002 until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (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 accordance with § 679.20(a)(5)(i)(C)(*1*) and the American Fisheries Act (AFA) (Public Law 105–277, Division C, Title II), NMFS specified a pollock incidental catch allowance equal to 4 percent of the pollock total allowable catch after subtraction of the ten percent Community Development Quota reserve in the 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).

As of August 17, 2002, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that approximately 22,104 metric tons (mt) of pollock remain in the incidental catch account. Based on projected harvest rates of other groundfish species and the expected bycatch of pollock in those fisheries, the Regional Administrator has determined that 9,000 mt of pollock specified in the incidental catch account will not be necessary as incidental catch. Therefore, NMFS is apportioning the projected unused amount, 9,000 mt, of pollock from the incidental catch account to the directed fishing allowances established at § 679.20(a)(5)(i)(C)(*2*). This transfer will increase the allocation to catcher vessels harvesting pollock for processing by the inshore component by 4,500 mt, to catcher/processors and catcher vessels harvesting pollock for processing by catcher processors in the offshore component by 3,600 mt and to catcher vessels harvesting pollock for processing by motherships in the offshore component by 900 mt. Pursuant to § 679.20(a)(5)(i)(C)(*2*)(*ii*), no less than 8.5 percent of the 3,600 mt allocated to catcher processors in the offshore component, 306 mt, will be available for harvest only by eligible catcher vessels delivering to listed catcher processors.

Pursuant to § 679.20(a)(5)(i)(C)(*3*), Table 1, which is a revision of Table 11 in the Final 2002 Harvest Specifications (67 FR 956, January 8, 2002), revises the final 2002 BS subarea allocations to include the seven inshore catcher vessel pollock cooperatives that have been approved and permitted by NMFS for the 2002 fishing year consistent with this reallocation.

TABLE 1. BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catch histories[1]	Percentage of inshore sector allocation	Annual co-op allocation
Akutan Catcher Vessel Association	245,527	28.085%	181,433
ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA, DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MAJESTY, MARCY J, MARGARET LYN, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM, PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER			
Arctic Enterprise Association	36,807	4.210%	27,198
BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER			

TABLE 1. BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS—Continued

Cooperative name and member vessels	Sum of member vessel's official catch histories[1]	Percentage of inshore sector allocation	Annual co-op allocation
Northern Victor Fleet Cooperative ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL	73,656	8.425%	54,429
Peter Pan Fleet Cooperative AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PROVIDIAN, TOPAZ, WALTER N	18,693	2.138%	13,813
Unalaska Cooperative ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN	106,737	12.209%	78,874
UniSea Fleet Cooperative ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE	201,566	23.056%	148,948
Westward Fleet Cooperative A.J., ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC KNIGHT, PACIFIC PRINCE, STARWARD, VIKING, WESTWARD I	189,544	21.681%	140,064
Open access AFA vessels	1,707	0.195%	1,261
Total inshore allocation	874,238	100%	646,020

[1] Under § 679.62(e)(1) the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

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 implementation of these measures in a timely fashion in order to allow full utilization of the pollock TAC 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 taken under 50 CFR 679.20, and is exempt from review under Executive Order 12866.

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

Dated: August 30, 2002.

Virginia M. Fay,

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

[FR Doc. 02–22807 Filed 9–4–02; 1:52 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. 090302A]

Fisheries of the Exclusive Economic Zone off Alaska; ''Other Rockfish'' in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of all rockfish defined in the category ''other rockfish'' in Table 3 of 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (January 8, 2002) in the Bering Sea subarea of the

Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catch of ''other rockfish'' in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 2002 total allowable catch (TAC) of ''other rockfish'' in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 4, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (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 amount of the 2002 TAC of ''other rockfish'' in the Bering Sea subarea of the BSAI was established as 307 metric tons by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 2002 TAC for ''other rockfish'' in the Bering Sea subarea of the BSAI has been achieved. Therefore, NMFS is requiring that further catches of ''other rockfish'' in the Bering Sea subarea of the BSAI be treated as prohibited species in accordance with § 679.21(b).

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 overharvesting the allocation of the TAC, and therefore reduce the public's ability to use 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:September 4, 2002

Virginia M. Fay,

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

[FR Doc. 02–22806 Filed 9–4–02; 1:52 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. 090302D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of 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 pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the pollock total allowable catch (TAC) for Statistical Area 630.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 4, 2002, until 1200 hrs, A.l.t., October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish 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.

Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator, Alaska Region, NMFS, provided that the sum of the revised seasonal allowances does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20(a)(5)(ii)(C)). For 2002, 30 percent of the annual TAC for the Central and Western Regulatory Areas is 15,187 mt. For 2002, the Regional Administrator has determined that within each area for which a seasonal allowance is established, any overage or underage of harvest from the previous season(s) shall be subtracted from or added to the seasonal allowance of the following season provided that the resulting sum of seasonal allowances in the Central and Western Regulatory Areas does not exceed 15,187 mt in any single season. The C season allowance of the pollock TAC in Statistical Area 630 is 3,803 metric tons (mt) as 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). The B season allowance in Statistical Area 630 was exceeded by 248 mt, therefore the Regional Administrator, in accordance with § 679.20(a)(5)(ii)(C), is reducing the C season pollock TAC in Statistical Area 630 by 248 mt to 3,555 mt.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the C season allowance of the pollock TAC in Statistical Area 630 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,455 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630.

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 TAC,

and therefore reduce the public's ability to use 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: September 4, 2002.

Virginia M. Fay,

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

[FR Doc. 02–22837 Filed 9–4–02; 2:26 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 174
Monday, September 9, 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

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Notice of Staff Conference on Market Monitoring

August 28, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of staff conference.

SUMMARY: On July 31, 2002, the Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking (67 FR 55452, August 29, 2002) proposing to amend its regulations under the Federal Power Act to remedy undue discrimination through open access transmission service and standard electricity market design. As announced in the NOPR, the Commission is convening a staff conference to get additional public input on developing a standard market monitoring plan. The public is invited to attend and a further notice giving more details will be issued later.

DATES: The conference will be convened on October 2, 2002.

ADDRESSES: The conference will be held at FERC, 888 First St., NE., in Washington, DC, in the Commission Meeting Room.

FOR FURTHER INFORMATION CONTACT: Saida Shaalan, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8278, *saida.shaalan@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Remedying Undue Discrimination Through Open-Access Transmission Service and Standard Electricity Market Design

The Federal Energy Regulatory Commission (Commission) staff will convene a conference on October 2, 2002, to discuss and further develop the essential elements that should be required in a standard market monitoring plan. The conference will be held at FERC, 888 First St., NE., in Washington DC, in the Commission Meeting Room.

As announced in the July 31, 2002, Notice of Proposed Rulemaking in this docket, staff is convening this conference to get additional public input on developing a standard market monitoring plan. The staff may then propose additional detail for such a plan, on which the public will then be given opportunity to comment.

The goal of this conference is to discuss the development of a standardized market monitoring plan to assist in evaluating the performance of wholesale electric markets and the conduct of individual market participants. The conference will include a discussion of standard indices, data and reporting needed to implement the market monitoring plan effectively.

A further notice with more detail will be issued later.

The public is invited to attend. There is no registration or fee.

The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700, or 800–336–6646. Transcripts will be placed in the public record ten days after the Commission receives the transcripts. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

For additional information, please contact Saida Shaalan at 202–502–8278, or *saida.shaalan@ferc.gov.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22484 Filed 9–6–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME056–1–7005b; FRL–7269–5]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Reasonably Available Control Technology for Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision that was submitted by the State of Maine. The SIP revision establishes and requires Reasonably Available Control Technology (RACT) at stationary sources of nitrogen oxides (NO_X). The intended effect of this action is to approve regulatory provisions and source specific air emissions licenses which require major stationary sources of NO_X to reduce their emissions in accordance with requirements of the Clean Air Act.

DATES: Comments must be received on or before October 9, 2002.

ADDRESSES: You should address your comments to Mr. David Conroy, Unit Manager, Air Quality Planning Unit, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

FOR FURTHER INFORMATION CONTACT: Dan Brown, Environmental Engineer, Air Quality Planning Unit (CAQ), U.S. EPA, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023; (617) 918–1532; *brown.dan@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule

without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

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

Dated: August 16, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–22360 Filed 9–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–172–4194b; FRL–7271–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to the State Implementation Plan (SIP) Addressing Sulfur Dioxide in Philadelphia County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision consists of Operating Permits which modify the sulfur dioxide (SO_2) allowable emissions at four facilities in Philadelphia County. The four facilities are Trigen-Philadelphia Energy Corporation, Schuylkill Station, Grays Ferry Cogeneration Partnership, PECO Energy Company, Schuylkill Generating Station, and Sunoco, Inc. (R&M) Philadelphia Refinery. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 9, 2002.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and the Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104.

FOR FURTHER INFORMATION CONTACT: Denis Lohman, (215) 814–2192, or Ellen Wentworth, (215) 814–2034, or by e-mail at *lohman.denny@epa.gov* or *wentworth.ellen@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, pertaining to SO_2 in Philadelphia County, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: August 16, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–22728 Filed 9–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86, 90, 1045, 1051, 1065, and 1068

[AMS–FRL–7373–2]

RIN 2060–AJ90

Control of Emissions from Spark-Ignition Marine Vessels and Highway Motorcycles; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; change of hearing date.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of August 14, 2002 a document concerning new emission standards for spark-ignition marine vessels and highway motorcycles. This notice changes the hearing date for issues relating to marine vessels and corrects the preamble to reflect the correct hearing dates.

DATES: We will hold a public hearing on September 17, 2002 starting at 9:30 a.m. EDT. This hearing will focus on issues related to highway motorcycles. In addition, we will hold a public hearing on October 7, 2002 starting at 11:00 a.m. EDT. This hearing will focus on issues related to marine vessels. If you want to testify, notify the contact person listed below at least ten days before the hearing.

ADDRESSES: We will hold a public hearing for issues related to highway motorcycles on September 17, 2002 at the Ypsilanti Marriott at Eagle Crest, Ypsilanti, Michigan (734–487–2000). We will hold a public hearing for issues related to marine vessels on October 7, 2002 at the National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood Dr., Ann Arbor, Michigan (734–214–4334).

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4334; e-mail: *borushko.margaret@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a document in the **Federal**

Register of August 14, 2002 (67 FR 53050). That document proposed new emission standards for spark-ignition marine vessels and highway motorcycles. In Section VII (page 53092, second column) the information about the public hearing on July 16, 2002 in Dulles, VA for issues related to highway motorcycles should state September 17, 2002 in Ypsilanti, MI. This is consistent with the information published in the original document under **DATES.** In the following sentence, the information about the public hearing on July 18, 2002 in Ann Arbor, MI for issues related to marine vessels should state October 7, 2002 in Ann Arbor, MI. This is consistent with the revised hearing date above under **DATES.**

Dated: August 30, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–22811 Filed 9–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL 7373–1]

RIN 2060–AJ07

Opportunity to Present Oral Testimony on the Agency's Proposed Alternative Provisions to the Compliance Criteria for the Waste Isolation Pilot Plant (WIPP); Notice of Public Hearings

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Hearings.

SUMMARY: The Environmental Protection Agency (''EPA,'' or ''the Agency'' or ''we'') is proposing to revise the ''Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the Disposal Regulations,'' which are used to determine whether the Department of Energy's Waste Isolation Pilot Plant (''WIPP'') will comply with EPA's ''Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes.'' The proposed revisions are as follows: addition of a mechanism to address minor changes to the provisions of the Compliance Criteria; changes to the approval process for waste characterization programs at Department of Energy transuranic sites; changes to allow for the submission of copies of compliance applications and reference materials in alternative format; and replacement of the term ''process knowledge'' with ''acceptable knowledge.'' The proposed changes do not lessen the requirements for complying with the Compliance Criteria. Moreover, these changes will have no effect on the technical approach that EPA employs when conducting independent inspections of the waste characterization capabilities at DOE waste generator sites. EPA is conducting this proposed action in accordance with the procedures for substituting alternative provisions of the Compliance Criteria.

The official proposed rule, entitled ''40 CFR Part 194—Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the Disposal Regulations; Alternative Provisions,'' was published in the **Federal Register** (67 FR 51930–51946) on August 9, 2002. The 120-day comment period for this action will conclude on December 9, 2002.

DATES: EPA will conduct public hearings to receive comments on the proposed revisions to the WIPP Compliance Criteria in Albuquerque, NM on September 24, from 1 p.m. to 5 p.m. and from 7 p.m. to 9 p.m.; and in Santa Fe, NM from 11 a.m. to 5 p.m. and from 7 p.m. to 9 p.m. For further information on registration and hearing procedures, please refer to **SUPPLEMENTARY INFORMATION.**

ADDRESSES: EPA's public hearings to accept comments on proposed revisions to the WIPP Compliance Criteria will be held on September 24, at the Albuquerque Convention Center, Picuris Room, 401 Second Street, NW., Albuquerque, NM; and on September 25, at the Hilton Hotel, Mesa A Room, 100 Sandoval Street, Santa Fe, NM.

Information on EPA's radioactive waste compliance criteria (40 CFR part 194), and other WIPP-related activities (including the proposed revisions and recertification) is listed under Dockets No. A–92–56, and A–98–49, respectively, and is available for review at the following three EPA WIPP docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Mon–Thu, 10–9, Fri–Sat, 10–6, and Sun 1–5; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Mon–Thu, 8–9, Fri, 8–5, Sat–Sun, 1–5; in Santa Fe at the New Mexico State Library (A–98–49 only), Hours: Mon–Fri, 9–5; and in Santa Fe at the Fogelson Library, College of Santa Fe (A–93–02 only), Hours: Mon–Thu, 8–Midnight, Fri, 8–5, Sat, 9–5, and Sun, 1–9. For purposes of judicial review, EPA's official docket for all rulemaking activities under the Waste Isolation Pilot Plant Land Withdrawal Act, as amended, is located in Washington, DC in the Air Docket, EPA Docket Center (EPA/DC), EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

In addition, the proposed rule and related documents may also be obtained online through EPA's new electronic docketing system, EDOCKET, which is available on the world wide web (*http://www.epa.gov/edocket*). The EDOCKET No. for this action is OAR–2002–0005. Interested parties can also view and obtain these documents through EPA's WIPP Web site (*http://www.epa.gov/radiation/wipp*) or call EPA's 24-hour toll-free WIPP Information Line, 1–800–331–WIPP for general information about the proposed revisions.

FOR FURTHER INFORMATION CONTACT: Rafaela Ferguson, Office of Radiation and Indoor Air, (202) 564–9362 or call EPA's EPA's contractor-operated, toll-free number 1–800–275–2209, Monday thru Friday between 9 a.m. and 5:30 p.m. Central Standard Time (CST).

SUPPLEMENTARY INFORMATION: The Waste Isolation Pilot Plant (''WIPP'') is a disposal system for transuranic radioactive waste. Developed by the Department of Energy (''DOE'' or ''the Department''), the WIPP is located near Carlsbad in southeastern New Mexico. Transuranic (TRU) wastes are emplaced 2,150 feet underground in an ancient layer of salt which will eventually ''creep'' and encapsulate waste containers. The WIPP has a total capacity of 6.2 million cubic feet of TRU waste. Congress authorized the development and construction of the WIPP in 1980.

The WIPP is the nation's first deep geological repository for the disposal of TRU waste generated by defense activities associated with nuclear weapons; no high level waste or spent nuclear fuel from the commercial power plants may be disposed at the WIPP. TRU waste is defined as material containing alpha-emitting radioisotopes, with half lives greater than twenty years and atomic numbers above 92, in concentrations greater than 100 nano-curies per gram of wastes.

Most TRU waste proposed for disposal at WIPP consists of items that have become contaminated as a result of activities associated with the production of nuclear weapons (or with the clean-up of weapons production facilities), *e.g.*, rags, equipment, tools, protective gear, and organic and inorganic sludges. The waste proposed for disposal at WIPP is currently stored at Federal facilities across the United States,

including locations in Colorado, Idaho, New Mexico, Nevada, Ohio, South Carolina, Tennessee, and Washington.

On February 9, 1996, EPA announced its final compliance criteria (40 CFR part 194) for determining whether the WIPP will comply with EPA's environmental radiation protection standards for the disposal of radioactive waste in 40 CFR part 191. The compliance criteria implemented the radiation protection standards by applying them to the proposed disposal of transuranic waste in the WIPP. The EPA was required by the WIPP Land Withdrawal Act of 1992 (Public Law 102–579) to evaluate whether the WIPP will comply with Subparts B and C of the 40 CFR part 191 (known as the ''disposal regulations'') and issue or deny a certification of compliance.

On May 13, 1998, EPA announced its final compliance certification decision (published in the **Federal Register** on May 18, 1998, at 63 FR 27354). This decision states that the WIPP complies with the EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

As mandated by Congress in the WIPP Land Withdrawal Act, EPA has regulatory authority over many of DOE's WIPP-related activities for the operational lifetime of the facility, approximately 35 years. EPA must also recertify WIPP's compliance every five years; the first recertification decision will occur in 2004. DOE must report changes in activities or conditions at the WIPP that differ significantly from the information contained in the most recent compliance application. The Agency reviews such information as it is received to determine whether the ''certification'' must be modified, suspended, or revoked. In addition to review changes, EPA monitors the continued compliance of the WIPP facility and related waste characterization activities at the waste generator sites by conducting audits and inspections.

EPA is proposing to revise certain provisions of the Compliance Criteria at 40 CFR part 194. As outlined in the official **Federal Register** notice (67 FR 51930–51946), EPA is proposing to (1) Revise the process for establishing ''alternative provisions'' in § 194.6; (2) revise the approval process in § 194.8 for waste characterization processes at TRU waste generator sites for disposal at WIPP; (3) revise the requirements in §§ 194.12 and 194.13 for submission of compliance applications and reference materials; and (4) change the term ''process knowledge'' to ''acceptable knowledge'' in § 194.24(c)(3). The proposed revisions are intended to ensure that 40 CFR part 194 remains comprehensive, appropriate, and based upon current knowledge and information. The Agency is soliciting comments on this proposal.

Hearing Procedures

Testifiers are requested to pre-register by calling EPA's contractor-operated, toll-free number 1–800–275–2209, Monday thru Friday between 9 a.m. and 5:30 p.m. Central Standard Time (CST). Please provide the following information when registering: Name, organization (if any), address, hearing date and location, time(s) available to testify, and daytime telephone number. Registrations must be received by 12 p.m. CST, September 20, 2002, in order to guarantee an opportunity to testify. Speakers not registered in advance may register at the door and will be scheduled to testify, if openings are still available and time permits.

Individuals testifying on their own behalf will be allowed 5 minutes. One individual may testify as the official representative or spokesperson on behalf of groups and organization and will be allocated 10 minutes for an oral presentation. Time allowed is exclusive of any time consumed by questions from the government panel and answers to these questions. Written comments will be considered to the same extent as oral testimony and will be included as part of the official hearings transcripts. The hearing transcript will constitute the official record of the hearing. All written comments which are submitted outside of the public hearings must be received by the HQ EPA Air Docket (through EDOCKET, e-mail, regular mail, or fax) by December 9, 2002. These comments will also be given EPA's full consideration. Thus, all comments received by EPA, whether written or oral, will be given equal consideration in development of the final rule. [**Note:** The dockets in New Mexico only contain major items from the official docket (WDC) plus all those documents added to the official docket since October 1992 when the WIPP Land Withdrawal Act was enacted.] As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying docket materials.

Dated: August 30, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–22802 Filed 9–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7372–9]

Central Characterization Project Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Nevada Test Site Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; Opening of Public Comment Period.

SUMMARY: The Environmental Protection Agency (EPA, or ''we'') is announcing an inspection for the week of September 23, 2002, at the Nevada Test Site (NTS). With this notice, we also announce availability of Department of Energy (DOE) documents in the EPA Docket, and solicit public comments on the documents available in the docket for a period of 30 days. The following DOE documents, entitled ''CCP–PO–001—Revision 4, May 31, 2002—CCP Transuranic Waste Characterization Quality Assurance Project Plan'' and ''CCP–PO–002—Revision 4, May 31, 2002—CCP Transuranic Waste Certification Plan,'' are available for review in the public dockets listed in **ADDRESSES**. We will consider public comments received on or before the due date mentioned in **DATES**. In accordance with EPA's WIPP Compliance Criteria, we will conduct an inspection (of both waste characterization and quality assurance) at NTS to verify that, using the systems and processes developed as part of the DOE Carlsbad Office's central characterization project (CCP), DOE can characterize TRU waste at NTS properly, consistent with the Compliance Criteria.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before October 9, 2002.

ADDRESSES: Comments should be submitted to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Docket No. A–98–49, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday 1

p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m.

As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying. Air Docket A–98–49 in Washington, DC, accepts comments sent electronically or by fax (fax: 202–566–1741; e-mail: *a-and-r-docket@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Ms. Rajani D. Joglekar, Office of Radiation and Indoor Air, (202) 564–7734. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Web site at *http://www.epa/gov/radiation/wipp.*

SUPPLEMENTARY INFORMATION

Background

DOE is operating the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Public Law No. 102–579), as amended (Public Law No. 104–201), transuranic (TRU) waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, Subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of Appendix A to 40 CFR Part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until the EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR Part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of the TRU waste characterization and quality assurance activities performed by the DOE's Central Characterization Project (CCP) staff at the Nevada Test Site (NTS) in accordance with Condition 3 of the WIPP certification. We will evaluate the adequacy, implementation, and effectiveness of the CCP technical activities contracted by the NTS for characterization of the disposal of retrievably-stored debris waste at the WIPP. The overall program adequacy and effectiveness of CCP/NTS documents will be based on the following DOE-provided documents: (1) CCP–PO–001—Revision 4, May 31, 2002—CCP Transuranic Waste Characterization Quality Assurance Project Plan and (2) CCP–PO–002—Revision 4, May 17, 2002—CCP Transuranic Waste Certification Plan. EPA has placed these DOE-provided documents pertinent to the NTS inspection in the public docket described in **ADDRESSES**. The documents are included in item II–A2–42 in Docket A–98–49. In accordance with 40 CFR 194.8, EPA is providing the public 30 days to comment on these documents. The inspection is scheduled to take place the week of September 23, 2002.

EPA will inspect the following technical elements for characterizing retrievably-stored TRU debris waste: data validation and verification, acceptable knowledge, nondestructive assay (NDA–WIT and APNEA), Digital Radiography/Computed Tomography, visual examination, and data tracking and reporting via the WIPP Waste Information System.

If EPA determines as a result of the inspection that the proposed CCP waste characterization and quality assurance processes and programs used at NTS adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship transuranic waste from NTS to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: August 30, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–22801 Filed 9–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7272–3]

Minnesota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Minnesota has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Minnesota has submitted these changes so that it may implement the EPA approved U.S. Filter Recovery Systems (USFRS) XL project. EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is proposing to authorize the State's changes through this proposed final action.

DATES: Written comments must be received on or before October 9, 2002.

ADDRESSES: Send written comments to Gary Westefer, Minnesota Regulatory Specialist, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please refer to Docket Number MN–XL1. You can view and copy Minnesota's application from 9 am to 4 pm at the following addresses: Minnesota Pollution Control Agency, 520 Lafayette Road, North, St. Paul, Minnesota 55155,

contact Nathan Cooley (651) 297–7544, and EPA Region and EPA Region 5, contact Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Minnesota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Minnesota Final authorization to operate its hazardous waste program with the changes described in the authorization application. Minnesota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Minnesota, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is to allow Minnesota to carry out the requirements outlined in the U.S. Filter Recovery Services XL Project promulgated in the May 22, 2001 **Federal Register** (66 FR 28066). On May 23, 1995 (60 FR 27282), U.S. EPA issued guidance for XL projects, with the goal of reducing regulatory burden and promoting economic growth, while achieving better environmental and public health protection. XL Projects are required to provide alternative pollution reduction strategies pursuant to eight criteria. These criteria were met and approved in the May 22, 2001 **Federal Register**. This action merely allows Minnesota to carry out the requirements approved in the May 22, 2001 **Federal Register**.

Minnesota has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.

This action does not impose additional requirements on the regulated community. U.S. EPA believes that this project will result in cost savings and a reduction in the paperwork burden for generators. For more details please see the May 22, 2001 **Federal Register** (66 FR 28066).

D. What Happens if EPA Receives Comments that Oppose This Action?

If EPA receives comments that oppose this authorization, we will address such comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do it at this time.

E. What Has Minnesota Previously Been Authorized for?

Minnesota initially received Final authorization on January 28, 1985, effective February 11, 1985 (50 FR 3756) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 20, 1987, effective September 18, 1987 (52 FR 27199); on April 24, 1989, effective June 23, 1989 (54 FR 16361) amended June 28, 1989 (54 FR 27170); on June 15, 1990, effective August 14, 1990 (55 FR 24232); on June 24, 1991, effective August 23, 1991 (56 FR 28709); on March 19, 1992, effective May 18, 1992 (57 FR 9501); on March 17, 1993, effective May 17, 1993 (58 FR 14321); on January 20, 1994, effective March 21, 1994 (59 FR 2998); and on May 25, 2000, effective August 23, 2000 (65 FR 33774).

F. What Changes Are We Authorizing With Today's Action?

On April 17, 2002, Minnesota submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, subject to receipt of written comments that oppose this action, that Minnesota's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant Minnesota Final authorization for the following program changes:

Description of federal requirement (include checklist #, if relevant)	*Federal Register* date and page (and/or RCRA statutory authority)	Analogous state authority)
Project XL Site-Specific Rulemaking for US Filter Recovery Services Roseville, Minnesota and Generators and Transporters of USFRS XL Waste.	May 22, 2001, 66 FR 28066.	Minnesota Statutes sections 114C.10 through 114C.14 Effective 1996; and USFRS permit, and MPCA generator and transporter standards based on these Statues.

G. Where Are the Revised State Rules Different From the Federal Rules?

In the changes currently being made to Minnesota's program, there are no regulations more stringent than the Federal requirements. There are no broader-in-scope provisions in these changes, either.

H. Who Handles Permits After the Authorization Takes Effect?

Minnesota will issue permits for all the provisions for which it is authorized and will administer the permits it

issues. EPA will continue to implement and issue permits for HSWA requirements for which Minnesota is not yet authorized. As the XL project involves new permits, Minnesota will issue any new permits or new portions of permits for the provisions listed in the Table above. EPA or Minnesota may enforce compliance with those permits.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Minnesota?

Minnesota is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian Reservations within or abutting the State of Minnesota, including:

a. Bois Forte Indian Reservation
b. Fond Du Lac Indian Reservation
c. Grand Portage Indian Reservation
d. Leech Lake Indian Reservation
e. Lower Sioux Indian Reservation
f. Mille Lacs Indian Reservation
g. Prairie Island Indian Reservation
h. Red Lake Indian Reservation
i. Shakopee Mdewankanton Indian Reservation
j. Upper Sioux Indian Reservation
k. White Earth Indian Reservation

2. Any land held in trust by the U.S. for an Indian tribe, and

3. Any other land, whether on or off a reservation that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

J. What Is Codification and Is EPA Codifying Minnesota's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart Y for this authorization of Minnesota's program changes until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. This action does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C.272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 22, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–22810 Filed 9–6–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7538]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the

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

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Kentucky	Harlan (City of), Harlan County.	Clover Fork	Approximately 260 feet downstream of the confluence of Martins Fork.	*1,179	*1,180
			Approximately 375 feet upstream of Main Street/State Route 72.	None	*1,181
		Martins Fork	At the confluence with Clover Fork	*1,179	*1,180
			Approximate 1,200 feet upstream of State Route 72.	*1,185	*1,186
		Interior Drainage Area No. 1.	At the intersection of Walnut Street and Cumberland Avenue.	*1,180	*1,176
		Interior Drainage Area No. 2.	Approximately 150 feet southeast of the intersection of Clover and Walnut Streets along Walnut Street.	*1,184	*1,174
Maps available for inspection at the Harlan City Hall, 218 South Main Street, Harlan, Kentucky.					
Send comments to The Honorable Daniel E. Howard, Mayor of the City of Harlan, 218 South Main Street, P.O. Box 783, Harlan, Kentucky 40831–0783.					
Maine	Turner (Town), Androscoggin County.	Nezinscot River	At confluence with Androscoggin River	None	*274
			At upstream corporate limits	None	*315
		Androscoggin River	At downstream corporate limits	None	*264

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
			At upstream corporate limits	None	*281
Maps available for inspection at the Turner Town Office, 11 Turner Center Road, Turner, Maine.					
Send comments to Mr. James Caitlin, Turner Town Manager, Town Office, P.O. Box 157, Turner, Maine 04282–0157.					
New Jersey	Estell Manor (City), Atlantic County.	Tuckahoe River	Approximately 0.7 mile upstream of Cumberland Avenue.	None	*56
			At State Route 49	None	*22
		Great Egg Harbor	At the confluence of Great Egg Harbor River and South River.	None	*9
Maps available for inspection at the Estell Manor City Municipal Building, 148 Cumberland Avenue, Estell Manor, New Jersey.					
Send comments to The Honorable Gary Buck, Mayor of the City of Estell Manor, P.O. Box 102, 148 Cumberland Avenue, Estell Manor, New Jersey 08319.					
New York	Plattsburgh (City), Clinton County.	Saranac River	Approximately 200 feet upstream of Delaware and Hudson Railroad.	*102	*103
			At the upstream of corporate limits	*190	*189
Maps available for inspection at the Plattsburgh City Building Inspector's Office, 41 City Hall Place, Plattsburgh, New York.					
Send comments to The Honorable Daniel Stewart, Mayor of the City of Plattsburgh, 41 City Hall Place, Plattsburgh, New York 12901.					
New York	Plattsburgh (Town), Clinton County.	Saranac River	Approximately 0.75 mile downstream of Indian Rapids Dam.	None	*188
			Approximately 1.9 mile upstream of Harney Bridge Road.	*735	*736
Maps available for inspection at Plattsburgh Town Hall, 151 Banker Road, Plattsburgh, New York.					
Send comments to Mr. Andrew Abdallah, Plattsburgh Town Supervisor, 151 Banker Road, Plattsburgh, New York 12901.					
New York	Saranac (Town), Clinton County.	Saranac River	Approximately 1,050 feet downstream of Duquette Road.	*735	*736
			Approximately 400 feet upstream of confluence of North Branch Saranac River.	None	*1,111
Maps available for inspection at the Saranac Town Hall, 3662 Route 3, Saranac, New York.					
Send comments to Mr. Samuel Tedford, Saranac Town Supervisor, P.O. Box 147, Saranac, New York 12981.					
Tennessee	Rockwood (City), Roane County.	East Fork Black Creek	At the upstream side of West Wheeler Street.	*879	*880
			Approximately 380 feet upstream of North Front Avenue.	*915	*912
		Black Creek Side Channel	At the confluence with Black Creek	*868	*866
			At the divergence from North Fork Black Creek.	*875	*872
		Black Creek	Approximately 1,580 feet upstream of U.S. Route 70.	*858	*866
			Approximately 220 feet upstream of West Rockwood Street.	877	*872
		Middle Fork Black Creek	Approximately 140 feet downstream of North Chamberlain Avenue.	*879	*878
			Approximately 2,420 feet upstream of Strang Street.	None	*924
Maps available for inspection at the City Hall Building, 110 North Chamberlain Avenue, Rockwood, Tennessee 37854.					
Send comments to The Honorable Mike Miller, Mayor of the City of Rockwood, 110 North Chamberlain Avenue, Rockwood, Tennessee 37854.					
Wisconsin	Markesan (City), Green Lake County.	Grand River	At downstream corporate limits	None	*841
			Approximately 0.6 mile upstream of the confluence of East Tributary.	None	*855
		East Tributary	At confluence with Grand River	None	*851
			Approximately 0.6 mile upstream of John Street.	None	*854
		West Tributary	At confluence with Grand River	None	*845
			Approximately 0.5 mile upstream of Margaret Street.	None	*871
Maps available for inspection at the Markesan City Hall, 150 South Bridge Street, Markesan, Wisconsin.					
Send comments to The Honorable Rich Slate, Mayor of the City of Markesan, 150 South Bridge Street, Markesan, Wisconsin 53946.					

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

Dated: August 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–22822 Filed 9–6–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7536]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. •Elevation in feet (NGVD) Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
DELAWARE				
Kent County (Unincorporated Areas), City of Dover, Town of Smyrna, Town of Leipsic, City of Milford, Town of Frederica, Town of Boweres, Town of Little Creek, Town of Clayton,				
Andrews Lake	Approximately 1,525 feet downstream of Andrews Lake Road.	None	*9	Kent County (Unincorporated Areas)
	Approximately 1.25 miles upstream of Andrews Lake Road.	None	*22	
Beaverdam Ditch	At confluence with Tidy Island Creek	None	*46	Kent County (Unincorporated Areas)
	Approximately 90 feet upstream of Taraila Road	None	*57	
Browns Branch North	At the downstream side of the northbound lane of U.S. Route 13.	None	*42	Kent County (Unincorporated Areas)

Source of flooding	Location	#Depth in feet above ground. •Elevation in feet (NGVD) Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	At the downstream side of the southbound lane of U.S. Route 13.	None	*43	
Browns Branch South	At Route 431	None	*41	Kent County (Unincorporated Areas)
	Approximately 1.04 miles upstream of Route 431	None	*48	
Cahoon Branch	At confluence with Maidstone Branch	*30	*32	Kent County (Unincorporated Areas), City of Dover
	Approximately 50 feet downstream of Navit Road	None	*58	
Choptank River	Approximately 1.33 miles downstream of Still Road	None	*22	Kent County (Unincorporated Areas)
	Approximately 0.5 mile upstream of confluence of Culbreth Marsh Ditch.	None	*37	
Coursey Pond	Approximately 1,030 feet downstream of Canterbury Road.	None	*9	Kent County (Unincorporated Areas)
	Approximately 1.3 miles upstream of Canterbury Road.	None	*13	
Cow Marsh Creek	At confluence with Choptank River	None	*26	Kent County (Unincorporated Areas)
	At confluence of Willow Grove Prong	None	*51	
Culbreth Marsh Ditch	At confluence with Choptank River	None	*37	Kent County (Unincorporated Areas)
	Approximately 300 feet upstream of Lucks Drive	None	*49	
Delaware Bay	At intersection of Big Stone Beach Road and Scotts Corner Road.	*8	*9	Kent County (Unincorporated Areas), Town of Smyrna, Town of Leipsic, City of Milford, City of Dover, Town of Frederica, Town of Boweres, Town of Little Creek
	Approximately 375 feet north of intersection of North Street and Pearson Avenue Bowers, Woodland Beach.	*11	813	
Duck Creek	Approximately 1,660 feet downstream of Smyrna Landing Road.	*8	*9	Kent County (Unincorporated Areas), Town of Smyrna, Town of Clayton
	Approximately 300 feet upstream of State Route 15	None	*29	
Fork Branch	At confluence with St. Jones River	*24	*27	Kent County (Unincorporated Areas), City of Dover
	Approximately 100 feet upstream of Shaws Corner Road.	None	*64	
Green Branch	At confluence with Marshyhope Creek	None	*41	Kent County (Unincorporated Areas)
	Approximately 1,200 feet upstream of Layton Corners Road.	None	*56	
Green's Branch	Approximately 500 feet downstream of Main Street	None	*9	Kent County (Unincorporated Areas), Town of Smyrna
	At CONRAIL	None	*27	
Horsepen Arm	At confluence with Marshyhope Creek	None	*54	Kent County (Unincorporated Areas)
	Approximately 650 feet upstream of Park Brown Road.	None	*58	
Little River	Just downstream of State Route 8	None	*9	Kent County (Unincorporated Areas), City of Dover
	Approximately 0.7 mile upstream of West Wind Drive.	None	*25	
Maidstone Branch	At the confluence with St. Jones River	*24	*27	Kent County (Unincorporated Areas), City of Dover
	Approximately 750 feet upstream of Sharon Hill Road.	None	*49	
Marshyhope Creek	At the downstream county boundary	None	*35	Kent County (Unincorporated Areas)
	At the confluence of Horsepen Arm	None	*54	

Source of flooding	Location	#Depth in feet above ground. •Elevation in feet (NGVD) Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Marshyhope Ditch	At the confluence with Marshyhope Creek	None	*54	Kent County (Unincorporated Areas)
	Approximately 500 feet upstream of Park Brown Road.	None	*56	
McColley Pond	Approximately 1,325 feet downstream of Canterbury Road.	None	*9	Kent County (Unincorporated Areas)
	Approximately 1.4 miles upstream of Canterbury Road.	None	*12	
McGinnis Pond	Approximately 1,125 feet downstream of McGinnis Pond Road.	None	*9	Kent County (Unincorporated Areas)
	Approximately 1.0 mile upstream of McGinnis Pond	None	*20	
Mill Creek	At U.S. Route 13	*8	*9	Kent County (Unincorporated Areas), Town of Smyrna
	At State Route 137	*18	*17	
Morgan Branch	Approximately 0.4 mile upstream of the confluence with Little River.	*9	*10	Kent County (Unincorporated Areas), City of Dover
	Approximately 1.5 miles upstream of Little Creek Road.	None	*17	
Penrose Branch	Approximately 750 feet upstream of Sharon Hill Road.	None	*49	Kent County (Unincorporated Areas)
	Approximately 1.9 miles upstream of Pearsons Corner Road.	None	*66	
Providence Creek	Approximately 300 feet upstream of U.S. Route 15	None	*29	Kent County (Unincorporated Areas), Town of Clayton
	Approximately 300 feet upstream of Alley Mill Road	None	*43	
Puncheon Branch	Approximately 0.5 mile downstream of U.S. Route 113A.	*8	*9	Kent County (Unincorporated Areas), City of Dover
	Approximately 900 feet downstream of U.S Route 113A.	*8	*9	
St. Jones River	Approximately 1,170 feet downstream of Court Street.	*9	*10	Kent County (Unincorporated Areas), City of Dover
	Approximately 1.11 miles upstream of West College Square.	*25	*27	
Tappahanna Ditch	At the confluence with Tidy Island Creek	None	*46	Kent County (Unincorporated Areas)
	Approximately 200 feet upstream of U.S. Route 8	None	*64	
Tantrough Branch	At City of Milford corporate limits	*19	*15	Kent County (Unincorporated Areas), City of Milford
	Approximately 0.62 mile upstream of Blairs Pond Dam.	None	*34	
Tidy Island Creek	Approximately 3,300 feet downstream of Mahan Corner Road.	None	*44	Kent County (Unincorporated Areas)
	At the confluence of Beaverdam Ditch and Tappahanna Ditch.	None	*46	
Willow Grove Prong	At confluence with Cow Marsh Creek	None	*51	Kent County (Unincorporated Areas)
	Approximately 850 feet upstream of Honeysuckle Road.	None	*57	

Source of flooding	Location	#Depth in feet above ground. •Elevation in feet (NGVD) Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Kent County (Unincorporated Areas)				
Maps available for inspection at the Kent County Planning, 414 Federal Street, Dover, Delaware.				
Send comments to Mr. Robert McLeod, Kent County Administrator, 414 Federal Street, Room 201, Dover, Delaware 19901.				
Town of Bowers				
Maps available for inspection at the North Bowers Fire Hall, Rural Drive #1 Bowers, Frederica, Delaware.				
Send comments to The Honorabale William Poulin, Mayor of the Town of Bowers, 111 Church Street, Frederica, Delaware 19946.				
Town of Clayton				
Maps available for inspection at the Clayton Town Hall, 105 Main Street, Clayton, Delaware.				
Send comments to The Honorable Robert Berhorn, Mayor of the Town of Clayton, P.O. Box 1130, Clayton, Delaware 19938.				
City of Dover				
Maps available for inspection at the Dover City Hall, 15 East Lockerman Street, Dover, Delaware.				
Send comments to The Honorable James Hutchison, Mayor of the City of Dover, P.O. Box 475, Dover, Delaware 19903.				
Town of Frederica				
Maps available for inspection at the Frederica Town Hall, David Street, Frederica, Delaware.				
Send comments to The Honorable Robert Volkomer, Mayor of the Town of Frederica, P.O. Box 294, Frederica, Delaware 19946.				
Town of Leipsic				
Maps available for inspection at Leipsic Town Hall, 192 Front Street, Leipsic, Delaware.				
Send comments to The Honorable Norma Mohler, Mayor of the Town of Leipsic, 728 Leipsic Road, Dover, Delaware 19901.				
Town of Little Creek				
Maps available for inspection at the Little Creek Town Hall, 204 Main Street, Little Creek, Delaware.				
Send comments to The Honorable Harry Marvel, Sr., Mayor of the Town of Little Creek, P.O. Box 298, Little Creek, Delaware 19961.				
City of Milford				
Maps available for inspection at the Milford City Hall, 201 South Walnut Street, Milford, Delaware.				
Send comments to Mr. Richard Carmean, Milford City Manager, 201 South Walnut Street, Milford, Delaware 19963.				
Town of Smyrna				
Maps available for inspection at the Smyrna Town Hall, 27 Market Street, Plaza, Smyrna, Delaware.				
Send comments to The Honorable Mark Schaeffer, Mayor of the Town of Smyrna, 27 South Market Street Plaza, P.O. Box 307, Smyrna, Delaware 19977.				
PITT COUNTY, NORTH CAROLINA				
Bells Branch	At the confluence with Hardee Creek	•19	•20	City of Greenville, Pitt County (Unincorporated Areas)
	Approximately 2,000 feet upstream of confluence	•19	•20	
Briery Swamp	At the confluence with Tranaters Creek	None	•22	Pitt County (Unincorporated Areas)
	Approximately 0.4 mile upstream of Staton Mill Road	None	•61	
Briery Swamp Tributary	At the confluence with Briery Swamp	None	•36	Pitt County (Unincorporated Areas)
	Approximately 0.8 mile upstream of NC 903	None	•44	
Cheeks Mill Creek	Approximately 0.5 mile upstream of the confluence with the Tar River.	None	•27	Pitt County (Unincorporated Areas)
	A backwater area from a point approximately 1.8 miles upstream of the confluence with the Tar River.	None	•39	
Chicod Creek	At the confluence with the Tar River	•13	•14	Pitt County (Unincorporated Areas)
	Approximately 1,250 feet upstream of South Grimesland Bridge Road.	None	•39	
Conetoe Creek	At the confluence with the Tar River	•27	•31	Pitt County (Unincorporated Areas)
	At the confluence of Crisp Creek	None	•48	
Cow Swamp	At the confluence with Chicod Creek	None	•19	Pitt County (Unincorporated Areas)
	Approximately 2.6 miles upstream of Black Jack-Simpson Road.	None	•46	
Crisp Creek	At the confluence with Conetoe Creek	None	•48	Pitt County (Unincorporated Areas), Town of Bethel
	Approximately 0.5 mile downstream of Interstate 64	None	•51	
Cross Swamp	At the confluence with Cow Swamp	None	•33	Pitt County (Unincorporated Areas)
	Approximately 0.6 mile upstream of Black Jack-Grimesland Road.	None	•37	

Source of flooding	Location	#Depth in feet above ground. •Elevation in feet (NGVD) Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Flat Swamp	At the confluence with Tranters Creek	None	•39	Pitt County (Unincorporated Areas)
	Approximately 0.4 mile upstream of James Road	None	•42	
Fornes Run	At the confluence with Green Mill Run	•24	•21	City of Greenville
	Approximately 1,850 feet upstream of the confluence with Green Mill Run.	•26	•27	
Green Mill Run	At the confluence with the Tar River	•20	•21	City of Greenville, Pitt County (Unincorporated Areas)
	Approximately 270 feet upstream of Allen Road	None	•70	
Grindle Creek	Approximately 2.0 miles upstream of the confluence with the Tar River.	None	•14	Pitt County (Unincorporated Areas)
	Approximately 500 feet upstream of U.S. 13/NC 11	None	•39	
Grindle Creek Tributary	At the confluence with Grindle Creek	None	•20	Pitt County (Unincorporated Areas)
	Approximately 0.6 mile upstream of railroad	None	•30	
Hardee Creek	At the confluence with the Tar River	•19	•20	City of Greenville, Pitt County (Unincorporated Areas)
	Approximately 1.1 miles upstream of Herman Garris Road.	None	•57	
Hardee Creek Tributary	Approximately 810 feet upstream of the confluence with Hardee Creek.	•36	•37	City of Greenville
	Approximately 425 feet upstream of Joseph Street	•37	•43	
Harris Mill Run	At the confluence with the Tar River	•23	•25	City of Greenville, Pitt County (Unincorporated Areas)
	Approximately 0.4 mile upstream of Interstate 264	None	•60	
Hunting Run	At the confluence with Grindle Creek	None	•21	Pitt County (Unincorporated Areas)
	Approximately 1.5 miles upstream of the confluence with Grindle Creek.	None	•29	
Island Swamp	At the confluence with Chicod Creek	None	•35	Pitt County (Unincorporated Areas)
	Approximately 0.9 mile upstream of South Grimesland Bridge Road.	None	•44	
Johnsons Mill Run	At the confluence with the Tar River	•24	•25	Pitt County (Unincorporated Areas), City of Greenville
	Approximately 80 feet downstream of Staton House Road.	None	•32	
Johnsons Mill Run Tributary	At the confluence with Johnsons Mill Run	None	•26	Pitt County (Unincorporated Areas), City of Greenville
	Approximately 900 feet downstream of Barrus Construction Road.	None	•31	
Juniper Branch	At the confluence with Chicod Creek	None	•15	Pitt County (Unincorporated Areas)
	Approximately 0.4 mile upstream of Ivy Road	None	•47	
Kitten Creek	At the confluence with Otters Creek	None	•36	Pitt County (Unincorporated Areas), Town of Fountain
	Approximately 1.6 miles upstream of Dilda Church Road.	None	•77	
Lateral No. 1	Approximately 150 feet upstream of the confluence with Parkers Creek.	•22	•23	City of Greenville
	At Interstate 13	•23	•24	
Lawrence Run	At the confluence with Tyson Creek	None	•33	Pitt County (Unincorporated Areas)
	Approximately 1.8 miles upstream of NC 121	None	•58	
Meadow Branch	At the confluence with Briery Swamp	None	•22	Pitt County (Unincorporated Areas)
	Approximately 0.7 mile upstream of Sheppard Mill Road.	None	•47	
Mill Branch	At the confluence with Whichard Branch	None	•41	Pitt County (Unincorporated Areas)
	Approximately 0.4 mile upstream of Staton Mill Road	None	•59	

Source of flooding	Location	#Depth in feet above ground. •Elevation in feet (NGVD) Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
North Fork Green Mill Run ...	Approximately 175 feet upstream of the confluence with Green Mill Run.	•55	•56	City of Greenville, Pitt County (Unincorporated Areas)
	Approximately 1,100 feet upstream of Spring Forest Road.	•68	•69	
Otter Creek	At the confluence with the Tar River	•29	•33	Pitt County (Unincorporated Areas), Town of Falkland
	Approximately 0.8 mile downstream of Edgewood Church Road.	None	•51	
Otter Creek Tributary	At the confluence with Otter Creek	None	•48	Pitt County (Unincorporated Areas)
	Approximately 200 feet upstream of the confluence with Otter Creek.	None	•48	
Parkers Creek	At the confluence with the Tar River	•21	•22	City of Greenville
	Approximately 800 feet upstream of Staton Road	None	•26	
Pea Branch	At the confluence with Tranters Creek	None	•15	Pitt County (Unincorporated Areas)
	Approximately 400 feet upstream of Satterthwaite Road.	None	•26	
Poley Branch	At the confluence with Tranters Creek	None	•15	Pitt County (Unincorporated Areas)
	Approximately 2,000 feet upstream of Sheppard Mill Road.	None	•25	
Tar River	Approximately 1.8 miles upstream of the confluence with Bear Creek.	•10	•9	Pitt County (Unincorporated Areas), Town of Falkland, City of Greenville
	At the county boundary	•33	•37	
Thomas Canal	At the confluence with Conetoe Creek	None	•46	Pitt County (Unincorporated Areas), Town of Bethel
	Approximately 900 feet upstream of Bowers Road ...	None	•49	
Tranters Creek	Approximately 2.5 miles upstream of the confluence with the Tar River.	None	•9	Pitt County (Unincorporated Areas)
	Approximately 1.3 miles upstream of the confluence with Flat Swamp.	None	•49	
Tyson Creek	At the confluence with the Tar River	•27	•30	Pitt County (Unincorporated Areas), Town of Falkland
	Approximately 1.3 miles upstream of Seven Pines Road.	None	•65	
Whichard Branch	At the confluence with Grindle Creek	None	•32	Pitt County (Unincorporated Areas)
	Approximately 0.8 mile upstream of David Nobles Road.	None	•53	

Source of flooding	Location	#Depth in feet above ground. •Elevation in feet (NGVD) Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

TOWN OF BETHEL

Maps available for inspection at Pitt County Planning Department, Development Services Building, 1717 West 5th Street, Greenville, North Carolina.

Send comments to Mr. Greg Zephir, Bethel Town Administrator, P.O. Box 337, Bethel, North Carolina 27812.

Town of Falkland

Maps available for inspection at the Town of Falkland Community Building, Main Street, Falkland, North Carolina.

Send comments to the Honorable J.P. Stanzil, Mayor of the Town of Falkland, P.O. Box AO, Falkland, North Carolina 27827.

Town of Fountain

Maps available for inspection at the Fountain Town Hall, 6777 West Wilson, Fountain, North Carolina.

Send comments to the Honorable Shirley Mitchell, Mayor of the Town of Fountain, P.O. Box 134, Fountain, North Carolina 27829.

City of Greenville

Maps available for inspection at the Greenville Community Planning Development Building, 306 South Green Street, Greenville, North Carolina.

Send comments to Mr. Marvin Davis, Greenville City Manager, P.O. Box 7207, Greenville, North Carolina 27835.

Pitt County Unincorporated Areas

Maps available for inspection at the Pitt County Planning Department, Development Services Building, 1717 West 5th Street, Greenville, North Carolina.

Send comments to Mr. Scott Elliot, Pitt County Manager, 1717 West 5th Street, Greenville, North Carolina 27834.

Village of Simpson

Maps available for inspection at the Pitt County Planning Department, Development Services Building, 1717 West 5th Street, Greenville, North Carolina.

Send comments to the Honorable Tracey Mayo, Mayor of the Village of Simpson, P.O. Box 10, Simpson, North Carolina 27879.

PENNSYLVANIA

Allegheny County (All Jurisdictions)

Chartiers Creek	At the upstream side of Ingram Avenue	None	•748	Township of Robinson, Borough of Crafton, Borough of Rosslyn Farms, Borough of Thornburg
	Approximately 300 feet downstream of Chartiers Avenue.	None	•754	

BOROUGH OF CRAFTON

Maps available for inspection at the Crafton Borough Hall, 100 Stotz Avenue, Pittsburgh, Pennsylvania.

Send comments to Mr. Stephen Vincenti, Crafton Borough Manager, 100 Stotz Avenue, Pittsburgh, Pennsylvania 15205.

Township of Robinson

Maps available for inspection at Robinson Township Municipal Building, 1000 Church Hill Road, Pittsburgh, Pennsylvania.

Send comments to Mr. William L. Blumling, Chairman of the Robinson Township Board of Commissioners, 1000 Church Hill Road, Pittsburgh, Pennsylvania 15205.

Borough of Rosslyn Farms

Maps available for inspection at Rosslyn Farms Borough Municipal Office, 421 Kings Highway, Carnegie, Pennsylvania.

Send comments to Mr. Thomas B. Trebilcock, Rosslyn Farms Borough Council President, 421 Kings Highway, Carnegie, Pennsylvania 15106.

Borough of Thornburg

Maps available for inspection at the Thornburg Borough Office, 235 Tech Road, Pittsburgh, Pennsylvania.

Send comments to The Honorable Thomas P. Gordon, Mayor of the Borough of Thornburg, 235 Tech Road, Pittsburgh, Pennsylvania 15205.

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

Dated: August 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–22821 Filed 9–6–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2063; MM Docket No. 01–104; RM–10103, RM–10323, RM–10324]

Radio Broadcasting Services; Auburn, Northport, Tuscaloosa, Camp Hill, Gardendale, Homewood, Birmingham, Dadeville, Orrville, Goodwater, Pine Level, Jemison, and Thomaston, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: At the request of Auburn Network, Inc., the Commission dismisses the petition for rule making proposing the allotment of Channel 263A at Auburn, Alabama, as the community's second local FM transmission service (RM–10103). *See* 16 FCC Rcd 8937 (2001). We dismiss the counterproposal filed by Radio South, Inc., proposing the reallotment of Channel 263C1 from Northport to Helena, Alabama, and the modification of Station WLXY(FM)'s license accordingly (RM–10323). To accommodate the reallotment to Helena, proponent also requested the reallotment of Channel 225C1 from Tuscaloosa to Northport, Alabama, and the modification of the license for Station WTUG(FM) accordingly as a replacement service. We also dismiss the counterproposal filed by Cox Radio, Inc., and its wholly-owned subsidiary CXR Holdings, Inc., proposing the substitution of Channel 247C2 for Channel 247A at Homewood, Alabama, the reallotment of Channel 247C2 from Homewood to Gardendale, Alabama, required channel substitutions and site changes, and the modification of Station WRLR–FM's license accordingly (RM–10324). We find that both counterproposals are technically defective because they violate section 73.208(a)(1)(i) of the Commission's Rules and our policy against acting upon contingent proposals.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–104, adopted August 21, 2002, and released August 30, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–22755 Filed 9–6–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2062; MB Docket No. 02–250, RM–10549; MB Docket No. 02–251, RM–10315; MB Docket No. 02–252, RM–10316; MB Docket No. 02–253, RM–10317; MB Docket No. 02–254, RM–10550]

Radio Broadcasting Services; Big Lake, TX, Las Animas, CO, Muleshoe, TX, Rankin, TX, Rocksprings, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes five new allotments in Big Lake, TX, Las Animas, CO, Muleshoe, TX, Rankin, TX, Rocksprings, TX. The Audio Division requests comment on a petition filed by Linda Crawford proposing the allotment of Channel 296C2 at Big Lake, Texas, as the community's fourth local aural transmission service. Channel 296C2 can be allotted to Big Lake in compliance with the Commission's minimum distance separation requirements with a site restriction of 26.9 kilometers (16.7 miles) south of the community. The coordinates for Channel 296C2 at Big Lake are 30–57–18 North Latitude and 101–23–48 West Longitude. *See* Supplementary Information, *infra.*

DATES: Comments must be filed on or before October 21, 2002, and reply comments on or before November 5, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Linda Crawford, 3500 Maple Avenue, #1320, Dallas, Texas 75219, Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214, Sierra Grande Broadcasting, P.O. Box 51, Des Moines, New Mexico 88418–0051.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau, (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 02–250, 02–251, 02–252, 02–253, and 02–254, adopted August 14, 2002, and released August 30, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The Audio Division requests comments on a petition filed by Sierra Grande Broadcasting proposing the allotment of Channel 234C1 at Las Animas, Colorado, as the community's second local aural transmission service. Channel 234C1 can be allotted to Las Animas in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.5 kilometers (2.8 miles) southeast of the community. The coordinates for Channel 234C1 at Las Animas are 38–02–18 North Latitude and 103–11–09 West Longitude.

The Audio Division requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 227C1 at Muleshoe, Texas, as the community's second local aural transmission service. Channel 227C1 can be allotted to Muleshoe in compliance with the Commission's minimum distance separation requirements with a site restriction of 35.8 kilometers (22.3 miles) southwest of the community. The coordinates for Channel 227C1 at Muleshoe are 34–02–03 North Latitude and 103–02–08 West Longitude.

The Audio Division requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 273C1 at Rankin, Texas, as the community's first local aural transmission service. Channel 273C1 can be allotted to Rankin in compliance with the Commission's

minimum distance separation requirements at center city reference coordinates. The coordinates for Channel 273C1 at Rankin are 31–13–21 North Latitude and 101–56–15 West Longitude.

The Audio Division requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 263A at Rocksprings, Texas, as the community's fourth local aural transmission service. Channel 263A can be allotted to Rocksprings in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) west of the community. The coordinates for Channel 263A at Rocksprings are 30–01–30 North Latitude and 100–20–06 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 234C1 at Las Animas.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 296C2 at Big Lake, by adding Channel 227C1 at Muleshoe, by adding Rankin, Channel 273C1, by adding Channel 263A at Rocksprings.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–22757 Filed 9–6–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[I.D. 082902C]

Endangered and Threatened Wildlife and Plants; 12–Month Finding on a Petition To List the Atlantic White Marlin as Threatened or Endangered

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

ACTION: Notice of petition finding and availability of a status review document.

SUMMARY: NMFS announces a 12–month finding on a petition to add the Atlantic white marlin (Tetrapturus albidus), throughout its known range, to the list of threatened and endangered wildlife and to designate critical habitat under the Endangered Species Act (ESA). Based on a review of the best available scientific and commercial information on the status of the species, NMFS finds that listing Atlantic white marlin is not warranted at this time. NMFS intends to add this species to its candidate species list and to reevaluate its status in 2007.

DATES: The finding announced in this notice was made on September 3, 2002.

ADDRESSES: Copies of the Atlantic white marlin status review document are available upon request from the Protected Resources Division, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702. The status review is also available on the NMFS website at http://www.nmfs.noaa.gov.

FOR FURTHER INFORMATION CONTACT: David Bernhart, NMFS Southeast Region, 727–570–5312, Jennifer Lee, NMFS Southeast Region, 301–713–2239, or David O'Brien, NMFS Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 4(b)(3)(B) of the ESA (16 U.S.C. 1531 *et seq.*) for any petition to revise the List of Endangered or Threatened Wildlife and Plants which presents substantial scientific and commercial information, NMFS is required to make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Such 12–month findings are to be published promptly in the **Federal Register**.

On September 4, 2001, NMFS received a petition from the Biodiversity Legal Foundation and James R. Chambers requesting that NMFS list the Atlantic white marlin (Tetrapturus albidus) under the ESA as a threatened or endangered species throughout its range. The petition also requested that NMFS designate critical habitat for white marlin. The petition contained a detailed description of the species, including the present legal status; taxonomy and physical appearance; ecological and fisheries importance; distribution; physical and biological characteristics of its habitat and ecosystem relationships; population status and trends; and factors contributing to the population's decline. Potential threats identified in the petition included: (1) overutilization for commercial purposes; (2) inadequacy of existing regulatory mechanisms; (3) predation; and (4) other natural or man-made factors affecting the species' continued existence.

On December 20, 2001 (66 FR 65676), NMFS announced a finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted and initiated a formal white marlin status review, as required by section 4(b)(3)(A) of the ESA. Concurrently, NMFS solicited, through February 19, 2002, additional information and comment from the public on the historic and current abundance and distribution of white marlin, threats to white marlin, and ongoing conservation efforts for white marlin. NMFS received responses from the petitioner, the National Audobon Society, the Wildlife Conservation Society, the National Coalition for Marine Conservation, the Blue Water Fishermen's Association, the Billfish Foundation, the South Carolina Department of Natural Resources, and 10 private citizens. Most of the comments were in response to NMFS' request for information on the status of white marlin. The status review document (SRT 2002) considers all new information contained in the comments. Some of the comments included expressions of support and disagreement with the appropriateness of reviewing white marlin for possible ESA listing, expressions of alarm at the potential effects of listing white marlin on commercial and recreational fishing interests, and recommended areas for fisheries closures. Additional comments and information were received during 11 public scoping meetings (67 FR 39328, June 7, 2002) held in June 2002 by staff from the NMFS Southeast

Regional Office and the Office of Protected Resources. The status review document contains a summary of the comments received at those meetings.

In order to conduct a comprehensive review of Atlantic white marlin, a status review team (SRT) was convened consisting of experts in pelagic fish biology, fisheries management, and fisheries stock assessment. The SRT was asked to assess the species status and the degree of threat to the species with regard to listing criteria provided by the ESA. The SRT prepared a document (SRT 2002) that is the basis for the following discussions. Copies of the status review are available upon request from the Protected Resources Division, NMFS (see **ADDRESSES**).

Life History

Atlantic white marlin are found throughout tropical and temperate waters of the Atlantic Ocean and adjacent seas. Unlike blue marlin (*Makaira nigricans*) and sailfish (*Istiophorus platypterus*), white marlin occur only in the Atlantic Ocean. The Atlantic population is considered to be a single stock. White marlin spawn in tropical and subtropical waters in mid- to late spring, and enter colder temperate waters during the summer. They are considered to be very fast growing, and have a lifespan of at least 17 to 18 years. Female white marlin grow faster and reach a larger maximum size than males. Sexual maturity of females is reached at about 20 kg. Mature females probably spawn more than once a year, likely from March through June in the Northern Hemisphere. White marlin are generally considered piscivorous, but also have been known to consume squid. Likely predators of adults of the species are sharks and killer whales.

Fishery Landings and Management

Atlantic billfish, including white marlin, have historically been landed as the incidental catch of foreign and domestic commercial pelagic longline and purse seine vessels, and in directed recreational and artisanal fisheries. The majority of billfish fishing mortality in the Atlantic Ocean results from pelagic longline fisheries. Total reported landings in the Atlantic for white marlin peaked in 1965 at 4,911 metric tons (mt). Since the 1970s, catches have averaged 1,500 mt without trend while fishing effort has increased substantially. Combined U.S. commercial and recreational reported catches (landings plus dead discards) were 63 mt and 42 mt during 1999 and 2000, representing 5 and 4 percent, respectively, of the total reported Atlantic catch.

White marlin are managed internationally by the member nations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). By consensus, this group adopts binding recommendations to manage for maximum sustainable catch of the fish stocks under its purview. The U.S. participates in ICCAT-supported stock assessments for white marlin that utilize data from multiple fishing nations. These assessments are conducted by the Standing Committee for Research and Statistics (SCRS), a group of scientists from ICCAT member nations. The 2000 SCRS assessment found that white marlin were overfished and undergoing overfishing. Subsequently, a binding recommendation to conserve white marlin was adopted by ICCAT in 2000 and went into effect mid-way through 2001, requiring nations to reduce white marlin landings by 67 percent.

White marlin are managed domestically under Amendment One to the Billfish Fishery Management Plan (Billfish FMP) prepared under the dual authorities of the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Tunas Convention Act. The Billfish FMP prohibits commercial possession of billfish and uses minimum size limits to reduce recreational landings of blue marlin and white marlin. Its objective is to end overfishing and rebuild the stocks. In addition, the FMP seeks to coordinate domestic regulations with international management measures to control stock-wide fishing mortality.

Status of Species

The status of the Atlantic white marlin resource has been the subject of a number of quantitative assessments by the SCRS. The most recent assessments were conducted in 2000 and again in May 2002. Basic information available for conducting stock assessments includes time series of fishery landings and discards (for some fleet sectors, over varying periods of years) and trends in commercial and recreational catch per unit of effort as relative indices of stock abundance. Little is known about the age, growth and reproductive biology of white marlin and, with few exceptions, no quantitative estimates of population parameters for this species exist that can be used in stock assessments. Production models are the primary method used in the stock assessments to estimate population size, fishing mortality, and biological reference points.

The SRT estimated that current white marlin population levels are at 5–15 percent of their historic levels; biomass is in long-term decline; and fishing mortality rates substantially exceed the level associated with maximum sustainable yield. The existing analyses are consistent with recent population sizes of about 200,000 individuals in the size range vulnerable to the fishery.

To assess the available data on stock status for evidence of extinction risk, the SRT reviewed literature on extinction risk analysis and developed a list of population dynamics factors for consideration, specific to white marlin, including: (1) Decline in population, (2) Absolute population size, (3) Trends and variability in recruitment, (4) Spatial focusing, (5) Depensation considerations, and (6) Formal modeling of probability of extinction. The SRT used these extinction risk criteria, developed specifically for white marlin, in their evaluation of the five ESA listing factors (discussed below).

The SRT characterized the white marlin's status based on decline in population (Factor 1) as on the borderline between ''vulnerable'' and ''not at risk.'' The SRT found that the current estimates of absolute population size (Factor 2) are an order of magnitude greater than the level at which the SRT would be concerned about imminent extinction risk.

Available evidence on recruitment (Factor 3) is limited and implies a declining trend, but it is not inconsistent with what would be expected based on the decline in biomass, nor does it suggest depensation (Factor 5)(i.e., when a stock becomes less, rather than more, able to replenish itself as stock size declines). White marlin have a broad geographic range and have shown no sign of range contraction despite a history of significant fishing, and there is no evidence to suggest special vulnerability of white marlin to spatial focusing (Factor 4) of fishing effort (i.e., when a fishery is able to focus ever more effective fishing effort on a stock as stock size declines).

To look at future stock condition (Factor 6) and to gauge the effectiveness of various ICCAT management policies for conserving white marlin, the SRT considered population projections that estimated the probability of the stock declining to one percent of carrying capacity (K) or lower in the next 10 years. For white marlin, one percent of K was determined by the SRT to ''indicate a population with an ESA-level problem, without concluding at this time whether the 0.01K level would be most consistent with a vulnerable, threatened, or endangered level of risk.'' Because of the inherent limitations of

the production models that were the basis of the population projections, when applied over long periods of time, the SRT focused on a 10–year time horizon for their evaluations. The population projections indicate a low probability of the population declining to one percent of K over the next 10 years, except when constant catch scenarios or unreduced, or increasing, fishing mortality scenarios are used. Even under unreduced fishing mortality rates (i.e., assuming no reduction in fishing mortality as a result of the recent ICCAT recommendation to reduce landings by 67 percent), there is less than a 10–percent chance in 5 years, and about a 20–percent chance in 10 years, that the stock will reach one percent of K. The SRT found that current measures by ICCAT are not sufficient to prevent continued overfishing. Even with assumptions of full compliance with management measures, no post-release mortality, and no unreported fishing, the SRT concluded that the stock likely will continue to decline, but not necessarily to high-risk levels.

Threatening Factors Affecting Atlantic White Marlin

Section 4(a)(1) of the ESA states that a species is endangered if any one or more of the following factors causes it to be in danger of extinction throughout all or a significant portion of its range: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) Inadequacy of existing regulatory mechanisms; or (E) Other natural or human-made factors affecting its continued existence. A threatened species is one that is likely to become endangered in the foreseeable future.

The conclusions of the SRT relative to these five listing factors are as follows: (1) There is no evidence of range curtailment or habitat degradation to suggest that white marlin are at risk of extinction; (2) While overutilization is occurring and the Atlantic white marlin population is declining, the stock is not in danger of imminent extinction; (3) There is no evidence that competition, predation, or disease are affecting the Atlantic white marlin population in ways that would contribute to risk of extinction; (4) Since the U.S. currently accounts for approximately 5 percent of total reported catch of white marlin, domestic management measures including the Magnuson-Stevens Act, Atlantic Tunas Convention Act, and possibly the ESA are not adequate to protect this species from continued decline. Under current management measures adopted by ICCAT, presently the only forum in which effective cooperative management actions could be taken to reverse the white marlin's population decline, the stock will likely continue to decline, but not to high risk levels; and (5) No other natural or manmade factors affecting white marlin's continued existence were identified.

NMFS has reviewed the status review document and affirms that it represents the best available scientific and commercial data on the status of Atlantic white marlin. NMFS generally accepts the analyses and conclusions of the SRT. The SRT, however, was pessimistic about the implementation of conservation measures for white marlin. As discussed below, conservation measures have already been implemented that NMFS believes will reduce white marlin mortality significantly. Regulatory mechanisms that are not currently in place were not considered in this listing determination.

Conservation Factors Affecting Atlantic White Marlin

The most significant conservation factor affecting white marlin is ICCAT's binding recommendation, which was adopted in 2000 and became effective mid-way through 2001, that Contracting and Non-Contracting Parties, Entities and Fishing Entities reduce white marlin longline and purse seine landings by 67 percent. ICCAT recommendations are binding upon the parties to the international convention. Therefore, NMFS considers the recommendation to be a formalized conservation effort that has been implemented and will be effective, consistent with our draft policy for the evaluation of conservation efforts when making listing decisions (65 FR 37102, June 13, 2000). Because of the recent implementation of the recommendation and the usual time lags in compiling data from all parties' fishing fleets, no ICCAT data are yet available to quantify the effectiveness of this recommendation. The SRT expressed concern that the ICCAT recommendation would not be fully effective; that is, the 67 percent reduction in landings would not achieve a 67 percent reduction in white marlin mortality because of post-release mortality, non-compliance with ICCAT recommendations, and a significant level of illegal, unreported, and unregulated fishing. NMFS agrees that these factors will offset the conservation benefit of the ICCAT recommendation to an unknown degree, but NMFS believes that the effect of the binding recommendation will be to reduce white marlin mortality significantly. Several additional years of ICCAT data reporting will be needed to assess the actual reduction of mortality achieved by the latest recommendation, and ICCAT has mechanisms in place to make this evaluation. NMFS expects the SCRS will conduct another stock assessment for white marlin no later than 2006, and NMFS will work within ICCAT to ensure this result.

Another conservation effort affecting white marlin is NMFS' final rule implementing pelagic longline fishery time/area closures in the Atlantic and Gulf of Mexico and live bait restrictions in the Gulf of Mexico (65 FR 47213, August 1, 2000). Preliminary data to evaluate the effect of these measures which were not available to the SRT show that dead discards of white marlin by U.S. pelagic longliners in the northwest Atlantic, Caribbean, and Gulf of Mexico were reduced by 61 percent in 2001 compared to the average level of the three previous years. U.S. longliners are already prohibited from landing marlin, so the ICCAT recommendation to reduce landings does not affect the U.S. longline fleet. Although the U.S. catch of white marlin is small relative to the international fishing fleets, these domestic reductions in discards represent a conservation benefit in addition to those associated with the ICCAT landings reductions. NMFS will need to continue to monitor these discard rates for several years in order to judge the long-term effectiveness of the regulatory measures, but the initial signs are very encouraging.

The SRT also commented negatively on ICCAT's resolve to adopt further management measures for white marlin a bycatch species in the immediate future. NMFS agrees with the SRT's basis of concern, but notes that over the past years the United States has moved forward on white marlin conservation at ICCAT and on actions to limit unregulated effort and has achieved increasing success. In any case, NMFS is not relying on the expectation of adoption of additional, future conservation measures for white marlin in making this listing determination but on the information on the stock's current status and the currently implemented conservation measures. NMFS will, however, continue to pursue additional conservation measures for white marlin internationally, through ICCAT, and will consider additional measures that could be implemented domestically, under existing legal authorities.

Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(6) and (20)). Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation to protect and conserve the species.

After reviewing the best scientific and commercial information available and the effects of current conservation efforts, NMFS has determined that listing of Atlantic white marlin under the ESA is not warranted at this time. NMFS intends to add Atlantic white marlin to its list of ESA candidate species and reevaluate its status in 2007. If the 2007 status review indicates that ICCAT and U.S. management measures have been ineffective in reducing the fishing mortality rate, NMFS would likely propose to list this species under the ESA.

References

White Marlin Status Review Team. 2002. Atlantic White Marlin Status Review Document. Report to National Marine Fisheries Service, Southeast Regional Office, September 3, 2002. 49 pp.

Authority

The authority for this section is the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 3, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–22805 Filed 9–4–02; 1:52 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 083002C]

Mid-Atlantic Fishery Management Council; Public Hearings

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

ACTION: Public hearing meetings; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) is currently developing Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan (FMP), pursuant to the Magnuson–Stevens Fishery Conservation and Management Act of 1976, as amended. The Council will hold a series of public hearings to solicit comments on proposals to be included in Amendment 13. The intended effect of this action is to alert interested public of the commencement of this hearing process and to provide for public participation.

DATES: Written comments will be accepted through 5 p.m. October 15, 2002. See **SUPPLEMENTARY INFORMATION** for specific location and dates of the public hearings.

ADDRESSES: Send comments to Daniel T. Furlong, Executive Director of the Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904. When submitting comments, identify correspondence as ''Comments on Draft Amendment 13.'' Copies of the public hearing document and the Draft Environmental Impact Statement (DEIS) for Amendment 13 may be obtained from the Council. Hearings will be held in Maine, New Jersey, and Delaware. See **SUPPLEMENTARY INFORMATION** for specific locations. Requests for special accommodations should be addressed to the Mid-Atlantic Fishery Management Council, Federal Building, 300 South New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director of the Mid-Atlantic Fishery Management Council, 302–674–2331, ext. 19.≤:

SUPPLEMENTARY INFORMATION: The Council proposes to take action to implement Amendment 13 to the FMP. Amendment 13 addresses five major issues: (1) a new surfclam overfishing definition; (2) fishing gear impacts to essential fish habitat (EFH); (3) multi-year quotas; (4) suspension of the surfclam minimum size limit; and (5) a vessel monitoring-type system.

In conjunction with the development of Amendment 13, the Council prepared a DEIS under the National Environmental Policy Act to assess the potential effects of the proposed action, and the alternatives to those actions, on the human environment. A Notice of Availability for the DEIS for Amendment 13 was published in the **Federal Register** on August 30, 2002 (67 FR 55838). The 45–day comment period for the DEIS ends on October 15, 2002. Copies of the DEIS can be obtained from the Council (see **ADDRESSES**).

Once it has considered public comments, the Council will approve final management measures and prepare a submission package for NMFS. There will be an additional opportunity for public comment when the Notice of Availability and the proposed rule for Amendment 13 are published in the **Federal Register**.

Public Hearings

The dates, times, and locations of the hearings are scheduled as follows:

1. Tuesday, September 24, 2002, beginning at 7 p.m.—University of Maine, Science Building, Room 102, Machias, ME; telephone: 207–255–1289.

2. Monday, September 30, 2002, beginning at 7 p.m.—Clarion Hotel and Convention Center, 6821 Black Horse Pike, Atlantic City, NJ; telephone: 609–272–0200.

3. Wednesday, October 2, 2002, beginning at 7 p.m.—Holiday Inn Select, 630 Naamans Road, Claymont, DE; telephone: 302–791–4603. This hearing will be in conjunction with the Mid-Atlantic Fishery Management Council's October meeting at the same location.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council's office at least 5 days prior to the hearing date.

Dated: August 30, 2002.

Virginia M. Fay,

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

[FR Doc. 02–22836 Filed 9–6–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 174

Monday, September 9, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–095–1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), we are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

DATES: Sessions will be held from 8 a.m. to 5 p.m. on September 24–25, 2002, and from 8 a.m. to noon on September 26, 2002.

ADDRESSES: The meeting will be held at the USDA Center at Riverside in Conference Center D, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Annelli, Chief Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to prevent the introduction of foreign diseases of livestock and poultry into the United States. In addition, the Committee advises the Secretary on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

The meeting will focus on the U.S. animal health emergency management system and the foreign animal disease situation worldwide and its relevance to the United States. The meeting will be open to the public. However, due to the time constraints, the public will not be allowed to participate in the Committee's discussions.

You may obtain an agenda for the meeting by contacting Dr. Joseph Annelli at the address listed under **FOR FURTHER INFORMATION CONTACT.**

You may file written statements on meeting topics with the Committee before or after the meeting by sending them to Dr. Joseph Annelli at the address listed under **FOR FURTHER INFORMATION CONTACT.** You may also file written comments at the time of the meeting. Please refer to Docket No. 02–095–1 when submitting your comments.

Parking and Security Procedures at the USDA Center

Please note that a fee of $2.25 is required to enter the parking lot at the USDA Center. The machine accepts $1 bills and quarters.

Upon entering the building, visitors should inform security personnel that they are attending the Advisory Committee Meeting on Foreign Animal and Poultry Diseases. Identification is required. Visitor badges must be worn at all times while inside the building.

Done in Washington, DC, this 5th day of September, 2002 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–22919 Filed 9–6–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Northeast Oregon Forests Resource Advisory Committee (RAC) will meet on September 26–27, 2002 in Enterprise, Oregon. The purpose of the meeting is to meet as a Committee to complete business items identified at the June 14 meeting and tour Title II project sites on the Wallowa-Whitman National Forest.

DATES: The meeting will be held as follows: September 2, 2002, 8 a.m. to 5 p.m., Enterprise, Oregon; September 27, 2002, 8 a.m. to 3 p.m., Enterprise, Oregon.

ADDRESSES: The September 26, 2002 meeting will be held at the Wallowa Mountains Visitor Center, located at 88401 Highway 82, Enterprise, Oregon. The September 27, 2002 Title II project tour will start at Wallowa Mountains Visitor Center, located at 88401 Highway 82, Enterprise, Oregon and proceed through the Wallowa-Whitman National Forest.

FOR FURTHER INFORMATION CONTACT: Jennifer Harris, Designated Federal Official, USDA, Malheur National Forest, PO Box 909, John Day, Oregon 97845. Phone: (541) 575–3008.

SUPPLEMENTARY INFORMATION: At the September 26 meeting the RAC will receive an update of how the fiscal year 2002 projects are progressing, discuss replacement of alternate RAC members, initiate annual monitoring report procedures, and review project issues. A public input opportunity will be provided at 1:15 p.m. on September 26, and individuals will have the opportunity to address the committee at that time. After public comment the RAC will depart Enterprise to tour a Title II project site, from 1:45 p.m. to 5 p.m. On September 27 the committee will tour the Wallowa-Whitman National Forest and review fiscal year 2002 projects.

Dated: August 28, 2002.

Jennifer L. Harris,

Designated Federal Official.

[FR Doc. 02–22781 Filed 9–6–02; 8:45 am]

BILLING CODE 3410–DK–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order.

SUMMARY:

On July 22, 2002, the Department of Commerce (''the Department'') published a notice of initiation and preliminary results of a changed circumstances review with the intent to revoke, in part, the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order and Intent to Revoke Order in Part*, 67 FR 47766 (July 22, 2002) (''*Initiation and Preliminary Results*''). In our *Initiation and Preliminary Results*, we gave interested parties an opportunity to comment; however, we did not receive any comments. We are now revoking this order, in part, with respect to the particular carbon steel flat products described below, based on the fact that domestic parties have expressed no interest in the continuation of the order with respect to these particular carbon steel flat products.The Department will instruct the U.S. Customs Service (''Customs'') to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated below, entered or withdrawn from warehouse, for consumption on or after August 1, 1998, the day after the most recent time period that was subject to final results of an administrative review (08/01/97 - 07/31/98).

EFFECTIVE DATE: September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3207.

SUPPLEMENTARY INFORMATION:

THE APPLICABLE STATUTE AND REGULATIONS

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 C.F.R. Part 351 (2002).

Background

On May 29, 2002, Uchiyama America, Inc. (''Uchiyama'') requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, Uchiyama requested that the Department revoke the order with respect to imports meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate.

On July 3, 2002, domestic producers of the like product, Bethlehem Steel Corporation; National Steel Corporation; and United States Steel Corporation, informed the Department that they have no interest in the importation or sale of steel from Japan with these specialized characteristics. Subsequently, as noted above, we gave interested parties an opportunity to comment on the *Initiation and Preliminary Results*. We received no comments from interested parties.

New Scope based on Changed Circumstances Review

The merchandise covered by this changed circumstances review is certain corrosion-resistant carbon steel flat products from Japan. This changed circumstances administrative review covers all manufacturers/exporters of carbon steel flat products meeting the specifications as noted above in the background section. The new scope of this order is as follows: the products covered by the antidumping duty order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges.

Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating.

Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness.

Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Also excluded from this order are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt,

and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Also excluded from this order are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Also excluded from this order are doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900 - 990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron.

Also excluded from this order are products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also, excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet.

Also excluded from this order are products meeting the following specifications: (1) diffusion annealed, non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet (''CRBG'') with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004'' (0.10mm) to 0.030'' (0.762mm) and conforming to the following chemical specifications (%): C ≤ 0.08; Mn ≤ 0.45; P ≤ 0.02; S ≤ 0.02; Al ≤ 0.15; and Si ≤ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32 - 55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85 - 150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than +/- 0.2; Lankford value = ≥ 1.2.; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers, nickel-graphite layer only > 0.2 micrometers, and bottom side: nickel layer ≥ 1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; nickel-graphite layer ≥ 0.5 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal

first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer ≥ 1.0 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer ≥ 1.0 micrometers; nickel-phosphorous layer ≥ 0.1 micrometers; bottom side : nickel layer ≥ 1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel-tin-nickel combination layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer ≥ 1 micrometer; tin layer alone ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometer.

Also excluded from this order are products meeting the following specifications: (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning carbon steel flat products, as described herein, constitutes changed circumstances sufficient to warrant partial revocation of this order. Also, no party commented on the *Initiation and Preliminary Results*. Therefore, the Department is partially revoking the order on certain corrosion-resistant carbon steel flat products from Japan with regard to products which meet the specifications detailed above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216(d).

The Department will instruct the Customs to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, entered or withdrawn from warehouse, for consumption on or after August 1, 1998, the day after the most recent time period that was subject to final results of an administrative review (08/01/97 - 07/31/98). The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, entered or withdrawn from warehouse, for consumption on or after August 1, 1998, in accordance with section 778 of the Act.

This notice serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216(e) and 351.222(g) of the Department's regulations.

Dated: August 29, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–22840 Filed 9–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–502]

Iron Construction Castings from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews in Accordance with Court Decision

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Reviews in accordance with Court Decision.

SUMMARY: On February 10, 2000, the Court of International Trade affirmed the remand determinations of the Department of Commerce (the Department) arising from the 1987–88, 1988–89 and 1989–90 administrative

reviews of the antidumping duty order on iron construction castings from the People's Republic of China (PRC). *See Sigma Corp. v. United States*, 86 F. Supp. 2d 1344, 1353 (CIT 2000). Because this is the final and conclusive court decision with respect to entries during these periods of review, we will instruct the U.S. Customs Service to liquidate entries subject to these amended final results.

EFFECTIVE DATE: September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Christian Hughes, Doug Campau or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0648, (202) 482–1395, and (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Antidumping Duty Order

This order covers certain iron construction castings, limited to manhole covers, rings and frames, catch basins, grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, and to valve, service and meter boxes which are placed below ground to encase water, gas or other valves, or water or gas meters. The articles must be of cast iron, not alloyed, and not malleable. Until January 1, 1989, iron constructions castings were classified under item 657.0950 and 657.0990 of the TSUSA. This merchandise is currently classified under Harmonized Tariff System (HTS) items 7325.10.00.00 and 7325.10.00.50. The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of the order.

Background

On May 9, 1986, the Department issued an antidumping duty order on iron construction castings from the PRC. *See Antidumping Duty Order: Iron Construction Castings from the People's Republic of China*, 51 FR 17222 (May 9, 1986) (*Antidumping Duty Order*). On January 24, 1991, the Department published final results of the administrative reviews of iron construction castings for the 1987–88 and 1988–89 review periods. *See Iron Construction Castings from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 56 FR 2742 (January 24, 1991) (1987–88 and 1988–89). On March 27, 1992, the Department published the final results of the administrative review for the 1989–1990 period. *See Iron Construction Castings from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 10644 (March 27, 1992) (1989–90).

In the 1987–88 and 1988–89 determinations, the Department concluded that no exporter had demonstrated that it was entitled to a separate rate. Therefore, it calculated a single country-wide, weighted-average margin for each of those reviews, based on data submitted by respondents. 56 FR at 2744. In the 1989–90 determination, the Department assigned a calculated separate rates margin of 92.74 percent to Guangdong Metals & Minerals Import & Export Corporation (Guangdong), and assigned the same margin, as best information available (BIA), as a country-wide rate to all other exporters. All of these determinations were appealed with respect to two types of issues relevant to these amended final results: (1) whether China National Machinery Import and Export Corporation (MACHIMPEX Liaoning) should be deemed included in the reviews, and (2) issues related to the calculation of the margins assigned for these periods.

Exclusion of MACHIMPEX Liaoning from Reviews

With respect to MACHIMPEX Liaoning, the Court of International Trade held that, under the circumstances of the relevant cases, that company had not received adequate notice that it was subject to these reviews, and ordered the Department to assess duties against its entries for these periods at the 11.66 percent deposit rate that plaintiff Overseas Trade Corporation (Overseas) paid upon importation. *Sigma Corp. v. United States*, 841 F. Supp. 1255, 1273 (CIT 1993)(1987–88/1988–89); *Sigma Corp. v. United States*, 841 F. Supp. 1275, 1285 (CIT 1993)(1989–90). This issue was not further appealed. The Department, therefore, amends its final results in these reviews to provide that MACHIMPEX Liaoning entries for the periods 1987–88, 1988–89 and 1989–90 will be liquidated at the 11.66 percent deposit rate.

1987–88/1988–89 Calculation Issues

With respect to calculation issues in the 1987–88 and 1988–89 reviews, on remand the Department made the changes to its final results described below. Some of these changes were addressed over the course of more than one remand.

(1) The Department recalculated depreciation expense based on information on the record, specifically the public version of a depreciation schedule submitted in a companion case on iron construction castings from India. The Court of International Trade upheld this determination in *Sigma Corp. v. United States*, 890 F. Supp. 1077, 1084 (CIT 1995), and the issue was not further appealed.

(2) The Department recalculated Guangdong's labor costs in order to include the skilled labor cost of lathe operators. This approach was upheld by the Court of International Trade. *Id.* at 1085 (remanding for correction of a clerical error in the remand skilled labor calculation, but dismissing ''upon correction'' of the error). The issue was not further appealed.

(3) The Department corrected clerical errors in its final results involving the amounts of aluminum and fireclay consumed in production. *See Sigma Corp. v. United States*, 841 F. Supp. 1255, 1274 (CIT 1993). This correction was upheld without comment in *Sigma Corp. v. United States*, 890 F. Supp. 1077, 1084 (CIT 1993), and was not further contested.

(4) In accordance with the mandate of the Court of Appeals for the Federal Circuit (*Sigma Corp. v. United States*, 117 F.3d 1401, 1406–08 (Fed. Cir. 1997)), Commerce devised a new methodology for valuing the inland freight component of constructed value for use when CIF import prices in a surrogate country are used to value inputs sourced domestically in non-market economy cases. Specifically, the Department used, for such inputs, a value for domestic inland freight based on the shorter of the reported distances from either the closest PRC seaport to the production site, or from the PRC domestic materials supplier to the production site. *Sigma Corp. v. United States*, 86 F. Supp. 2d 1344, 1348 (CIT 2000). Because for most inputs the actual supplier was closer to the castings foundry than the nearest seaport was to the castings foundry, this change in methodology affected only a limited number of inputs. *Id.*

1989–90 Calculation Issues

With respect to the calculation issues in the 1989–90 review, on remand the Department made the changes to its final results described below. Some of these issues were addressed over the course of more than one remand.

(1) The Department recalculated surrogate values for pig iron and scrap iron, relying upon publicly available published import statistics on pig iron and scrap iron imported into India. For

pig iron, the Department, in a second remand, revised the tariff categories used in its first remand, to rely only upon the Indian tariff category for non-alloy pig iron containing less than 0.5 percent phosphorus. *Sigma Corp. v. United States*, 888 F. Supp. 159, 161 (CIT 1995). This issue was not further appealed.

(2) The Department recalculated its valuation of inland freight on inputs sourced domestically in China for which it had used CIF import prices in a surrogate country to value the inputs themselves. The Department used the methodology described at point (4), above, with respect to the 1987–88 and 1988–89 reviews. *Sigma Corp. v. United States*, 86 F. Supp. 2d 1344, 1348 (CIT 2000).

(3) The Department recalculated the surrogate valuation of overhead for Guangdong's foundries in this review. Based on the sizes of the foundries in question, it calculated an overhead rate for Guangdong's medium-size foundries and a rate for its small foundry. These rates were upheld in *Id.*, 86 F. Supp. 2d at 1349.

PRC-wide Rate for 1989–90

Because the PRC-wide rate for the 1989–90 review period was based on Guangdong's calculated rate for that period, plaintiff importers also challenged the PRC-wide rate after Guangdong's original rate of 92.74 percent for 1989–90 was reduced in the course of the litigation. In *Sigma Corp. v. United States*, 117 F.3d 1401, 1411 (Fed. Cir. 1997), the Court of Appeals for the Federal Circuit held that, by challenging Guangdong's rate, the importers did so not only as to Guangdong's exports, but also as to the exports made by the PRC-wide entity, to which that margin had been assigned. Thus, the Court of Appeals reversed the Department's reliance on the 92.74 percent BIA rate for the PRC-entity, and remanded for selection of a rate that had not been judicially invalidated. *Id.* In its amended remand of January 30, 1998, the Department selected, as BIA for the PRC-wide entity (which in this review encompasses all exporters other than Guangdong and MACHIMPEX Liaoning), a rate of 28.77 percent, the rate calculated for the PRC-wide entity in that remand for the 1988–1989 period, and the highest margin not judicially invalidated at the time of that remand. This choice of a 1989–90 BIA rate for the PRC-wide entity was upheld in *Sigma Corp. v. United States*, 86 F.2d 1344, 1353 (CIT 2000), and was not further appealed.

On February 10, 2000, the CIT upheld the Department's final redetermination on remand with respect to these reviews. *Sigma Corp. v. United States*, 86 F. Supp. 2d 1344 (CIT 2000). This decision was not appealed. There is now a final and conclusive court decision in this action. Thus, we are amending our final results of these reviews. The rates for these amended final results, which are the rates upheld by the CIT on remand, are:

Period of Review	Manufacturer/exporter	Margin (percent)
5/1/1987–4/30/1988	PRC-wide Rate*	12.50
5/1/1988–4/30/1989	PRC-wide Rate*	28.77
5/1/1989–4/30/1990	Guangdong Metals & Minerals Import & Export Corporation	22.50
5/1/1989–4/30/1990	PRC-wide rate*	28.77

* As explained above, the Court of International Trade determined that China National Machinery Import and Export Corporation (MACHIMPEX Liaoning) is not within the scope of review for 1987–1988, 1988–1989, and 1989–1990. Duties for Overseas Trade Corporation (Overseas) imports from MACHIMPEX Liaoning are to be assessed at the 11.66 percent deposit rate that Overseas paid upon importation, rather than at the PRC-wide rate.

Accordingly, the Department will determine, and the United States Customs Service will assess, antidumping duties on all entries of subject merchandise in accordance with these amended final results. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs. The above rates will not affect the cash deposit rates currently in effect, which continue to be based on the margins found to exist in the most recently completed reviews for the relevant companies.

This notice is published in accordance with §751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: August 29, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–22841 Filed 9–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–502]

Certain Iron Construction Castings from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review in Accordance with Court Decision

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review in accordance with Court Decision.

SUMMARY: On September 10, 1999, the Court of International Trade affirmed the remand determination of the Department of Commerce (the Department) arising from the 1990–1991 administrative review of the antidumping duty order on certain iron construction castings from the People's Republic of China (PRC). *See D & L Supply Co. v. United States*, 6 F. Supp. 2d 914 (CIT 1998), *aff'd Guangdong Metals & Minerals Import & Export Corporation v. United States*, 217 F. Supp. 3d 851 (Fed. Cir. 1999) (unpublished opinion). As there is now a final and conclusive court decision in this segment, we will instruct the U.S. Customs Service to liquidate entries subject to these amended final results.

EFFECTIVE DATE: September 9, 2002

FOR FURTHER INFORMATION CONTACT: Christian Hughes, Doug Campau or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0648, (202) 482–1395, and (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Antidumping Duty Order

This order covers certain iron construction castings, limited to manhole covers, rings and frames, catch

basins, grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, and to valve, service and meter boxes which are placed below ground to encase water, gas or other valves, or water or gas meters. The articles must be of cast iron, not alloyed, and not malleable. Until January 1, 1989, iron construction castings were classified under items 657.0950 and 657.0990 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classified under Harmonized Tariff System (HTS) items 7325.10.00.00 and 7325.10.00.50. The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of the order.

Background

On May 9, 1986, the Department issued an antidumping duty order on iron construction castings from the PRC. *See Antidumping Duty Order: Iron Construction Castings from the People's Republic of China*, 51 FR 17222 (May 9, 1986) (*Antidumping Duty Order*). On June 8, 1992, the Department published its final results of the fourth administrative review of iron construction castings, covering the 1990–1991 review period. *See Certain Iron Construction Castings from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 57 FR 24245 (June 8, 1992) (*Final Results*).

No PRC producer or exporter responded to the Department's questionnaires in this review. The Department based its determination entirely on the best information available (BIA), pursuant to 19 U.S.C. 1677e(c) (1988). This BIA rate was assigned both as a separate rate for Guangdong Metals and Minerals Import and Export Corporation (Guangdong), which had previously been granted a separate rate, and as the PRC-wide rate applied to all other producers and exporters of the subject merchandise for the 1990–1991 review period. *See Final Results*.

In accordance with its practice, for BIA the Department selected 92.74 percent, the rate calculated during the third administrative review (1989–90) for Guangdong, and the highest calculated rate available for any company from the investigation of sales at less than fair value or any previous review. *See Iron Construction Castings from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 10644 (March 27, 1992). The Department's Final Results were appealed on two grounds that are relevant to these amended final results.

First, importer Overseas Trade Corporation (Overseas) argued that its supplier, China National Machinery Import and Export Corporation (MACHIMPEX Liaoning), had no notice that it was subject to the review, and that its MACHIMPEX Liaoning entries should be assessed at the 11.66 percent deposit rate that it had paid upon importation. The Court of International Trade agreed that under the circumstances of this case, MACHIPEX Liaoning could not be deemed within the scope of the review, and remanded for the Department to assess duties against MACHIMPEX Liaoning at the 11.66 percent deposit rate Overseas had paid upon importation. *D & L Supply Co. v. United States*, 841 F. Supp. 1312, 1316 (CIT 1993). This issue was not further appealed. The Department is amending its *Final Results* to provide that Overseas' MACHIMPEX Liaoning entries for the 1990–91 review period will be liquidated at the 11.66 percent deposit rate.

Second, exporter Guangdong and a group of importers including D & L Supply Company argued that the Department erred in using the 1989–90 rate for Guangdong as a BIA rate for the 1990–91 entries, because at the time of the *Final Results*, this rate was subject to judicial review. By the time the Court of International Trade issued its first decision on the 1990–91 Final Results, the 92.74 percent rate for Guangdong in the 1989–90 review had been overturned in *Sigma Corp. v. United States*, 841 F. Supp. 1275 (CIT 1993)). *See D & L Supply Co. v. United States*, 841 F. Supp. 1312, 1314 (CIT 1993). Because litigation in the 1990–91 review was not yet final, the Court also ordered the Department to reevaluate whether its choice of BIA for Guangdong and the PRC-wide entity in the 1990–91 review continued to be appropriate. *Id.* at 1317. On remand, the Department determined that, because the 92.74 rate was a valid one when it was originally selected as BIA for the 1990–91 review, it was appropriate to continue to rely upon that rate. The Court of International Trade upheld that determination. *D & L Supply Co. v. United States*, 888 F. Supp. 1191 (CIT 1995).

On May 8, 1997, however, the Court of Appeals for the Federal Circuit (CAFC) reversed this decision, holding that the Department must revise its BIA selection for the 1990–1991 review in favor of a rate which had not been invalidated at the time the BIA redetermination was issued. *D & L Supply Co. v. United States*, 113 F. 3d 1220 (Fed. Cir. 1997) (*D & L Supply*). On July 8, 1997, in accordance with the decision of the Court of Appeals in *D&L Supply*, the Court of International Trade issued an order remanding the final results of the 1990–1991 review to the Department for selection of new BIA rates for Guangdong and the PRC-wide entity.

On October 8, 1997, the Department released its *Final Results of Redetermination Pursuant to Court Remand, D & L Supply Co. v. United States. Consol. Ct. No. 92–06–00424* (*Remand Results*) (October 8, 1997). Therein, the Department assigned to Guangdong and the PRC-wide entity the 25.52 percent petition rate, which reflected the overall average of the margins alleged in the petition, as BIA for the 1990–91 review period. *See D & L Supply Co. v. United States*, 6 F. Supp. 2d 914 (CIT 1998) (affirming the Department's *Remand Results* and rejecting the theory that publication of a different investigation rate ''invalidates'' petition rates). D & L Supply Co., U.V. International, Sigma Corporation, Southern Star, Inc., City Pipe & Foundry, Inc., and Long Beach Iron Works, Inc. (collectively, D & L) appealed that judgment. On September 10, 1999, the CAFC affirmed the lower Court's decision. *Guangdong Metals & Minerals Import and Export Corp. v. United States*, 217 F.3d 851 (Fed. Cir. 1999).

There is now a final and conclusive court decision in this action. We are amending our *Final Results* for the period May 1, 1990 through April 30, 1991. The rates for these amended final results, which are the rates upheld by the Court of International Trade and the CAFC upon remand, are:

Period of Review	Manufacturer/exporter	Margin(percent)
5/1/1990–4/30/1991	Guangdong Metals & Minerals Import & Export Corporation	25.52

Period of Review	Manufacturer/exporter	Margin(percent)
5/1/1990–4/30/1991	PRC-wide rate*	25.52

* As explained above, the Court of International Trade determined that China National Machinery Import and Export Corporation (MACHIMPEX Liaoning) is not within the scope of review for the 1990–91 period of review. Duties for Overseas Trade Corporation (Overseas) imports from MACHIMPEX Liaoning are to be assessed at the 11.66 percent deposit rate that Overseas paid upon importation, rather than at the PRC-wide rate.

Accordingly, the Department will determine, and the Customs Service will assess, antidumping duties on all entries of subject merchandise in accordance with these amended final results. The Department will issue appraisement instructions directly to Customs. Because the 1990–91 review is the most recent proceeding in which exports by Guangdong have been reviewed, upon publication of these amended final results of review, a cash deposit rate of 25.52 percent for exports by Guangdong will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by §751(a) of the Tariff Act of 1930, as amended (the Tariff Act). These results do not affect the PRC-wide cash deposit rate currently in effect (which also applies to MACHIMPEX Liaoning), which continues to be based on the margins found to exist in the most recently completed review. (*See Iron Construction Castings from the People's Republic of China; Final Results of Antidumping Administrative Review*, 60 FR 51454 (October 2, 1995).)

This notice is published in accordance with §751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: August 29, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–22842 Filed 9–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–810]

Notice of Preliminary Results of Antidumping Duty Administrative Review; Oil Country Tubular Goods From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from petitioners North Star Steel Ohio, a division of North Star Steel Company, and United States Steel LLC (currently known as United States Steel Corporation), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on oil country tubular goods from Argentina. This administrative review covers imports of subject merchandise from Siderca S.A.I.C. (Siderca) and Acindar Industria Argentina de Aceros S.A. (Acindar). The period of review is August 1, 2000, through July 31, 2001.

EFFECTIVE DATE: September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Mike Heaney, or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2924, (202) 482–4475, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 1, 2001).

Background

On August 11, 1995, the Department published the antidumping duty order on oil country tubular goods from Argentina. *See Antidumping Duty Order: Oil Country Tubular Goods from Argentina,* 60 FR 41055 (August 11, 1995). On August 31, 2001, North Star Steel Ohio, a division of North Star Steel Company, requested that the Department conduct an administrative review of sales of the subject merchandise made by Siderca. Also on August 31, 2001, United States Steel LLC, requested that the Department conduct an administrative review of sales of the subject merchandise made by Acindar. (United States Steel LLC changed its name to United States Steel Corporation effective January 1, 2002. *See* petitioner's submission of January 4, 2002.)

On October 1, 2001, the Department initiated the administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 66 FR 49924 (October 1, 2001).

On October 25, 2001, the Department issued its antidumping duty questionnaire to Acindar and Siderca. Because Acindar's home market was not viable, and because Acindar had no sales to any third-country markets, the Department did not require that Acindar respond to section B of the questionnaire, but did require that it respond to D of the questionnaire. *See* memoranda to the file dated November 20, 2001 and December 10, 2001. On November 16, 2001, the Department received Acindar's Section A response to the questionnaire. On December 13, 2001, the Department received Acindar's Sections C and D responses. On January 28, 2002, the Department issued a supplemental questionnaire for sections A, C, and D of the questionnaire. Acindar submitted its supplemental responses on February 28, 2002. The Department verified Acindar's sales and cost responses from July 9 through July 13, 2002. The results of the verification are found in the verification report dated August 27, 2002, on file in the Central Records Unit of the Department of Commerce.

In response to the Department's October 25, 2001, questionnaire, Siderca stated in a November 6, 2001, submission that it had no consumption entries of subject merchandise during the period of review (POR). Siderca submitted information on its temporary import bond entries on December 19, 2001. In addition, on February 20, 2002, Siderca submitted a written response to the Department's questions regarding specific entries that appeared on a Customs entries list. We will continue to seek confirmation of Siderca's claim that it had no entries of subject merchandise during the POR, and will put the results of our research in a memorandum which we will place on the record of this review in the Central Records Unit of the Department of Commerce.

The margin for Siderca indicated below under ''Preliminary Results of

Review'' represents the margin for Siderca from the less-than-fair-value investigation, which was the most recently completed segment of this proceeding in which Siderca's U.S. sales were analyzed. *See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina,* 60 FR 33539 (June 28, 1995). The margin for Acindar indicated below under ''Preliminary Results of Review'' is based on our analysis of its data submitted for this review.

Verification

As provided in section 782(i) of the Tariff Act, we verified the sales and cost information provided by Acindar using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public and proprietary versions of the verification report, which are on file in the Central Records Unit of the Department.

Period of Review

The POR is August 1, 2000, through July 31, 2001.

Scope of the Review

Oil country tubular goods (OCTG) are hollow steel products of circular cross-section, including oil well casing and tubing 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 or tubing pipe containing 10.5 percent or more of chromium. Drill pipe was excluded from this order beginning August 11, 2001. *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).

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.

The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this order is dispositive.

Product Comparisons

In accordance with 771(16) of the Tariff Act, we considered all products produced by the respondents, covered by the descriptions in the ''Scope of the Review'' section of this notice, supra, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of oil country tubular goods. However, Acindar's home market was not viable, and it had no sales of subject merchandise in any third-country markets. See Acindar's February 28, 2002, submission, exhibit SA–1. Therefore, we relied upon constructed value (CV) for purposes of determining normal value (NV).

We relied on seven characteristics to match U.S. sales of subject merchandise to CV: seamless/welded, finished grade v. unfinished, end finish, outside diameter, length, normalized/non-full body normalized, and wall thickness.

Export Price

In accordance with section 772(a) of the Tariff Act, export price (EP) is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Tariff Act, constructed export price (CEP) is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Tariff Act. For purposes of this review Acindar has classified its sale(s) as EP sales. See December 13, 2001, section C response, at C–9.

Acindar has stated that it sells to only unaffiliated trading companies in the United States during the POR. *See* November 16, 2001, section A response at A–14. Based on Acindar's description of its U.S. sales process, that it sells the merchandise directly to unaffiliated trading companies in the U.S. market, and did not sell in the United States through an affiliated U.S. importer, we preliminarily determine that Acinar's U.S. sales are EP sales. We calculated EP in accordance with section 772(a) of the Tariff Act. We based EP on packed prices for export to distributors in the U.S. market. We made deductions for foreign inland freight, international freight, domestic brokerage, and U.S. unloading expenses.

Normal Value

In accordance with section 773(a)(1)(C) of the Tariff Act, to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Acindar's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Because Acindar's aggregate volume of home market sales of the foreign like product was less than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was not viable. Furthermore, Acindar did not sell to third-country markets during the POR. See Acindar's November 16, 2001, submission, at A–3. Therefore, we utilized CV as the NV.

We calculated CV as the sum of Acindar's cost of materials, fabrication, SG&A (including interest), profit, and U.S. packing costs. Our calculation of cost of materials, fabrication, SG&A, and U.S. packing were in accordance with section 773(e) of the Tariff Act. However, because Acindar's home market was not viable, we calculated profit from Siderca's financial statement in accordance with section 773(e)(2)(B)(ii). We utilized its financial statement for the period ending March 31, 2001. We also made circumstance-of-sale adjustments to CV by deducting the selling expenses reported on Acindar's financial statement, and adding the direct selling expenses reported for Acindar's U.S. sales, in accordance with section 773(a)(8) of the Tariff Act. We also made a deduction from CV for internal taxes rebated upon exportation of the subject merchandise in accordance with 773(e) of the Tariff Act.

Level of Trade

Since Acindar has no viable comparison market, and since we based CV selling expenses on Acindar's financial statement (which records selling expenses for more than just subject merchandise, and which does not break out selling expenses by level of trade or by merchandise), we have no way of conducting a level of trade analysis. For this reason we made no LOT adjustment to Acindar's NV.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period August 1, 2000, through July 31, 2001, to be as follows:

Manufacturer/Exporter	Margin (percent)
Acindar	65.74
Siderca	1.36

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. An interested party may request a hearing within 30 days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). The Department will issue the final results of these preliminary results, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of the final results of review. Because Acindar did not report entered values, we plan to issue appraisement instructions based on reported sales quantities. If these preliminary results are adopted in the final results of review, we will direct the Customs Service to assess the resulting assessment rates against the entered customs quantities for the subject merchandise on each of the importer's/customer's entries during the review period.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed company will be the rates established in the final results of the administrative review (except that no deposit will be required if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 1.36 percent, the ''all others'' rate established in the LTFV investigation. *See Antidumping Duty Order: Oil Country Tubular Goods from Argentina,* 60 FR 41055 (August 11, 1995).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: September 3, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–22844 Filed 9–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 2000–2001 administrative review and intent not to revoke.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 2000, through July 31, 2001. This review covers imports of pure magnesium from one producer/exporter.

We have preliminarily found that sales of subject merchandise have not been made below normal value. We have also preliminarily determined not to revoke the order with respect to pure magnesium from Canada produced by Norsk Hydro Canada, Inc. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties.

Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder or Scott Holland,

Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0189 or (202) 482–1279, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations refer to 19 CFR part 351 (2001).

Background

On August 31, 1992, the Department published in the **Federal Register** (57 FR 39390) an antidumping duty order on pure magnesium from Canada. On August 1, 2001, the Department published a notice in the **Federal Register** (66 FR 39729) of ''Opportunity to Request an Administrative Review'' of this order. On August 31, 2001, Magnesium Corporation of America (the ''petitioner'') requested an administrative review of imports of the subject merchandise produced by Norsk Hydro Canada, Inc. (''NHCI''), and Magnola Metallurgy Inc. (''Magnola''). On August 31, 2001, NCHI made a similar request for review and also requested that the Department revoke the antidumping duty order. On October 1, 2001, the Department published a notice in the **Federal Register** (66 FR 49924) initiating the review for the period August 1, 2000, through July 31, 2001.

On October 10, 2001, we issued antidumping questionnaires to NHCI and Magnola. On October 29, 2001, NHCI requested to limit reporting of home market sales to the six-month period July 1 through December 31, 2000. On October 31, 2001, in accordance with 19 CFR 351.414(e)(2)(ii) and 19 CFR 351.414(e)(2)(iii), we granted NHCI's request to limit the reporting of home market sales.

On November 16, 2001, Magnola reported that it had no shipments of subject merchandise to the United States during the August 1, 2000, through July 31, 2001, period of review (''POR''). *See* ''*Partial Rescission*'' section, below.

On November 26, 2001, we received NHCI's questionnaire response. On February 27, 2002, we issued a supplemental questionnaire to NHCI and received the response on March 13, 2002.

On December 12, 2001, in accordance with 19 CFR 351.301(d)(2)(ii), the petitioner filed an allegation that NHCI had made sales below the cost of production (''COP'') during the POR. NHCI submitted an objection to the allegation on December 21, 2002. On January 9, 2002, the petitioner filed a reply to NHCI's objections. We found that the petitioner did not provide a reasonable basis to believe or suspect that NHCI is selling pure magnesium in the United States at prices below the COP. *See* Memorandum from Team to Susan Kuhbach, ''*Allegation of Sales Below Cost of Production,*'' dated February 25, 2002. Accordingly, we did not initiate a sales-below-COP investigation.

On April 15, 2002, in accordance with section 751(a)(3)(A) of the Act, the Department published a notice in the **Federal Register** (67 FR 18173) extending the time limit for the completion of the preliminary results in this case by 120 days (*i.e.*, until no later than September 3, 2002).

On July 16, 2002, we received notification that U.S. Magnesium, LLC (''U.S. Magnesium''), had become the successor-in-interest to the petitioner, Magnesium Corporation of America, for the purpose of this antidumping proceeding.

Scope of the Order

The product covered by this order is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope currently classifiable under subheading 8104.11.0000 of the Harmonized Tariff Schedule (''HTS''). The HTS item number is provided for convenience and for customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, in July 2002, we verified information provided by NHCI using standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant sales and financial records, and selection of original documentation containing relevant information. The Department reported its findings at the sales verification on September 3, 2002.

Partial Rescission

In accordance with 19 CFR 351.213(d)(3), we are rescinding this review with respect to Magnola, which reported that it made no shipments of subject merchandise during this POR. We examined shipment data furnished by the Customs Service and are satisfied that the record does not indicate that there were U.S. shipments of subject merchandise from Magnola during the POR.

Export Price

For sales to the United States, we used export price (''EP''), as defined in section 772(a) of the Act, because the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. The use of constructed export prices was not warranted based on the facts of the record. EP was based on the packed price to unaffiliated purchasers in the United States. We made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: inland freight from the plant to the distribution warehouse, pre-sale warehousing expense, inland freight from the distribution warehouse to the unaffiliated customer, and foreign brokerage and handling.

Normal Value

In order to determine whether there was a sufficient volume of sales of pure magnesium in the home market to serve as a viable basis for calculating NV, we compared NHCI's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because the aggregate volume of home market sales of the foreign like product was greater than five percent of the respective aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provided a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like product was first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.

We calculated NV based on the price to unaffiliated customers. We adjusted the price for billing adjustments. We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments, consistent with section 773(a)(6)(B)(ii) of the Act, for the following movement expenses: inland freight from the plant to the distribution warehouse, warehousing expense, and inland freight from the plant/warehouse to the customer. In addition, we made adjustments for differences in

circumstances of sale (''COS'') in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on home market sales (credit expenses) and adding U.S. direct selling expenses (credit expenses).

Revocation

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1).

According to 19 CFR 351.222(b)(2), upon receipt of such a request, the Department may revoke an order, in part, if it concludes that (1) the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) the continued application of the antidumping duty order is not otherwise necessary to offset dumping; and (3) the company has agreed to the immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV.

Pursuant to 19 CFR 351.222(e)(1), NHCI requested revocation of the antidumping duty order. The request was accompanied by certifications that NHCI had not sold the subject merchandise at less than NV during the current period of review and would not do so in the future. NHCI certified that it sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. NHCI also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that NHCI sold the subject merchandise at less than normal value subsequent to the revocation.

We must determine, as a threshold matter, in accordance with 19 CFR 351.222 whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the request. After consideration of the information and arguments on the record of this review, we preliminarily determine that NHCI did not sell the subject merchandise in the United States in commercial quantities during the current review period. *See* the Memorandum from Team to Richard W. Moreland, ''Commercial Quantities,'' dated September 3, 2002, for a discussion of NHCI's selling activity. Because NHCI did not make sales in commercial quantities during at least one of the three years cited by NHCI to support its request for revocation, we do not need to examine whether NHCI made sales in commercial quantities in either of the other two years underlying its request for revocation. Accordingly, we preliminarily find that NHCI does not qualify for revocation of the order on pure magnesium pursuant to 19 CFR 351.222(e)(1)(ii).

Preliminary Results of the Review

As a result of this review, we preliminarily determine that NHCI's margin for the period August 1, 2000, through July 31, 2001, is zero.

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

Assessment Rates and Cash Deposit Requirements

Upon completion of this administrative review, the Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period.

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of pure magnesium from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required for the company if its weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21 percent, the ''all others'' rate established in *Pure Magnesium from Canada; Amendment of Final Determination of Sales At Less Than Fair Value and Order in Accordance With Decision on Remand* (58 FR 62643, November 29, 1993).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review

period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 3, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–22843 Filed 9–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Holly Hawkins or Sean Carey, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0414 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351 (2001).

Background

On August 27, 2001, the Department of Commerce (the Department) received a request from respondent Zhenxing Chemical Company to conduct an administrative review. The Department also received a request on August 30, 2001 from petitioner, Nation Ford Chemical Company (NFC), to conduct an administrative review of Zhenxing Chemical Company. On October 1, 2001, the Department published a notice of initiation of an administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China, covering the period August 1, 2000 through July 31, 2001 (67 FR 31770). On May 10, 2002, the Department published its preliminary results of this administrative review (67 FR 31770).

Extension of Time Limits for Final Results

Because of the complexities involved in this review, including the need to analyze new public information on factor valuation timely submitted by the parties since the preliminary results of review, it is not practical to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the final results of review from September 7, 2002 to November 15, 2002.

This notice is published in accordance with sections 751(a)(2)(B) and 777 (i)(1) of the Act.

Dated: August 29, 2002.

Joe Spetrini,

Deputy Assistant Secretary AD/CVD Enforcement Group III.

[FR Doc. 02–22839 Filed 9–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Millennium Pipeline Company From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of appeal, request for comments, notice of availability of appeal documents, and notice of public hearing.

SUMMARY: The Millennium Pipeline Company has filed an administrative appeal with the Department of Commerce asking that the Secretary of Commerce override the State of New York's objection to Millennium's proposed natural gas pipeline. The pipeline would extend from the Canadian border in Lake Erie and cross the Hudson River, affecting the natural resources or land and water uses of New York's coastal zone. This document: (a) Provides public notice of the appeal; (b) announces an opportunity for public comment on the appeal; (c) identifies locations where documents comprising the appeal record will be available for review; and (d) provides notice of a public hearing for the appeal.

DATES: Public comments on the appeal must be received by December 2, 2002. A public hearing for the appeal is scheduled for November 13, 2002.

ADDRESSES: All email comments on issues relevant to the Secretary's decision of this appeal may be submitted to *Millennium.comments@noaa.gov.* Comments may also be sent by mail to the Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record will be available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the Office of the Assistant General Counsel for Ocean Services. Also, public filings made by the parties to the appeal may be available at the offices of the New York Department of State, Office of General Counsel, 41 State Street, 8th Floor, Albany, NY. The public hearing will be held at the Hilton Tarrytown Hotel, 455 South Broadway, Tarrytown, New York.

FOR ADDITIONAL INFORMATION CONTACT: Karl Gleaves, Assistant General Counsel for Ocean Services, via email at *gcos.inquiries@noaa.gov,* or at 301–713–2967, extension 186.

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

Millennium Pipeline Company, L.P. (Millennium or Appellant) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.,* and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H, (revised, effective January 8, 2001). The appeal is taken from an objection by the New York Department of State (State) to Millennium's consistency certification for U.S. Army Corps of Engineers and Federal Energy Regulatory Commission permits to construct and operate a natural gas pipeline. The certification indicates that the project is consistent with the State's coastal management program. The project would traverse Lake Erie and cross the Hudson River, affecting the natural resources or land and water uses of New York's coastal zone.

The Appellant requests that the Secretary override the State's consistency objections for a procedural reason, concerning the timing of the State's objection to the Millennium

project. The Appellant also requests an override of the State's objection on the two substantive grounds provided in the CZMA. The first ground requires the Secretary to determine that the proposed activity is ''consistent with the objectives'' of the CZMA. To make this determination, the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner; (2) the national interest furthered by the proposed activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the proposed activity to be conducted in a manner consistent with the enforceable polices of the State of New York's coastal zone management program. 15 CFR 930.121.

The second substantive ground for overriding a State's objection considers whether the proposed activity is necessary in the interest of national security. To reach this conclusion, the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity in question was not permitted to go forward as proposed. 15 CFR 930.122.

II. Public Comments

Public comments are invited on any of the issues that the Secretary must consider in deciding this appeal. Comments must be received by December 2, 2002, and may be submitted by email to *Millennium.comments@noaa.gov.* Comments may also be sent by mail to the Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA). Comments will be made available to the Appellant and the State; they are also expected to be posted on a Department of Commerce website identified below.

III. Appeal Documents

The Secretary has required that Millennium file its initial brief and supplementary information on August 12, 2002, and that the State of New York file its initial brief and supplementary material on September 30, 2002. NOAA intends to provide the public with access to all materials and related documents comprising the appeal record via the Internet at *http://www.ogc.doc.gov/czma.htm,* except that certain materials or documents or portions thereof may be withheld if they contain confidential materials, critical energy infrastructure information, national security information or other types of information that would be inappropriate for public release. Likewise, these public materials and documents also will be available during business hours at the NOAA Office of the Assistant General Counsel for Ocean Services. In addition, the State of New York may make copies of public filings by the parties available for review during business hours at the office of the New York Department of State.

IV. Public Hearing Notice

A public hearing has been scheduled to obtain information relevant to issues to be decided by the Secretary in the Millennium appeal. The public hearing will be held on Wednesday, November 13, 2002, at the Hilton Tarrytown Hotel. Further details concerning the hearing will be available via the Internet at *http://www.ogc.doc.gov/czma.htm* or through other forms of public notice.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: August 30, 2002.

James R. Walpole,

General Counsel.

[FR Doc. 02–22838 Filed 9–6–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082702C]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of an application to modify an existing scientific research/enhancement permit (1180) and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit modification from Thomas R. Payne & Associates (TRPA) in Arcata, CA (1180). The modified permit would affect four Evolutionarily Significant Units (ESUs) of salmonids identified in the **SUPPLEMENTARY INFORMATION** section. This document serves to notify the public of the availability of the permit modification application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on October 9, 2002.

ADDRESSES: Written comments on the modification request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review by appointment at: Daniel Logan, Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (ph: 707–575–6053, fax: 707–578–3435). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: Daniel Logan at phone number 707–575–6053, or e-mail: *dan.logan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531–1543), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the following one endangered and three threatened salmonid ESUs: Endangered Sacramento River Winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley Spring-run Chinook salmon, threatened Central

California Coast steelhead (*O. mykiss*) and threatened Central Valley steelhead.

Modification Request Received

TRPA requests a modification to permit 1180 for takes of adult and juvenile ESA-listed Chinook salmon and steelhead associated with studies monitoring the distribution and relative abundance of fish populations, data evaluations, and habitat monitoring. Presently, permit 1180 authorizes intentional takes of adult and juvenile threatened Southern Oregon/Northern California Coast coho salmon (*O. kisutch*), threatened Central California Coast coho salmon and endangered Southern California coast steelhead. This requested modification would add intentional takes of threatened Central Valley Spring-run Chinook salmon, endangered Sacramento River Winter-run Chinook salmon, threatened Central California Coast steelhead, and threatened Central Valley steelhead to TRPA's permit.

Dated: September 3, 2002.

Phil Williams,

Chief, Endangered Species Division, National Marine Fisheries Service.

[FR Doc. 02–22835 Filed 9–6–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 8, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 3, 2002.

John Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Even Start and Title I Preschool Classroom Literacy Environment and Outcomes (CLEO) Study.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 3,500.

Burden Hours: 1,155.

Abstract: CLEO will test the effectiveness of three different two-generation family literacy interventions in a sample of Even Start projects and will conduct a screener in a national sample of Title I preschool projects to evaluate the feasibility of conducting an impact study.

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 2142. 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 *vivian_reese@ed.gov.* Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her 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. 02–22762 Filed 9–6–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 9, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed

information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 3, 2002.

John D. Tressler,

Leader, Regulatory Information Management Group, , Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Preschool Curricula Evaluation Research (PCER) Program.

Frequency: Semi-Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 7,217.

Burden Hours: 5,281.

Abstract: The primary objective of the PCER Program is to evaluate the effectiveness of selected preschool curricula on child development outcomes such as language skill, pre-reading and pre-math abilities, cognition, general knowledge, and social competence. Although there is a need for preschool programs to enhance their instructional content, there is weak evidence regarding the effectiveness of classroom curricula. These data will provide critical data to allow government agencies to recommend and preschool providers to choose among the array of available curricula. The respondents include children, teachers and parents.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2078. 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, D.C. 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov or faxed to 202–708–9346.* Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at *Katrina.Ingalls@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. 02–22763 Filed 9–6–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 9, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, 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 e-mail address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 3, 2002.

John D. Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Final Performance Report Guidelines for the Learning Anytime Anywhere Partnerships (LAAP) Program.

Frequency: One time only, at conclusion of funded project.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 15.

Burden Hours: 525.

Abstract: The Learning Anytime Anywhere Partnerships (LAAP) is a grant program that supports partnerships among colleges and universities and/or other organizations to develop online distance education programs, especially those that promote access to underserved learners.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2068. 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 e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–22798 Filed 9–6–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES:

Tuesday, September 17, 2002, 8 a.m.–6 p.m.

Wednesday, September 18, 2002, 8 a.m.–5 p.m.

Public participation sessions will be held on:

Tuesday, September 17, 2002, 12:15–12:30 p.m, 5:45–6 p.m.

Wednesday, September 18, 2002, 11:45–12 noon, 4–4:15 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Sun Valley Lodge, One Sun Valley Road, Sun Valley, Idaho 83353–0010.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 545 Shoup Avenue, Suite 335B, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda Topics: (Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *www.ida.net/users/cab/*.)

- Transition in INEEL's mission to Nuclear Energy
- Recent activities under the Environmental Management program
- DOE's strategic objectives for accelerating cleanup
- DOE's overall strategy for the buried waste
- DOE's strategy for removing calcine and for accelerating closure of the high-level waste tank farm
- Status of efforts to close high-level waste tanks 182 and 183
- Final High-Level Waste and Facilities Disposition Environmental Impact Statement
- Draft Wildland Fire Management Environmental Assessment
- Transfer of spent nuclear fuel from wet to dry storage at the Test Area North
- Water Integration Project roadmap and conceptual model summary

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Wendy Lowe, INEEL CAB Facilitator, Jason Associates Corporation, 545 Shoup Avenue, Suite 335B, Idaho Falls, ID 83402 or by calling (208) 522–1662.

Issued at Washington, DC, on September 3, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–22787 Filed 9–6–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7372–7]

Request for Nominations to the National Advisory Council for Environmental Policy and Technology (NACEPT)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency invites nominations to fill vacancies on its National Advisory Council for Environmental Policy and Technology (NACEPT). The Agency seeks qualified senior-level decision makers from diverse sectors throughout the United States to be considered for appointments. EPA will accept nominations until Friday, October 4, 2002.

ADDRESSES: Submit nominations to: Ms. Gwendolyn Whitt, Designated Federal Officer, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601E), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues.

The Administrator of EPA has asked NACEPT to provide advice in a timely manner and operate as a proactive and strategic body that will alert EPA to potential environmental challenges and issues that could impact the Agency's ability to protect public health and the environment, and options to address them. In addition, NACEPT members may be asked to advise the Administrator on other environmental policy priorities as needed. EPA seeks new members with broad expertise in strategic planning, visioning, and environmental stewardship.

NACEPT consists of a representative cross-section of EPA's partners, stakeholders, and constituents who provide timely advice and recommendations on environmental policy issues and serve as a sounding board for new strategies that the Agency is developing.

Members are appointed by the Administrator of EPA for one or two year terms with the possibility of reappointment. Each member's

expertise and experience enables the Council to function in a timely and strategic manner. Critical issues, challenges, and solutions for addressing them are identified and presented to the Administrator for consideration. The Council usually meets 4–5 times annually and the average workload for the members is approximately 10 to 15 hours per month. Members serve on the Council in a voluntary capacity; however, EPA does provide reimbursement for travel expenses associated with official government business.

Maintaining a balance and diversity of expertise, knowledge, and judgement is an important consideration in the selection of members. Potential candidates should possess the following qualifications:

Occupy a senior position within their organization

Broad experience outside of their current position

Experience dealing with public policy issues

Membership in broad-based networks

Extensive experience in the environmental field

Recognized expert in the subject matter to be addressed by NACEPT

EPA is seeking nominees for representation from all sectors, in particular federal, state, local and tribal agencies, academia, environmental justice organizations, grassroots organizations, and NGOs.

Nominations for membership must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current business address and daytime telephone number.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Whitt, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency (1601E), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 233–0090, e-mail: *whitt.gwen@epa.gov.*

Dated: August 29, 2002.

Gwendolyn Whitt,

Designated Federal Officer.

[FR Doc. 02–22815 Filed 9–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 7372–8]

Chesapeake Bay Program—Fiscal Year 2003 Supplemental Request for Initial Proposals (RFIP)

The U.S. Environmental Protection Agency (EPA) Chesapeake Bay Program (CBP) is issuing a Supplemental Requests for Initial Proposals (RFIP) to implement a specific outcome that will further goals of the Chesapeake 2000 agreement. One project received no responses in the first Request for Initial Proposals (RFIP) dated May 29, 2002, therefore this supplemental RFIP is being issued. Up to $75,000 dollars may be available for Fiscal Year 2003 for implemental of activities to protect and restore the Chesapeake Bay. Any non-profit organization, federal, state or local government agency, interstate agency, college or university is eligible to submit proposals in response to this Request for Initial Proposals. Funding will be provided to an applicant under the authority of the Clean Water Act, Section 117.

The RFIP will be available starting September 3, 2002 at the following Web site: *http://www.gov/r3chespk/* You may also request a copy by calling Robert Schewack at 410–267–9856 or by e-mail at *shewack.bob@epa.gov* All proposals must be postmark NLT September 17, 2002.

Diana Esher,

Deputy Director, Chesapeake Bay Program Office.

[FR Doc. 02–22812 Filed 9–6–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6724–2]

Developing Assessment Factors for Evaluating the Quality of Information From External Sources; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; comment request.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will hold a public meeting on September 20, 2002 to obtain public input on factors and considerations to be used to assess the quality of information voluntarily provided by external sources to the Agency or obtained by EPA from external sources for specific purposes. In addition, EPA is seeking comments from the public on the draft EPA document, ''Assessment Factors for Evaluating the Quality of Information from External Sources.'' EPA developed this document as part of the *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (EPA Information Quality Guidelines). The EPA Information Quality Guidelines were developed pursuant to the Office of Management and Budget (OMB) *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies* (OMB Guidelines, 67 FR 8452, February 22, 2002).

DATES: The public meeting will be held on September 20, 2002, from 9:00 a.m. to 1:00 p.m. (Eastern Daylight Time, EDT). Written comments must be received on or before September 20, 2002, 11:59 p.m. EDT. For information on dates for submission of written comments, requests to present oral comments, or requests for special seating arrangements, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: This meeting will be held at the U.S. Environmental Protection Agency East Building, Public Hearing Room 1153, 1201 Constitution Avenue, NW., Washington, DC. Comments may be submitted by e-mail, mail, courier or in person. See **SUPPLEMENTARY INFORMATION** for instructions on submitting comments and public meeting information.

FOR FURTHER INFORMATION CONTACT: Greg Schweer, Office of Science Coordination and Policy (7203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8469; fax number: (202) 564–8482; e-mail address: *assessment.factors@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons or entities who develop or collect information which is voluntarily submitted to EPA or obtained by EPA for its use. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any 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.* You may obtain electronic copies of the draft ''Assessment Factors for Evaluating the Quality of Information from External Sources'' from the Information Quality Guidelines Home Page at: *http://www.epa.gov/oei/qualityguidelines/.*

2. *In person.* The Agency has established a docket for this meeting under docket ID number OEI–10014. The docket consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other material information, including any information claimed as Confidential Business Information (CBI). The public version of the docket, which includes printed, paper versions of any electronic comments that may be submitted during the applicable comment period, is available for inspection at: EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC, 20460. The docket is open from 8:30 a.m. to 4:30 p.m. EDT, Monday through Friday, excluding legal holidays. The telephone number is (202)566–1752.

C. How Can I Request To Participate in the Public Meeting?

You may submit a request to present oral or written comments at the meeting and you may provide written comments prior to the meeting via electronic mail (e-mail), mail, by courier, or in person. To ensure proper receipt of your request and/or comments, it is imperative that you identify docket ID No. OEI–10014 in the subject line of the first page of your request/comments. The request to present brief oral comments (*i.e.*, limited to approximately 5 minutes) should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment. Although requests to present oral comments are accepted until the date of the meeting, to the extent that time permits, interested persons who have not submitted a request may be permitted to present oral comments. EPA will not be recording or transcribing the public meeting. To facilitate EPA's consideration of your planned comments, EPA recommends that you provide EPA with a written record of those comments you want EPA to consider, either prior to or at the public meeting. Comments must be received on or before September 20, 2002, 11:59 p.m. EDT.

To ensure timely receipt, e-mail *(assessment.factors@epa.gov)* is the Agency's preferred method for submitting requests to participate in the meeting and for submitting comments. Do not submit any information electronically that you consider to be CBI. If you submit your request and/or written comments by U.S. mail, send them to: U.S. EPA, EPA Docket Center (7407), Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460. If you submit requests and/or comments in person, by courier, or other shipping method, deliver them to: EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The docket is open from 8:30 a.m. to 4:30 p.m. EDT, Monday through Friday, excluding legal holidays. The telephone number is (202) 566–1752.

Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. Background

In response to OMB's guidelines (67 FR 8452, February 22, 2002), EPA has developed *Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (Draft EPA Information Quality Guidelines; 67 FR 21234, April 30, 2002). The Draft EPA Information Quality Guidelines are available at EPA's site, *http://www.epa.gov/oei/qualityguidelines.* The Draft EPA Information Quality Guidelines address the various sources of information submitted to or obtained by the Agency for use in making decisions, and, in particular, discuss one category of information that includes information voluntarily submitted to the Agency or information that the Agency obtains from external third party sources. During development of these guidelines, EPA requested comments and held a public meeting. Subsequently, EPA developed a document, ''Assessment Factors for Evaluating the Quality of Information from External Sources,'' that specifically addresses assessment factors and considerations relevant to evaluating and using external sources of data and information. EPA is holding a public meeting on September 20, 2002 to obtain public input on factors and considerations they feel are useful to assess the quality of information voluntarily provided by external sources to the Agency or obtained by EPA for specific purposes. In addition, EPA is seeking comments from the public on the document, ''Assessment Factors for Evaluating the Quality of Information from External Sources.''

List of Subjects

Environmental protection, data quality, information quality.

Dated: August 20, 2002.

Elaine Stanley,

Director, Office of Information Analysis and Access, Office of Environmental Information.

[FR Doc. 02–22814 Filed 9–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0198; FRL–7197–5]

Benomyl; Receipt of Request For Registration Cancellation

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by Hi-Yield Chemical Company to cancel the registration for their product containing methyl 1-(butylcarbamoyl)-2-benzimidazole carbamate, or benomyl. No other registrants hold registrations for benomyl. Prior to acting on this request, EPA is providing a 30–day period for public comment.

DATES: Comments on the requested cancellation of product and use registrations must be submitted by October 9, 2002.

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8062; fax number: (703) 308–7042; e-mail address: fuller.demson@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the **Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0198. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0198 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0198. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking

This notice announces receipt by the Agency of a request from Hi-Yield Chemical Company to cancel its pesticide product registered under sections 3 and 24(c) of FIFRA. This registration is listed in Table 1.

A. Background Information

Benomyl is a benzimidazole carbamate and systemic foliar fungicide that was registered for use on a variety of crops. All registered sources of benomyl have been canceled and all tolerances have been revoked.

The technical registrant, E.I. du Pont de Nemours and Company met with the Agency on April 18, 2001, and requested a voluntary cancellation of all their registrations for products containing benomyl. The cancellation order was published in the **Federal Register** of August 8, 2001 (66 FR 41589) (FRL–6794–9).

In addition to Hi-Yield Chemical Company, the Agency has previously received letters from the following registrants requesting voluntary cancellation of all their products containing benomyl: American Mushroom Institute, Amvac, Pursell Industries, Inc., the Scotts Company, Value Garden Supply, and Voluntary Purchasing Groups, Inc. The cancellation order for these products was published in the **Federal Register** of January 15, 2002 (67 FR 1976) (FRL–6817–7).

In their letter dated July 31, 2002, Hi-Yield (represented by their agent, Brazos

Associates Inc.) stated that they no longer manufacture or distribute the end use product that contained benomyl and there are no inventories of remaining stocks.

B. Requests for Voluntary Cancellation

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless: (1) The registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrant has requested that EPA waive the 180–day comment period. EPA is granting the registrant's request to waive the 180–day comment period. Therefore, EPA will provide a 30–day comment period on the proposed request. EPA anticipates granting the cancellation request shortly after the end of the 30–day comment period for this notice. The registration for which the cancellation was requested is identified below in Table 1.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Company	Registration No.	Product
Hi-Yield Chemical Company	34911-27	Hi-Yield Benomyl

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA section 6(f)(1) further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register,** make reasonable efforts to inform persons who rely on the pesticide for minor agricultural uses, and provide a 30–day period in which the public may comment. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 28, 2002.

Susan Lewis,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–22935 Filed 9–5–02; 2:54 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7373–3]

Notice of Availability of National Management Measures to Control Nonpoint Source Pollution From Urban Areas and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comment.

SUMMARY: EPA is requesting comment on draft guidance for the prevention and control of urban runoff. This technical guidance was written to provide technical assistance to State and local elected officials and agencies, landowners, developers, environmental and conservation groups, and watershed practitioners on the best available, most economically achievable means of reducing nonpoint source pollution from urban sources. The guidance is not a regulation and it does not impose legally binding requirements on EPA, States, Territories, authorized Tribes, or the public.

The guidance is organized from a watershed perspective and was written to cover all phases of runoff management from planning and development to program evaluation. The guidance provides up-to-date effectiveness and cost information on management practices, literature citations, internet links to additional information and case studies from across the country. Reviewers should note that the draft technical guidance is consistent with the Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters (EPA 840–B–92–002), which EPA published in January 1993 under the authority of section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). The draft document does not supplant or replace the 1993 document, but provides an expanded framework for addressing urban runoff. The guidance was written to apply to both coastal and inland areas and contains updated technical information that has become available since the 1993 guidance was published. The guidance is not intended to be used as a basis to review and approve either CZARA section 6217 or Clean Water Act section 319 State nonpoint source management programs. However, EPA and the National Oceanic and Atmospheric Administration (NOAA) encourage use of the revised guidance in the development and revision of Tribal, State and local programs to address urban runoff/storm water. The draft guidance revises several of the management measures published in 1993 due to the availability of new information and evolving management approaches. In addition, four new management measures have been added to provide information on developing and implementing a comprehensive runoff management program.

EPA will consider comments on this draft guidance and will then issue final guidance.

DATES: Written comments should be submitted to the person listed below by December 9, 2002.

ADDRESSES: Comments should be sent to Rod Frederick, Assessment and Watershed Protection Division (4503–T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Non-U.S. Postal Service comments should be sent to Rod Frederick, Assessment and Watershed Protection Division, U.S. Environmental Protection Agency, EPA West, Room 7417A, 1301 Constitution Ave., NW., Washington, DC 20004. Faxed comments should be sent to Rod Frederick at (202) 566–1331. Comments can also be emailed to *frederick.rod@epa.gov.*

The complete text of the draft guidance is available on EPA's Internet site on the Nonpoint Source Control Branch homepage at *http://www.epa.gov/owow/nps.* Copies of the complete draft can also be obtained in electronic or hard copy format by request from Rod Frederick at the above address, by e-mail at *Frederick.Rod@epa.gov,* or by calling (202) 566–1197.

FOR FURTHER INFORMATION CONTACT: Rod Frederick at (202) 566–1197 or email: *frederick.rod@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1993, under the authority of section 6217(g) of the CZARA, EPA issued Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters. The 1993 guidance document details management measures appropriate for the control of five categories of nonpoint sources of pollution in the coastal zone: agriculture, forestry, urban areas, marinas and recreational boating, and hydromodification. States and Territories were required to adopt measures ''in conformity'' with the coastal management measures guidance for their Coastal Nonpoint Pollution Control Programs.

State, Territory, and Tribal water quality assessments continue to identify nonpoint source pollution as a major cause of degradation in surveyed waters nationwide. In 1987 Congress enacted section 319 of the Clean Water Act to establish a national program to control nonpoint sources of water pollution. Under section 319, States, Territories, and Tribes assess the nonpoint source pollution problems within the State, Territory, or Tribal lands; identify the sources of pollution; and implement management programs to control the pollution. Section 319 also authorizes EPA to award grants to States, Territories, and Tribes to assist them in implementing management programs that EPA has approved. Program implementation includes nonregulatory and regulatory programs, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects. In fiscal year 2002, Congress appropriated and EPA awarded $237.5 million for nonpoint source management program grants. EPA has awarded a total of approximately $1.5 billion to States, Territories, and Indian Tribes since 1990. The 1993 management measures guidance, developed under the authority of CZARA, focused on conditions and examples of management measure implementation within the coastal zone. To date, technical guidance on the best available, economically achievable measures for controlling nonpoint sources with a national focus has not been released. The draft national management measures guidance for urban areas is intended to partially address this gap. Although the practices detailed in the 1993 coastal guidance apply generally to inland areas, EPA has recognized the utility of developing and publishing technical guidance that explicitly addresses nonpoint source pollution on a nationwide basis. Moreover, additional information and examples from research and experience with management measure implementation and assessments of urban watersheds are available to enrich the national guidance. These changes have helped to prompt the revision and expansion of the urban chapter of the 1993 guidance.

II. Scope of the Draft Urban Nonpoint Source Management Measures Guidance—Sources of Nonpoint Source Pollution Addressed

The draft Urban Nonpoint Source Management Measures Guidance was written to provide information useful in the development, implementation and enhancement of new and existing urban runoff management programs. The guidance was structured to reflect the major phases and elements that should generally be included and implemented in an effective urban runoff/storm water program. EPA envisions that the guidance will serve both as a template for the development of new comprehensive runoff/programs and as a technical reference for existing program managers.

The guidance contains a set of twelve management measures that address various aspects of program development from planning and assessment to management practice selection and eventually program monitoring and evaluation. Each management measure is a collection of management actions or program elements that EPA has determined are important to prevent and reduce urban nonpoint source pollution. EPA has provided a list of practices that can be used to implement the objectives of each management measure. Both nonstructural and structural management practices are included in the guidance. Examples of nonstructural practices include planning and zoning, minimizing/limiting impervious surfaces, source reduction and recycling, runoff management ordinances, siting to minimize disturbance of natural drainage systems, and operation and maintenance programs. Examples of structural practices include conventional and alternative onsite wastewater treatment systems such as septic tanks followed by drain fields or recirculating media filters, and runoff controls such as silt fencing, infiltration (*e.g.*, berms and trenches), low impact bioretention (*e.g.*, rain gardens, vegetated roofs, vegetated swales), and detention and retention (*e.g.*, wet and dry ponds, street and swale storage, and baffle boxes).

III. Approach Used To Develop Guidance

The draft National Urban Nonpoint Source Management Measures Guidance is based, in large part, on the 1993 coastal guidance. The coastal guidance was developed using a workgroup approach to draw upon technical expertise within other Federal agencies as well as State water quality and coastal zone management agencies. To revise the guidance, EPA conducted a literature review, interviewed technical experts and collected and evaluated new information. The 1993 text has been expanded to include new and updated information about the cost and effectiveness of runoff treatment practices; examples of urban nonpoint source projects that successfully implement the practices outlined in the guidance; methods for evaluating the effectiveness of nonpoint source control programs; and descriptions of technical references and guidance manuals that are useful references for urban runoff program managers. A few management measures have been added to frame the urban measures in the context of an overall watershed approach to control urban sources of pollution.

IV. Request for Comments

EPA is soliciting comments on the draft guidance. Specific issues EPA seeks comments on include: examples of effective runoff control strategies, programs, rules and regulations that illustrate the concepts in the guidance;

information pertaining to demonstrated water quality or habitat benefits from the implementation of the approaches and practices described in the draft guidance; management practice effectiveness studies and data, cost information and information on operation and maintenance practices.

Dated: August 29, 2002.

G. Tracy Mehan III,

Assistant Administrator for Water.

[FR Doc. 02–22813 Filed 9–6–02; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection-no change: Employer Information Report (EEO–1).

SUMMARY: In accordance with section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a one-year extension of the existing collection as described below.

DATES: Written comments on this notice must be submitted on or before November 8, 2002.

ADDRESSES: Comments should be submitted to Karen Lee, Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington DC 20503, or e-mail at *KFLEE@OMB.EOP.GOV.* Comments should also be sent to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD) . (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 9222, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION: The Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

Collection Title: Employer Information Report (EEO–1).

OMB Number: OMB Number 3046–0007.

Frequency of Report: Annual.

Type of Respondent: Private employers with 100 or more employees and certain federal government contractors and first-tier subcontractors with 50 or more employees.

Description of Affected Public: Private industry employers and businesses, private institutions, organizations and farms.

Reporting Hours: 402,700.

Federal Cost: $1.3 million.

Number of Forms: 1.

Abstract: Section 709(c) of the Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations set forth in Title 29, Chapter XIV, Subpart B, § 1602.7. Employers in the private sector with 100 or more employees and some federal contractors with 50 or more employees have been required to submit EEO–1 reports annually since 1966. The individual reports are confidential.

EEO–1 data are used by EEOC to investigate charges to employment discrimination against employers in private industry and to provide information on the employment status of minorities and women. The data are shared with the Office of Federal Contract Compliance Programs (OFCCP), US Department of Labor, and several other federal agencies. Pursuant to Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data are also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO–1 reports survey is 45,000 private employers. The estimated number of responses per respondent is between 3 and 4 EEO–1 reports. The annual number of responses is approximately 170,000 and the total annual burden is 402,700 hours. In order to help reduce survey burden, respondents are encouraged to report data on such electronic media as interactive diskettes or magnetic tapes.

Dated: September 3, 2002.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 02–22832 Filed 9–6–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

August 29, 2002.

SUMMARY: The Federal Communications Commissions, 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, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (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 9, 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 Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0850.

Title: Quick-Form Application for Authorization in the Ship, Aircraft, Amateur, Restricted and Commercial Operator, and General Mobile Radio Services.

Form Number: FCC 605.

Type of Review: Revision to an Existing Collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 175,000.

Estimated Time Per Response: 0.44 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Total Annual Burden: 77,000 hours.

Total Respondent Cost: $2,537,500.

Needs and Uses: FCC Form 605 is a consolidated application form for Ship, Aircraft, Amateur, Restricted and Commercial Radio Operators, and General Mobile Radio Services that is used to collect licensing data for the Universal Licensing System (ULS). The form has been revised to add a Schedule G for applicants that require exemption from the radio provisions of ship station requirements, replacing FCC Form 820; to create a new operator class code for the Restricted and Commercial Radio Operators; to eliminate the Taxpayer Identification Number (TIN); and to clarify various general instructions. Although FCC Form 605 collects the Commercial Operator licensees' date of birth, this information will be redacted from public view. These revisions have, consequently, increased both the number of applicants (respondents) who file Form 605 and the estimated total annual hour burden.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–22786 Filed 9–6–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Assistance to Firefighter Grant Program '' Grant Application Supplemental Information.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0285.

Abstract: The information collected will be used to objectively evaluate each of the 20,000 to 25,000 anticipated applications to determine which of the proposed projects most closely address the established program priorities and which applicants have the greatest needs. The information will also be used to determine which projects offer the highest benefits for the costs incurred and the information will be used to ensure the FEMA's responsibilities, mandated in the legislation, are fulfilled accurately and efficiently.

Affected Public: Non-For-Profit Institutions and State, Local or Tribal Government.

Number of Respondents: 25,000.

Estimated Time per Respondent:

Type of forms or collection	Number of respondents	Hours per response	Annual burden hours
SF–424 Application Facesheets	20,000 to 25,000	0.5	10,000 to 12,500.
20–20 Budget Non-Construction	20,000 to 25,000	1.0	20,000 to 25,000.
20–16 Summary of Assurances	20,000 to 25,000	0.5	10,000 to 12,500.
Grant Application Supplemental Information	See details below	See details below	See details below.
General Questions for all Applicants	20,000 to 25,000	1.0	20,000 to 25,000.
Vehicle Acquisition	6,000 to 10,000	0.5	3,000 to 5,000.
Firefighting Operations and Safety	9,000 to 13,000	0.5	4,500 to 6,500.
Emergency Medical Services	2,000 to 4,000	0.5	1,000 to 6,500.
Fire Prevention Programs	2,000 to 4,000	0.5	1,000 to 2,000.
Fire Prevention Programs	1,000 to 2,000	0.5	500 to 1,000.
Assistance to Firefighter Grant Program Narrative.	20,000 to 25,000	2.0	40,000 to 50,000.
SE–LLL Lobbying Disclosure	20,000 to 25,000	0.5	4,000 to 5,000.
Payment Document SF–270	6,000 to 12,000	0.5	3,000 to 6,000.
Direct Deposit Form SF–1199a	6,000	1.0	6,000.
SF 20–10 Financial Status Report	6,000	1.0	6,000.
Final Performance Report (as required by the Articles of Agreement).	6,000	0.5	3,000.

Estimated Total Annual Burden Hours: 174,540.

Frequency of Response: Annually.

Comments: Interested persons are invited to submit written comments on

the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail InformationCollection@fema.gov.

Dated: August 30, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–22819 Filed 9–6–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Flood Insurance Program Biennial Report.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0018.

Abstract: The National Flood Insurance Program Biennial Report forms provide information on changes to each participating community's flood hazard area, which may include new corporate boundaries, changes in flood hazard areas, new floodplain management measures, and changes in the rate of floodplain development. The information is also used to evaluate the effectiveness of a community's floodplain management activities by analyzing the number of variances and floodplain permits granted by each community against other information in the Biennial Report and the FEMA Community Information System. FEMA regional offices use the information to provide technical assistance to communities implementing a floodplain management program. Information from the forms will be input in FEMA's Mapping Needs Update Support System (MNUSS) for use in ranking and prioritizing one community's mapping needs against all other communities in the National Flood Insurance Program to determine how the limited flood hazard mapping funds will be allocated for map updates. Communities will have the option of responding on-line through a FEMA website or completing the paper forms and returning them via the mail system.

Affected Public: State, local or Tribal Government. .

Number of Respondents: 19,687 communities in the NFIP. One-half or 9,844 communities may submit the Biennial Report on an annual basis.

Estimated Time Per Respondent for the Following Forms:

FEMA Form 81–28, Emergency and Regular Program (Minimally Floodprone), range from .5 hour–1.5 hours with an average of 1 hour.

FEMA Form 81–29, Regular Program (With Base Flood Elevations), Range from 1 hour–2.5 hours, with an average of 1.25 hours.

FEMA Form 81–29A, Regular Program (No Special Flood Hazard Areas Designated), 12 minutes.

Estimated Total Annual Burden Hours: Annual burden ranges from 8,925–13,641 hours with an average of 11,283 hours per year (one-half of the biennial burden hours.).

Frequency of Response: Once for each form

Comments

Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail address: *InformationCollections@fema.gov.*

Dated: August 30, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–22820 Filed 9–6–02; 8:45 am]

BILLING CODE 6718–01–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 23, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Ralph Mann and Hazel E. Mann, Union, West Virginia, to acquire additional voting shares of Union Bankshares, Inc., Union, West Virginia, and thereby indirectly acquire additional voting shares of The Bank of Monroe, Union, West Virginia.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Ramon J. Green, Jacksonville, Illinois, as general partner of Green Enterprises, L.P. Jacksonville, Illinois, as trustee of the Ramon J. Green Trust, Jacksonville, Illinois, and co-trustee of the Beverly J. Green Trust, Jacksonville, Illinois; and Beverly J. Green, Jacksonville, Illinois, as co-trustee of the Beverly J. Green Trust, to retain control and increase their ownership in West Plains Investors, Inc., Pleasant Plains, Illinois, and thereby indirectly retain control and increase their ownership in

Pleasant Plains State Bank, Pleasant Plains, Illinois.

Board of Governors of the Federal Reserve System, September 3, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–22775 Filed 9–6–02; 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 October 3, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Mississippi 63166–2034:

1. Commerce Holding Corporation, Corinth, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Commerce National Bank, Corinth, Mississippi.

2. Kilmichael Bancorp, Inc., Kilmichael, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Kilmichael, Kilmichael, Mississippi.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Healthcare Bancorp, Inc., Broken Arrow, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Federal BankCentre, Broken Arrow, Oklahoma.

Board of Governors of the Federal Reserve System, September 3, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–22774 Filed 9–6–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—08/05/2002			
20021022	Kinross Gold Corporation	Echo Bay Mines Ltd	Echo Bay Mines Ltd.
20021031	Pekka Herlin	Partek Corporation	Partek Corporation.
Transactions Granted Early Termination—08/08/2002			
20020960	Bunge Limited	Italenergia Spa	Cereol S.A.
20021027	Varco International, Inc	ICO, Inc	ICO Worldwide, Inc.
20021035	Joseph E. Wagner	John L Rust & Donna G Rust	John L. Rust Company.
20021036	WPS Resources Corporation	Calpine Corporation	De Pere Energy, L.L.C.
20021045	Wachovia Corporation	Cameron M. Harris	Cameron M. Harris & Company.
Transactions Granted Early Termination—08/12/2002			
20021003	Koninklijke BAM NBM N.V	Grupo Dragados SA	Hollandsche Beton Groep N.W.
20021033	Newmont Mining Corporation	Kinross Gold Corporation	Kinross Gold Corporation.
20021047	FTI Consulting, Inc	PriceWaterhouseCoopers LLP	PriceWaterhouseCoopers LLP.
20021048	Long Point Capital Fund, L.P	Okaw Buildings, Inc.	Okaw Buildings, Inc.
20021051	KKR European Fund, Limited Partnership.	Siemens AG	Demag Cranes and Components GmbH & Co. KG. Gottwald Port Technology GmbH & Co. KG. Mannesmann Plastics Machinery AG. Power Generation Ceramics. Siemens European Network Services. Siemens Metering GmbH & Co. KG. Stabilus GmbH.

Trans No.	Acquiring	Acquired	Entities
20021053	Stronach Trust	Joseph A. DeFrancis	Laurel Racing Association Limited partnership. Pimlico Racing Association, Inc.
20021055	Wellspring Capital Partners II, L.P	International Multifoods Corporation	Multifoods Distribution Management, Inc.
20021057	Alliant Energy Corporation	Mirant Corporation	Mirant Neenah, LLC.
Transactions Granted Early Termination—08/13/2002			
20021017	Headwaters Incorporated	Industrial services Group, Inc	Industrial Services Group, Inc.
20021025	EG&G Technical Services Holdings, L.L.C.	URS Corporation	URS Corporation.
20021044	Anixter International Inc	Pentacon, Inc	JIT Holdings, Inc. Pentacon Aerospace Group, Inc. Pentacon Canada Corporation. Pentacon Delaware, Inc. Pentacon Europe Limited. Pentacon Industrial, Inc. Pentacon International Sales, Inc. Pentacon Mexico S.A. de C.V. Pentacon Properties, L.P. Pentacon USA, L.P. Pentacon, Inc.
Transactions Granted Early Termination—08/14/2002			
20021023	URS Corporation	EG&G Technical Services Holdings, L.L.C..	Carlyle-EG&G Holdings Corp. Lear Siegler Services, Inc.
Transactions Granted Early Termination—08/15/2002			
20021021	Symantec Corporation	Riptech Inc	Riptech Inc.
20021030	Symantec Corporation	Recourse Technologies, Inc	Recourse Technologies, Inc.
Transactions Granted Early Termination—08/16/2002			
20021043	MidAmerican Energy Holdings Company.	Dynegy, Inc	Northern Natural Gas Company.
Transactions Granted Early Termination—08/19/2002			
20021007	eBay Inc	PayPal, Inc	PayPal, Inc.
20021020	Terex Corporation	Siemens AG	Demag Mobile Cranes GmbH & Co. KA. Demag Mobile Cranes Verwaltungsgesellschaft mbH.
20021040	Temasek Holdings (Private) Limited	Friede Goldman Halter, Inc	Gulf Coast Fabrication, Inc. Halter Gulf Repair, Inc. Halter Marine Gulfport, Inc. Halter Marine Pascagoula, Inc. Halter Marine Services, Inc. Halter Marine, Inc., a Louisiana corporation. Halter Marine, Inc., A Nevada corporation.
20021066	Macquarie Global Infrastructure Fund A	Associated British Ports Holdings PLC	American Port Services, Inc. Amports Avcenters, Inc. ILG Avcenter, Inc.
20021067	Macquarie Global Infrastructure Fund B	Associated British Ports Holdings PLC	American Port Services, Inc. Amports Avcenters, Inc. ILG Avcenter, Inc.
20021068	Wescast Industries, Inc	George W. Mathews, Jr	Georgia Ductile Foundaries, LLC.
20021071	Mr. Sumner M. Redstone	Sesame Workshop	Noggin LLC.
20021076	Delaware Champion Holdings, LLC	Diageo plc	Burger King Corporation.
Transactions Granted Early Termination—08/20/2002			
20021061	Kao Corporation	Alan Howard Frieda, a/k/a John Frieda	Gaelle International, LLC. John Frieda Products. John Frieda Professional Hair Care, Inc. John Frieda SarL. John Frieda International, LLC.
20021062	Blum Strategic Partners II, L.P	PRG-Schultz International, Inc	PRG-Schultz International, Inc.

Trans No.	Acquiring	Acquired	Entities
20021077	J. Joe and Marlene M. Ricketts	Ameritrade Holding Corporation	Ameritrade Holding Corporation.
Transactions Granted Early Termination—08/21/2002			
20021049	Terex Corporation	Robert R. Wilkerson	Genie Holdings, Inc.
Transactions Granted Early Termination—08/22/2002			
20021080	Dr. Michael W. J. Smurfit	Smurfit-Stone Container Corporation	Smurfit-Stone Container Corporation.
Transactions Granted Early Termination—08/23/2002			
20021083	Riverdeep Group plc	Alex E. Gores	Broderbund Properties, LLC.
20021087	Dexia S.A	The PMI Group, Inc	Broderbund, LLC and Fairbanks Capital Holding Corp.
20021088	Bureau Veritas S.A	U.S. Laboratories Inc	U.S. Laboritories Inc.
20021093	Metalurigica Gerdau, S.A	Co-Steel Inc	Co-Steel Inc.
20021095	Questor Partners Bermuda, L.P	Fiat S.p.A	Fonderies du Poitou Aluminum S.A. Founderies Aluminum Cleon S.A. Teksid Aluminum Components Inc. Teksid Aluminum Fondry Inc. Teksid Aluminum SpA. Teksid Aluminumn Poland S.p.Z.o.o. Teksid do Brasil Aluminio Ltda. Teksid France S.A. Teskid Investment Aluminum B.V.
Transactions Granted Early Termination—08/27/2002			
20021091	Japan Airlines Company, Ltd	Japan Air System Co., Ltd	Japan Air System Co., Ltd.
20021092	Japan Air System Co., Ltd	Japan Airlines Company, Ltd	Japan Airlines Company, Ltd.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Hallman, Contact Representative, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–22796 Filed 9–6–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 021 0040]

Conoco Inc. and Phillips Petroleum Company; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 2, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Mark Menna, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2722.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC home page (for August 30, 2002), on the World Wide Web, at ''*http://www.ftc.gov/os/2002/08/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'' or ''FTC'') has issued a

complaint (''Complaint'') alleging that the proposed merger of Phillips Petroleum Company (''Phillips'') and Conoco Inc. (''Conoco'') (collectively ''Respondents'') would violate section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The Commission and Respondents have entered into an agreement containing consent orders (''Agreement Containing Consent Orders'') pursuant to which Respondents agree to be bound by a proposed consent order that requires divestiture of certain assets and certain other relief (''Proposed Order'') and a hold separate order that requires Respondents to hold separate and maintain certain assets pending divestiture (''Hold Separate Order''). The Proposed Order remedies the likely anti-competitive effects arising from Respondents' proposed merger, as alleged in the Complaint. The Order to Hold Separate and Maintain Assets preserves competition pending divestiture.

II. Description of the Parties and the Transaction

Phillips, headquartered in Bartlesville, Oklahoma, is an integrated oil company engaged in the worldwide exploration, production, and transportation of crude oil and natural gas; gathering of natural gas; fractionation of raw mix into specification products; refining, marketing, and transportation of petroleum products; and production and marketing of chemicals. Phillips is the nation's third largest refiner and fourth largest gasoline marketer, with approximately 10 percent of the United States refining capacity and 9 percent of gasoline marketing. In 2001, Phillips had revenues of $47.7 billion. Phillips has significant terminal facilities that it uses to distribute gasoline and other petroleum products to its customers. Phillips owns or licenses several gasoline brands under which gasoline is sold at approximately 11,700 stations throughout the United States. Phillips owns approximately 1,700 outlets in the Mid-Atlantic and Northeastern areas of the United States. These outlets currently sell gasoline under the Exxon and Mobil brands. Of the approximate 10,000 other outlets, primarily located outside the Mid-Atlantic and Northeastern United States, the great majority are owned and operated by independent marketers and dealers. Phillips also owns slightly more than 30 percent of Duke Energy Field Services, LLC (''DEFS''). DEFS is a significant gather of natural gas throughout the United States and has interests in many fractionation facilities throughout the United States.

Conoco, headquartered in Houston, Texas, is a fully integrated petroleum company engaged in the worldwide exploration, production, and transportation of crude oil and natural gas; gathering of natural gas; fractionation of raw mix into specification products; and refining, marketing, and transportation of petroleum products. In 2001, Conoco had revenues and net income of $39.5 billion and $1.6 billion, respectively. Conoco has approximately 3 percent of refining capacity and 3 percent of gasoline sales in the United States, making it approximately the nation's eleventh largest refiner and ninth largest gasoline seller. Conoco owns petroleum product terminals throughout the United States. Conoco brand gasoline is sold through approximately 5,000 stations primarily located in the Southeast, Southwest, Mid-continent, and Rocky Mountain areas of the United States. The great majority of these stations are owned and operated by independent distributors and dealers.

On November 18, 2001, Phillips and Conoco entered into an agreement to merge the two firms into a corporation to be known as ConocoPhillips, the estimated capital value of which, as of the date of the agreement, was approximately $35 billion. ConocoPhillips would be the third-largest integrated U.S. energy company based on market capitalization, and oil and gas reserves and production. Worldwide, it will be the sixth-largest energy company based on hydrocarbon reserves and the fifth-largest global refiner.

III. The Complaint

The Complaint alleges that the proposed merger and its consummation would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The Complaint alleges that the merger will lessen competition in each of the following markets: (1) The bulk supply of light petroleum products (a) in Eastern Colorado and (b) in Northern Utah; (2) light petroleum product terminaling services in the metropolitan statistical areas (''MSAs'') of Spokane, Washington and Wichita, Kansas; (3) the bulk supply of propane in (a) Southern Missouri, (b) the St. Louis MSA, and (c) Southern Illinois; (4) natural gas gathering in more than 50 sections of the Permian Basin; (5) and fractionation in Mont Belvieu, Texas.

Count I of the Proposed Complaint concerns the bulk supply of light petroleum products for sale in Eastern Colorado. Both Phillips and Conoco compete within this market. The Complaint alleges that the merged firm would have more than 30 percent of the market, which will be highly concentrated post-merger. The Complaint further alleges that the proposed merger would lead to higher prices for light petroleum products because the merged firm, in combination with other similarly situated firms, could profitably coordinate to raise prices and reduce output in Eastern Colorado. Successful coordination is likely because: (1) Prices for bulk supplies are transparent; (2) the merged firm and its similarly situated competitors have the ability to inexpensively divert bulk supplies away from Eastern Colorado to other markets; (3) other sources of bulk supply to Eastern Colorado are already largely at capacity (products pipelines and local refineries) or suppliers have no economic incentive to divert light petroleum products from more lucrative areas in the Rockies to Eastern Colorado; and (4) cheating on the coordination could be detected and punished by coordinating firms. Furthermore, there is some evidence that some degree of coordination has been lifting prices in areas of the Rockies outside of Eastern Colorado.

Count II of the Proposed Complaint concerns the bulk supply of light petroleum products for sale in Northern Utah. Phillips competes in this market through its ownership of a refinery in Salt Lake City, and Conoco competes in this market through its 50 percent undivided ownership interest in Pioneer Pipeline, the only pipeline bringing bulk supplies of light petroleum products into Northern Utah. The Complaint alleges that the merged firm would own or control about 24 percent of the refining and pipeline capacity serving Northern Utah, and that Northern Utah will be highly concentrated after the merger. The Complaint asserts that in highly concentrated markets, increasing concentration is likely to facilitate and more completely give effect to tacit coordination. With respect to entry into the bulk supply market, the Complaint alleges that in either Eastern Colorado or Northern Utah, entry is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Count III of the Proposed Complaint concerns terminaling services in the Spokane, Washington MSA. Petroleum terminals are facilities that provide temporary storage of gasoline and other petroleum products received from a

pipeline, and then redeliver these products from the terminal's storage tanks into trucks or transport trailers for ultimate delivery to retail gasoline stations or other buyers. There are no economic substitutes for petroleum terminals. The Complaint alleges that Conoco and Phillips are two of the only three providers of terminal services in Spokane. The Complaint further alleges that the merged firm would be able to unilaterally, or in concert with others, raise prices of terminaling services in Spokane. Entry into the terminaling of light petroleum products is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Count IV of the Proposed Complaint concerns terminaling services in the Wichita, Kansas MSA. There are five firms currently providing terminaling services in the Wichita market. Some of these competitors are unlikely to restrain a price increase in the future. The Complaint charges that the terminaling of light petroleum products in Wichita is highly concentrated, and would become significantly more concentrated as a result of the merger. The Complaint alleges that the merged firm would be able to coordinate or raise prices unilaterally in Wichita. Entry into the terminaling of light petroleum products is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Count V of the Proposed Complaint concerns the bulk supply of propane in Southern Missouri. Propane is a versatile fuel used by residential, industrial and agricultural consumers. It is produced as part of the crude refining process or extracted from natural gas. Bulk supply of propane is the provision of large quantities of propane to an area for distribution by wholesale distributors. In most of its applications, propane is used where natural gas is not available. The Complaint charges that Phillips and Conoco are two of four bulk suppliers of propane in Southern Missouri. There is reason to believe that other competitors are unlikely to effectively constrain the merged firm's pricing. In Southern Missouri, the merged firm would control the vast majority of the propane market. The Complaint alleges that the merger likely would enable ConocoPhillips to unilaterally raise prices (or reduce output) or to coordinate with other suppliers in the bulk supply of propane in Southern Missouri. Entry into the bulk supply of propane is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Counts VI and VII of the Proposed Complaint concern the bulk supply of propane in the St. Louis MSA and Southern Illinois areas, respectively. There are four bulk suppliers in St. Louis and Southern Illinois. There is reason to believe that other competitors are unlikely to effectively constrain the merged firm's pricing. The Complaint alleges that ConocoPhillips could raise prices unilaterally or in concert with others. The Complaint further alleges that entry into the bulk supply of propane is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Count VIII of the Proposed Complaint concerns natural gas gathering in several areas of the Permian Basin. The Permian Basin is an oil and gas rich area of western Texas and southeastern New Mexico. The relevant markets are limited to many small areas within Eddy, Chavez and Lea counties in New Mexico and Schleicher County, Texas. The likely production rates of the natural gas fields in the overlap areas and cost of building gathering lines in the Permian Basin limit the markets to areas with a radius of no more than three miles. Phillips owns about 30 percent of DEFS. Conoco is a substantial competitor in providing gathering services in the Permian Basin. The Complaint alleges that DEFS and Conoco are the only competitors in the areas identified by the Commission. The Complaint alleges that after the merger, ConocoPhillips' complete or partial ownership of the only two gathering systems would likely reduce competition. The Complaint alleges that there are substantial costs to entering the gathering business such that entry would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Count IX of the Proposed Complaint concerns fractionation of raw mix into specification products, such as butane and ethane. The Complaint alleges that there is no alternative to fractionation services. Many pipelines deliver raw mix and transport fractionated specification products from Mont Belvieu, Texas. There are four fractionators in Mont Belvieu. Mont Belvieu is an active trading hub for each specification product. DEFS owns an interest in two fractionators and Conoco has an interest in a third fractionator. The Complaint alleges that the combined firm would have access to competitively sensitive information of Mont Belvieu fractionators accounting for more than 70 percent of the market capacity and would have veto rights over significant expansion decisions. The Complaint further alleges the merger would reduce competition by allowing fractionation competitors to share information and exercise veto rights over expansion decisions. The Complaint charges that there are substantial entry barriers in fractionation in Mont Belvieu such that entry would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

IV. The Proposed Consent Order

The Proposed Order is designed to remedy the alleged anti-competitive effects of the proposed merger. Under the terms of the Proposed Order, the merged firm must: (1) Divest the Phillips refinery located at Woods Cross, Utah, and all of Phillips' related marketing assets served by that refinery; (2) divest Conoco's Denver refinery located at Commerce City, Colorado, and all of Phillips' marketing assets in Eastern Colorado; (3) divest Phillips light petroleum products terminal in Spokane, Washington; (4) enter into a petroleum products throughput agreement that includes an option to buy a 50 percent undivided interest in Phillips' Wichita, Kansas, light petroleum products terminal; (5)(a) divest Phillips' propane terminal assets in Jefferson City, Missouri, and East St. Louis, Illinois; and (b) provide a long-term propane supply agreement; (6) divest certain Conoco natural gas gathering assets in New Mexico and Texas, including Conoco's Maljamar processing facility and enter into a long-term agreement to process natural gas gathered in Texas; and (7) create firewalls that prevent the transfer of competitively sensitive information among Mont Belvieu fractionators.

A. Phillips Woods Cross Assets

Paragraph II of the Proposed Order requires the divestiture of the Phillips Woods Cross assets to restore competition in the bulk supply of light petroleum products in Northern Utah. The assets to be divested include Phillips' refinery located in Woods Cross, Utah, and substantially all of the related distribution, marketing and retail operations. This includes the refinery, crude oil supply pipelines, truck loading racks, light petroleum product pipelines and storage terminals used in the operation of the refinery. The assets to be divested also include all gasoline retail stations currently owned by Phillips and served by the Woods Cross refinery and, by assignment, all Phillips' agreements with marketers served by the Woods Cross refinery. Respondents will also be

required to provide to the buyer of the assets Phillips proprietary (branded) and non-proprietary credit card services, Phillips additive, and brand support at Phillips' costs.

The Proposed Order will require Respondents to grant to the acquirer an exclusive 10-year royalty free license to use brands currently used by Phillips in Utah, Wyoming, Montana and Idaho to sell gasoline, kerosene, diesel fuel and any other product typically sold at a gasoline station through the gasoline outlet channel of distribution and a nonexclusive 10-year royalty free license to use brands currently used by Phillips in Utah, Wyoming, Montana and Idaho to sell those products typically sold in gasoline stations (*e.g.*, motor oil) outside of the gasoline outlet channel of distribution.

The assets must be divested to a buyer receiving prior approval from the Commission within 12 months of the date Respondents executed the Agreement Containing Consent Orders, and Respondents must maintain the viability and the marketability of the assets until they are divested.

B. Colorado Assets

Paragraph III of the Proposed Order requires the divestiture of refinery and marketing assets to restore competition in the bulk supply of light petroleum products in Eastern Colorado. The assets to be divested include Conoco's refinery located in Commerce City, Colorado, and all of the related distribution assets, including crude oil supply pipelines, truck loading racks, light petroleum product pipelines and storage terminals used in the operation of the refinery, and pipelines assets ensuring the distribution of jet fuel.

The assets to be divested also include: (1) All gasoline retail stations that are currently owned by Phillips located in Colorado and, by assignment, all Phillips' agreements with marketers served by Phillips' Eastern Colorado bulk supply assets; (2) an exclusive 10-year royalty free license to use brands currently used by Phillips in Colorado to sell gasoline, kerosene, diesel fuel and any other product typically sold at a gasoline station through the gasoline outlet channel of distribution; (3) a nonexclusive 10-year royalty free license to use brands currently used by Phillips in Colorado to sell products typically sold at gasoline stations (*e.g.*, motor oil) through channels outside of gasoline outlets; and (4) provision of Phillips proprietary (branded) and non-proprietary credit card services, Phillips additive, and brand support at Phillips' costs.

These refinery and marketing assets must be divested to a buyer receiving prior approval from the Commission within 12 months of the date Respondents executed the Agreement Containing Consent Orders, and Respondents must maintain the viability and the marketability of the assets until they are divested.

C. Phillips' Propane Assets

Paragraph IV of the Proposed Order restores competition in bulk supplies of propane by requiring Respondents to divest the Phillips propane business and associated assets to a buyer receiving prior approval of the Commission by January 15, 2003. Respondents must divest all the physical assets (storage, truck racks, pipelines connecting the storage tanks to common carrier pipelines and truck racks) related to Phillips' propane terminal operations in Jefferson City, Missouri, and East St. Louis, Illinois. Phillips must also assign all propane supply agreements between Phillips and its customers from those terminals. The acquirer will have the unqualified ability to expand the propane terminal assets. The Proposed Order also imposes restriction on Respondents to ensure that the buyer of the propane business obtains nondiscriminatory access to the Blue and Shocker Lines. With access to the Blue Line and Shocker Line common carrier pipelines, the acquirer will be able to ship propane to the Jefferson City or East St. Louis terminals from the propane markets in Conway, Kansas. Until the propane assets are divested, Respondents must maintain the viability and the marketability of those assets.

Paragraph IV.D requires Respondents to, by the date of divesting the Propane Business, enter into a propane supply contract with the acquirer of the divested propane business. The contract must give the acquirer the ability to purchase propane at a price equal to the price at Conway, Kansas, plus the Blue Line and Shocker Line tariffs from Conway to the applicable terminal.

Respondents must also enter into a terminal operating agreement with the buyer of the propane business. The agreement must provide for the maintenance, upkeep, repair, security, and operation of the Jefferson City, Missouri, and East St. Louis, Illinois, terminals at Respondents' actual costs.

In the event that Respondents are unable to divest the propane business by January 15, 2003, to a buyer receiving prior approval of the Commission and in a manner approved by the Commission, Respondents must divest: (1) A 50 percent undivided interest in the Blue Line between Borger, Texas, and the connection to the Shocker Line (near Wichita, Kansas); (2) the Shocker Line; (3) Respondents' entire interest in the Blue Line from the connection with the Shocker Line to the East St. Louis, Illinois terminal; (4) the East St. Louis terminal; (5) the Jefferson City, Missouri terminal, and (5) the Ringer, Kansas terminal.

D. Phillips' Spokane Terminal

Paragraph V of the Proposed Order requires the Respondents to divest the Phillips terminal in Spokane, Washington, no later than six months after the date Respondents execute the Agreement Containing Consent Orders. The acquirer of the Phillips Spokane Terminal must have the prior approval of the Commission. Until Phillips Spokane Terminal is effectively divested, Respondents will be required to maintain the viability and the marketability of the terminal. The purpose of the sale of Phillips Spokane Terminal is to maintain the existing level of competition.

E. Phillips' Wichita Terminal

Paragraph VI of the Proposed Order requires the parties to enter into a 10-year products throughout agreement with Williams Pipe Line Company, LLC (''Williams''), or another firm, receiving the prior approval of the Commission, within nine months of Respondents' execution of the Agreement Containing Consent Orders. Williams owns and operates common carrier refined products pipelines and terminals serving, among others, the Mid-continent areas of the United States. The throughput agreement must provide for at least 8,500 barrels per day and cannot specify a minimum volume. The agreement must also provide for the acquisition of additive and information technology services, and provide an option to purchase a 50 percent undivided interest in Phillips terminal assets in Wichita, Kansas.

F. Natural Gas Gathering

Paragraph VII of the Proposed Order requires the Respondents to divest all of Conoco's natural gas gathering, compression, processing and transportation assets within specified areas of Chavez, Lea and Eddy Counties in New Mexico, within nine months from the date Respondents execute the Agreement Containing Consent Orders. These assets include Conoco's Maljamar Processing Plant, and all necessary agreements or contracts related to the operation of that plant. The Commission must give its prior approval before any acquirer may purchase these assets. Until these assets are sold, they will be

placed into an Order to Hold Separate and Maintain Assets.

Paragraph VIII of the Proposed Order requires the Respondents to divest all of Conoco's assets related to the gathering, compression, transportation or sale of natural gas within Schleicher County, Texas, within nine months from the date Respondents execute the Agreement Containing Consent Orders. This includes all gathering pipelines and any related contracts or agreements. The Commission must give its prior approval before any acquirer may purchase these assets. Until these assets are sold, they will be placed into an Order to Hold Separate and Maintain Assets. In addition, Respondents must enter into a processing agreement with the buyer of the divested assets. The processing agreement must allow the buyer to process at least the same volume of natural gas that is currently gathered on the system at Conoco's cost. This cost includes all direct costs, including raw materials, labor, utilities and third-party contract services actually used to provide services to the acquirer of the gathering assets. In addition, cost may include the *pro rata* share of the cost of the capital employed in the processing plant and indirect costs related to operating the processing plant, including taxes, depreciation, overhead and third-party contracts.

G. Fractionation

Paragraph IX of the Proposed Order contains four ensuring that Respondents cannot transfer competitively sensitive information among fractionators or exercise voting rights to thwart expansion. First, beginning at the date of execution of the Agreement Containing Consent Orders, the Proposed Order prohibits Respondents from sharing competitively sensitive fractionation information with DEFS, Duke (owner of approximately 70 percent of DEFS), or any DEFS Board Member. Second, Respondents may not receive from Duke, DEFS, or any DEFS Board Member any competitively sensitive fractionation information of DEFS. Third, ConocoPhillips DEFS Board Members may not participate in any discussions with DEFS or Duke relating to the three fracitonators in which Respondents and DEFS own an interest. Fourth, ConocoPhillips DEFS Board Members may not participate in any vote of the DEFS board, unless such a vote is necessary and, if such a vote is necessary, then the ConocoPhillips DEFS Board Members must vote is the same way as the majority of the Duke DEFS Board Members.

H. Other Terms

Paragraph X sets the guidelines for the appointment and powers of a Divestiture Trustee should the Respondents fail to complete one or more of the divestitures discussed above. Paragraph XI requires the Respondents to provide the Commission with a report of compliance with the Proposed Order every sixty days until the divestitures are completed. Paragraph XII provides for notification to the Commission in the even of any changes in the Respondents. Paragraph XIII requires the Respondents to provide the Commission with access to their facilities and employees for the purposes of determining or securing compliance with the Proposed Order. Paragraph XIV provides, among other things, that if a State fails to approve any of the divestitures contemplated in the Proposed Order, then the period of time required under the Proposed Order for such divestiture will be extended for ninety days. Finally, Paragraph XV provides that the Proposed Order will terminate ten years after the date the Order becomes final.

V. Gasoline Retail and Marketing Assets

In this instance, the Commission is not seeking gasoline marketing relief outside the bulk supply areas discussed above (Eastern Colorado and Northern Utah). After a thorough investigation, the Commission concluded that the proposed merger of Phillips and Conoco is not likely to have any anticompetitive effect on gasoline marketing the Mid-continent, Southeastern, or Southwestern United States. The Commission considered several factors in reaching its decision not to seek relief in those areas. First, Phillips and Conoco own and/or operate few retail outlets. With the exception of a small number of cities, Phillips and Conoco gasoline distribution relies significantly on independent gasoline marketers. Further, Conoco and Phillips, unlike the other major refiners, have not imposed significant costs of switching brands or de-branding on the predominant share of their marketers. Neither Phillips nor Conoco engage in redlining or zone pricing in areas investigated in this merger. Thus, the degree of vertical control over jobbers by Conoco and Phillips in these regions is significantly less than that exercised by other refiners in other parts of the country. Further, the Commission has found significant growth of low-priced gasoline retailing by supermarkets, club stores and mass merchandisers. The entry of these gasoline distribution competitors likely will prevent the merging firm from raising prices in the Mid-continent, Southeast and Southwest. In addition, entry by these low-priced competitors has induced jobbers to switch branch and de-brand. Entry and growth by low-priced formats are likely to continue in these areas, in part, because of a plentiful supply of gasoline and diesel fuel. Areas under investigation in this merger have common carrier pipelines and terminals delivering and storing gasoline to both branded and unbranded jobbers. For these and other reasons, the Commission does not have reason to believe that the merger of Conoco and Phillips would lessen competition substantially in the Mid-continent, Southeast and Southwest.

VI. Opportunity for Public Comment

The Proposed Order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw from the Proposed Order or make it final. By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Order, including the proposed divestitures, to aid the Commission in its determination of whether to make the Proposed Order final. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–22795 Filed 9–6–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Zhenhai Yao, M.D., Ph.D., The University of North Carolina at Chapel

Hill: On August 20, 2002, the U.S. Public Health Service (PHS) entered into a Voluntary Exclusion Agreement with The University of North Carolina at Chapel Hill (UNC) and Zhenhai Yao, M.D., Ph.D., an Associate Professor of Anesthesiology, School of Medicine at UNC. Based on the UNC Report, the respondent's admissions, and additional analysis conducted by ORI in its oversight review, PHS found that Dr. Yao engaged in scientific misconduct in research funded by the National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH).

Specifically, PHS and UNC found that Dr. Yao:

(1) Falsified two flourescent micrographs for figures presented in three NIH grant applications:

A. Figure 5, p. 28, in a funded grant application in 1 R01 HL067416–01, ''Mechanism of Preconditioning and Cardiac Apoptosis,'' submitted to NIH on May 31, 2000;

B. Figure 6, p. 33, in a funded grant application in 1 R01 HL68250–01, ''Free Radicals, PKCδ Signal Acetylcholine Preconditioning,'' submitted to NIH on September 9, 2000; and

C. Figure 7, p. 25, in an unfunded grant application in 1 R01 HL66230–01A1, ''Nitric Oxide and Opioid Preconditioning,'' Submitted to NIH on July 2, 2001.

Dr. Yao falsely claimed that two fluorescent micrographs in the figure represented neonatal rat cells transfected with an adenovirus-derived vector, when the cells actually were chick cells transfected with a cytomegalovirus-based vector, which he had taken from another scientist at the University of Chicago.

(2) Falsified the same two fluorescence micrographs of CMV-transfected chick cells described in Issue 1, above, by misrepresenting their description as embryonic chick cells transfected with pcDNA, with and without green fluorescent protein, for Figure 13 on p. 30 in an unfunded NIH grant application, 1 R01 HL66230–01, ''Molecular Mechanisms of Opioids in Myocardial Ischemia,'' submitted January 21, 2000.

(3) Falsified a flow cytometry histogram in Figure 1B on p. 22 of NIH application R01 HL66230–01A1, by claiming the histogram represented results with rat myocardiocyte cultures treated with an opiate antagonist (staurosporine).

However, this histogram had been published by Liu, H., McPherson, B.C., & Yao, Z. ''Preconditioning Attentuates Apoptosis and Necrosis: Role of Protein Kinase Cε and -δ Isoforms.'' *Am. J. Physiology Heart Circ Physiol.* 281:H404–H410, 2001, as Figure 1f showing the result from embryonic chick cells treated for 12 hours with deoxy-glucose in the absence of oxygen (simulated ischemia).

(4) Falsified claims about research results in NIH grant application R01 HL66230–01A1, by claiming that data in Figure 3 on p. 23 represented experiments on cultures of neonatal rat cardiomyocytes as an *in vitro* model of hypoxia-reoxygenation, shown as data from four separate experiments measuring apoptosis by different means.

The data in the four separate experiments portrayed in Figure 3 are identical to Figure 1, p. 2009, in the publication by Liu, H., Zhang, H.Y., McPherson, B.C., Baman, T., Roth, S., Shao, Z., Zhu, X., & Yao, Z. ''Role of Opioid δ_1 Receptors, Mitochondrial K_{ATP} Channels, and Protein Kinase C during Cardiocyte Apoptosis. *J. Mol. Cell. Cardio.* 33:2001–2014, 2001, which were reported as the results from experiments on cultures of embryonic chick cardiocytes.

(5) Falsified the micrographs in panels a and d, Figure 1, p. 2009, in the publication by Liu, H. *et al., J. Mol. Cell. Cardiol.* 33:2001–2014, 2001, by claiming they represented TUNEL data showing normal media and opioid antagonist (BTNX)-treated cultures of chick cardiocytes, respectively.

The same micrographs had been reported by Liu, H. *et al., Am. J. Physiology Heart Circ Physiol.* 281:H404–H410, 2001, in Figure 1 (panels a and e) and in Figure 2 (panels a and b), as representing cardiocyte cultures exposed for 24 hours to deoxy-glucose and no oxygen (simulated ischemia).

(6) Falsified the physiological effects of gene transduction into hearts, by copying and re-using the same pressure tracing for untreated rats as he did for rats purportedly treated by intracardial injection with adenovirus (AdEGFP) in:

A. Figure 11, p. 26, in unfunded NIH grant application R01 HL66230–01A1;

B. Figure 9, p. 30, in funded NIH grant application R01 HL67416–01;

C. Figure 9, p. 34, in funded NIH grant application R01 HL68250–01; and

D. Figure 8, p. 30, in funded NIH grant application 1 K08 HL03881–01.

(7) Falsified data in panels c and d in Figure 13, p. 26, in NIH grant application R01 HL66230–01A1. Dr. Yao claimed that panel c represented a TUNEL assay on histological sections of myocardium from a rat transfected with Ad.βgal and subjected to ischemia-reperfusion and that panel d represented a tissue section from a rat transfected with Ad.PKCδ–FL.

Panel c is a horizontally compressed copy of panel b, purported to be a non-transfected rat subjected to ischemia-reperfusion, and panel d is a horizontally expanded version of panel a, purported to be a sham-operated, non-transfected control.

(8) Falsified the claims about the micrograph of ischemic data (''panel b'' in issue 7, above) reported as:

A. Figure 11, p. 31, in R01 HL67416–01 (submitted May 31, 2000); and

B. Figure 12, p. 35, in R01 HL68250–01 (submitted September 29, 2000).

In both examples, the figures, which are identical, consist of two panels purported to be TUNEL data showing sham operated controls (panel a) and the effect of transient ischemia for 30 minutes (panel b). However, these data are identical to Figure 10, p. 32, in NIH application K08 HL03881–01, reported a control and the effect of nontransient ischemia, *i.e.*, 20 hours of ischemia followed by 24 hours of reperfusion.

(9) Falsified data in Figure 14 on p. 27 in NIH grant application R01 HL66230–01A1, as representing a gel electrophoresis data from an *in vivo* experiment on rat myocardial ischemia.

However, the same data was represented as Figure 3, p. 23, of the application (and also as in Figure 1, *J. Cell. Mol. Cardiol.* 33:2007–2014, 2001), as results from a study of embryonic chick heart cell cultures for the effect of preconditioning on opioid receptors. Furthermore, Dr. Yao falsified the stated size of the fragments in the DNA marker ladder by altering the position of the molecular weight markers in Figure 14.

(10) Falsified Figure 3, p. 27, in 1 R01 HL67416–01, a DNA-laddering gel electrophoresis experiment, showing that apoptosis in cardiocyte cultures is significantly increased by staurosporin and by 12 hours of simulated ischemia.

The same data was shown in Figure 1, p. 26, in application HL03881–07 showing that apoptosis is significantly increased by 10 μM NE and by 15 nM TNF-α.

The research misconduct was significant because Dr. Yao's research involved the fundamental mechanisms for cardiac cell injury and pathogenesis after a heart attack. The falsified data were significant to reviewers' opinions on funding because they were advanced as preliminary results showing successful new experiments extending his experimental model to adult rat hearts.

Dr. Yao has entered into a Voluntary Exclusion Agreement in which he has voluntarily agreed:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government

and from eligibility for, or involvement in, nonprocurement transactions (*e.g.*, grants and cooperative agreements) of the United States Government as defined in 45 CFR part 76 (Debarment Regulations) for a period of five (5) years, beginning on August 20, 2002;

(2) to exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of five (5) years, beginning on August 20, 2002; and

(3) to submit a letter to the *Journal of Molecular and Cellular Cardiology* requesting retraction of Figure 1 in the article by Hui Liu, *et al.*, *J. Mol. Cell. Cardiol.* 33:2001–2014, 2001, within 30 days of notification of this action. This requirement will be noted on the ALERT System until Dr. Yao sends a copy of the retraction letter to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 02–22794 Filed 9–6–02; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–70]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in HSQ–110, Acquisition, Protection and Disclosure of Peer Review Organization Information and Supporting Regulations in 42 CFR, Sections 476.104, 476.105, 417.116, and 476.134.; *Form No.:* CMS–R–70 (OMB# 0938–0426); *Use:* The Peer Review Improvement Act of 1982 authorizes PROs to acquire information necessary to fulfill their duties and functions and places limits on disclosure of the information. These requirements are on the PRO to provide notices to the affected parties when disclosing information about them. These requirements serve to protect the rights of the affected parties.; *Frequency:* Reporting on occasion; *Affected Public:* Business or other for-profit, Individuals or households, Not-for-profit institutions.; *Number of Respondents:* 362; *Total Annual Responses:* 3729; *Total Annual Hours:* 60,919

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 28, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–22765 Filed 9–6–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0215]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Export of FDA Regulated Products—Export Certificates

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by October 9, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Export Certificates for FDA Regulated Products Under Sections 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act—New Collection

FDA is requesting approval from OMB for the collection of information from the public associated with the export of FDA regulated products as indicated in sections 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(e) and 382), as amended.

In April 1996, a new law entitled ''The FDA Export Reform and Enhancement Act of 1996'' was enacted. It was designed to ease restrictions on exportation of unapproved products regulated by FDA and to facilitate such exportation by provide foreign governments certificates verifying that the products may be legally exported. Specifically, section 801(e)(4) of the act provides that persons exporting certain

FDA-regulated products may request FDA to certify that the products meet the requirements of sections 801(e) or 802 of the act, or other requirements of the act. Section 801(e)(4) of the act requires FDA to issue export certificates within 20 days of receipt of the request and to charge firms up to $175 for the certificates.

FDA has developed five types of certificates that satisfy the requirements of section 801(e)(4)(B) of the act: (1) ''Certificates to foreign governments'' are issued for legally marketed products that are in compliance with the requirements of the act; (2) ''certificates of exportability'' are for the export of products that cannot be marketed legally in the United States, but meet the requirements of sections 801(e) or 802 of the act and may be exported legally; (3) ''certificates of a pharmaceutical product'' are used for the export of drug products that are legally marketed in the United States. They conform to the format established by the World Health Organization (WHO) and attest to the acceptable current good manufacturing practice status of the manufacturing facility of the drug product; (4) ''nonclinical research use only certificates'' for the export of nonclinical research use only product, material, or component that is not intended for human use which may be marketed in and legally exported from the Untied States under the act; and (5) ''certificates of free sale.''

FDA has relied and will continue to rely on information provided by manufacturers for all types of export certificates. Manufacturers are requested to state that they are in compliance with all applicable requirements of the act, at the time that they submit their request to the appropriate center.

FDA will check all information submitted by firms in support of their certificates and any suspected case of fraud will be referred to FDA's Office of Criminal Investigations for followup. Firms making or submitting false statements on any documents submitted to FDA may be violating the United States Code title 18, chapter 47, section 1001 and be subject to penalties including up to $250,000 in fines and up to 5 years imprisonment.

In the **Federal Register** of May 30, 2002 (67 FR 37836), the agency requested comments on the proposed collection of information. FDA received four comments, three did not pertain to the information collection requirements and one talked to requirements of the U.S. Department of Agriculture and State agencies.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Centers	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Center for Biologics Evaluation and Research	1,479	1	1,479	1	1,479
Center for Drug Evaluation and Research	4,187	1	4,187	1	4,187
Center for Devices and Radiological Health (CDRH)	3,500	1	3,500	2[2]	7,000[2]
Center for Veterinary Medicine	621	1	621	1	621
Total	9,787		9,787		13,287

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Based on the CDRH policy of allowing multiple devices to appear on the certificate.

The estimates provided in table 1 are based on each center's latest calendar year counts.

Dated: September 3, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy

[FR Doc. 02–22793 Filed 9–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

Date: September 30, 2002.

Time: 7 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: John L. Meyer, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, Msc 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892–7965, 301–435–0806, *meyerj@ncrr.nih.gov.*

Dated: August 29, 2002.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–22777 Filed 9–6–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Regulatory Compliance Center.

Date: October 9, 2002.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, Palladian East Room, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Yen Li, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7616, 301–496–2550, *yli@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–22776 Filed 9–6–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) nad 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 18–19, 2002.

Open: September 18, 2002, 8:30 a.m. to 12 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: September 19, 2002, 9:45 a.m. to 10:15 a.m.

Open: September 19, 2002, 10:15 a.m. to 12 p.m.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activiites; National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: Naitonal Diabetes and Digestive and Kidney Diseases Advisory Council, Diabets, Encrocrinology, and Metagolic Diseases Subcommittee.

Date: September 18–19, 2002.

Open: September 18, 2002, 1:15 p.m. to 2:15 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: September 18, 2002, 2:15 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: September 19, 2002, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: September 19, 2002, 8:30 a.m. to 9:30 a.m.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, Phd, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammond@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: September 18–19, 2002.

Open: September 18, 2002, 1:15 p.m. to 2:45 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, A Wing, Conf. Rm. 9A22, Bethesda, MD 20892.

Closed: September 18, 2002, 3 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, A Wing, Conf. Rm. 9A22, Bethesda, MD 20892.

Open: September 19, 2002, 8 a.m. to 9:30 a.m.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, A Wing, Conf. Rm. 9A22, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, Phd, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammond@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: September 18–19, 2002.

Open: September 18, 2002, 1:15 p.m. to 5:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, A Wing, Conf. Rm. 9A22, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, Phd, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammond@extra.niddk.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Disease and Nutrition research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 28, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–22778 Filed 9–6–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 285–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to make a minor change to its system of records entitled ''Inmate Administrative Remedy Record System, JUSTICE/BOP–004.'' This system, which was last published on June 18, 2002 (67 FR 41450), is now being modified and will become effective September 9, 2002.

The Bureau is retaining the majority of the previously published Notice and making only one minor technical change in one section. The section entitled ''Retention and Disposal'' is being amended to more accurately reflect current agency practice. The entire Notice is being re-published for the convenience of the public.

A description of the modified system is provided below.

Dated: August 29, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/BOP–004

SYSTEM NAME:

Inmate Administrative Remedy Record System.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, or at any of the Federal Bureau of Prisons (Bureau) facilities, or at any location operated by a contractor authorized to provide computer and/or correctional services to Bureau inmates. A list of Bureau facilities may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former inmates, including pre-trial detainees, under the custody of the Attorney General and/or the Director of the Bureau of Prisons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: (1) Inmate information including (a) name; (b) register number; (c) institution location; (d) current offense and sentence; (e) prior criminal record; (f) social background; (g) institution adjustment; (h) institution program data; (i) medical information; and (j) personal property data; (2) complaint information including copies of BOP–9's (institution level complaints), BOP–10's (Region appeals) and BOP–11's (Central Office appeals); and (3) processing information, including dates of filing and responses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained under authority of 18 U.S.C. 3621, 4042, 5003, and 28 CFR part 542.

PURPOSE OF THE SYSTEM:

The Bureau maintains records of the receipt, processing and responses to grievances filed by inmates pursuant to the Bureau's Administrative Remedy Program, which was established to provide inmates with a means to seek formal review of issues relating to conditions of their confinement. The related uses for which the Bureau maintains the system include (1) to provide a source of information for reconsideration or amendment of Bureau policy with regard to its operation; (2) to maintain a source of information for purposes of defending civil actions filed against the Bureau by inmates; and (3) to provide a source of information for statistical reports furnished to federal courts for the purpose of determining exhaustion of administrative remedies and the effectiveness of the Administrative Remedy Program in reducing the backlog of cases filed in federal court.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To federal, state, local, foreign and international law enforcement agencies and officials for law enforcement purposes such as civil court actions, regulatory proceedings, responding to an emergency, inmate disciplinary proceedings; or for such law enforcement needs as prison administration, investigations, and possible criminal prosecutions.

(b) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records;

(c) To Members of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the record subject;

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(e) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(f) In a proceeding before a court, grand jury, or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding;

(g) To a federal, state, or local licensing agency or association which requires information concerning the suitability or eligibility of an individual for a license or permit and;

(h) Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in electronic media via a configuration of personal computer, client/server, and mainframe systems architecture and may be accessed by only those staff with a need-to-know at all Bureau and contractor facilities. Some information may be stored in other computerized media, *e.g.*, hard disk, floppy diskettes, magnetic tape, digital recordings, Compact Discs (CDs), and/or optical disks. Documentary records are maintained in manual file folders.

RETRIEVABILITY:

Documents are indexed by name and/or register number.

SAFEGUARDS:

Automated information is safeguarded in accordance with Department of Justice and Bureau of Prisons rules and policy governing automated information systems security and access. These safeguards include the maintenance of

records and technical equipment in restricted areas, *e.g.* controlled access buildings, and the required use of proper passwords and user identification codes to access the system. Manual records are stored in a file room. All records in Bureau facilities are maintained in guarded buildings.

RETENTION AND DISPOSAL:

Case files, stored electronically and/or on paper, are maintained for a period of three (3) full years from the date the response is completed, at which time they are destroyed. Indexes are maintained for a period of twenty (20) years, at which time they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director/General Counsel, Federal Bureau of Prisons; 320 First Street NW., Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made by writing to the System Manager identified above, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534. The envelope should be clearly marked ''Privacy Act Request.'' This system of records is exempted from access pursuant to 5 U.S.C. 552a(j). A determination as to the applicability of the exemption to a particular record(s) shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Records are generated by: Inmates; individuals covered by the system; Bureau staff; federal, state, local, tribal, and foreign law enforcement agencies; and federal/state probation and judicial offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(2), (e)(3), (e)(4)(H), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register** and codified at 28 CFR 16.97 (a) and (b).

[FR Doc. 02–22792 Filed 9–6–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, DoJ.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Compact Council created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the federal government and sixteen states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative federal-state system to exchange such records.

Matters for discussion are expected to include: (1) United States Customs Service Request for Access to the Interstate Identification Index (III) for NonCriminal Justice Purposes, (2) Immigration and Naturalization Service (INS) Request to Allow State Repository Criminal History Maintenance and Dissemination, (3) Standards/Procedures for Identity Verification, (4) Proposed Sanctions Rule, (5) National Applicant Database Requests, (6) Use of the III for Background Checks on Applicants' References, Relatives, Friends, and Associates, (7) Revised Rule to Allow INS Use of III for Emergency Child Placement, (8) Qualification Requirements and Audit Criteria, (9) United States Department of Justice Requirement for System Use, and (10) A Safer Nation—Proposed Briefing Document.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Ms. Cathy L. Morrison at (304) 625–2736, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed up to 15 minutes to present a topic.

DATES AND TIMES: The Compact Council will meet in open session from 9 a.m. until 5 p.m. on October 9–10, 2002. In addition, an education symposium concerning the Compact is being hosted as a collaborative effort of the FBI's Criminal Justice Information Services (CJIS) Division, the Compact Council, the National Consortium for Justice Information and Statistics (SEARCH), and the Bureau of Justice Statistics. The symposium is tailored to address enactment strategies, the potential benefits and practical applications of Compact ratification. The symposium will be held October 8, 2002, from 8 a.m. until 6 p.m. at the Wyndham Hotel in Washington, DC.

ADDRESSES: The Compact Council meeting and symposium will take place at the Wyndham Washington, DC, 1400 M Street, NW., Washington, DC, telephone (202) 429–1700.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Cathy L. Morrison, Interim Compact Officer, Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0147, telephone (304) 625–2736, facsimile (304) 625–5388.

Dated: August 27, 2002.

Thomas E. Bush III,

Section Chief, Programs Development Section, Federal Bureau of Investigation.

[FR Doc. 02–22818 Filed 9–6–02; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such

request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 19, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 19, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 12th day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 08/12/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Products(s)
41,934	Mallinckrodt Respiratory (Co.)	Carlsbad, CA	07/30/2002	Medical Equipment.
41,935	Flextronics Enclosure (Co.)	Elk Grove Villa, IL	07/22/2002	Cases for Computer Systems.
41,936	Fishking Processors, Inc. (Wkrs)	Los Angeles, CA	07/23/2002	Sea Food.
41,937	Circuit Center, Inc. (Wkrs)	Kettering, OH	08/01/2002	Printed Circuits and Wiring.
41,938	Valeo (Co.)	Ft. Worth, TX	07/30/2002	Switches.
41,939	LaCrosse Rainfair Safety (Wkrs)	Racine, WI	0726//2002	Rain Gear and Footwear.
41,940	Precision Threading (Co.)	Cheboygan, MI	07/26/2002	Thread Milling Cutters, Rolling Dies.
41,941	Samuel Whittar (Co.)	Detroit, MI	07/25/2002	Hot/Cold Rolled Steel Strips.
41,942	Encompass Group (Co.)	Eastman, GA	07/30/2002	Healthcare Apparel.
41,943	ADC Telecommunications (Wkrs)	Eden Prairie, MN	07/22/2002	Optical Connectivity Products.
41,944	John Deer Vehicle Group (Co.)	Toano, VA	07/26/2002	Utility Vehicles.
41,945	Exxon Mobil (Wkrs)	Gibsonia, PA	07/25/2002	Lubricants.
41,946	Tyco Electronics (Wkrs)	Middletown, PA	07/22/2002	Cable Assemblies.
41,947	Pella Plastics (Co.)	So. Pittsburgh, TN	07/24/2002	Plastic Injection Molded.
41,948	Buck Forkardt (Wkrs)	Portage, MI	07/24/2002	Scrolls and Pinions.
41,949	Don'L (Co.)	Toccoa, GA	07/22/2002	Athletic Apparel.
41,950	International Data (Wkrs)	El Paso, TX	07/17/2002	Data Entry.
41,951	Lion Apparel (Co.)	Williamsburg, KY	07/31/2002	Security Uniforms.
41,952	FCI USA (Wkrs)	York, PA	06/25/2002	Connectors.
41,953	Astec America (Co.)	Carlsbard, CA	07/22/2002	Power Conversion Supplies.
41,954	Leather Center (IUE)	Carrollton, TX	06/10/2002	Leather Furniture.
41,955	Bayer (PACE)	West Haven, CA	07/28/2002	Pharmceutical Products.
41,956	Stryker Howmedica	Rutherford, NJ	07/01/2002	Orthopedic Implants.
41,957	Mahoning Mills (Co.)	Kutztown, PA	07/22/2002	T-Shirts, Girls and Women Underwear.
41,958	Scranton Lace (Wkrs)	Scranton, PA	07/19/2002	Lace Curtains/Table Cloths.
41,959	Amory Garment Company (Wkrs)	Amory, MS	07/18/2002	Men's Casual Pants and Shorts.
41,960	Hart Ford Ball (UAW)	Rocky Hill, CT	07/24/2002	Finished Balls.
41,961	Gilman Engineering (IAM)	Janesville, WI	07/20/2002	Automated Machinery.

[FR Doc. 02–22831 Filed 9–6–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended, are identified in the appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistant (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The pursuant of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than September 19, 20002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than September 19, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Reliant Manufacturing (UAW)	Chesterfield, MI	8/13/2002	NAFTA–6,467	auto parts.
TI Automotive Systems (Co.)	Sanford, FL	8/16/2002	NAFTA–6,468	air conditioning parts.
Sun Belt Interplex (Wkrs)	Tamarac, FL	8/19/2002	NAFTA–6,469	precision metal stampings.
Citation Corp.—Interstate Forging Ind. (Wkrs).	Milwaukee, WI	8/19/2002	NAFTA–6,470	steel forged parts.
Wisconsin Patterson (Wkrs)	Racine, WI	8/15/2002	NAFTA–6,471	core boxes.
Ericsson, Inc. (Co.)	Brea, CA	8/01/2002	NAFTA–6,472	software components.
Lucedale Industries (Co.)	Lucedale, MS	8/09/2002	NAFTA–6,473	knit shirts.
Yakima Products—Watermark (Co.)	Arcata, CA	8/11/2002	NAFTA–6,474	automotive roof racks.
Tyco Electronic (Co.)	Fuquay Varina, NC	8/13/2002	NAFTA–6,475	wedge connectors and tooling.
New River Energetics (PACE)	Radford, VA	3/13/2002	NAFTA–6,476	MACS propellant.
Stan's Wood Products (Wkrs)	Redmond, OR	8/05/2002	NAFTA–6,477	particalboard.
Black and Decker (Wkrs)	Easton, MD	8/09/2002	NAFTA–6,478	steel machining.
Kraft Foods (Co.)	Holland, MI	8/15/2002	NAFTA–6,479	hardcandy and mints.
Piece Dye Acquisition (Co.)	Edenton, NC	8/15/2002	NAFTA–6,480	finished textiles.

[FR Doc. 02–22830 Filed 9–6–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c) (2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Job Openings and Labor Turnover Report (BLS–1411).'' A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before November 8, 2002.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Job Openings and Labor Turnover Survey (JOLTS) collects data on job vacancies, labor hires, and labor separations. As the monthly JOLTS time series grow longer, their value in assessing the business cycle, the difficulty that employers have in hiring workers, and the extent of the mismatch between the unused supply of available workers and the unmet demand for labor by employers will increase. The study of the complex relationship between job openings and unemployment will be of particular interest to researchers. While these two measures are expected to move in opposite directions over the course of the business cycle, their relative levels and movements depend on the efficiency of the labor market in matching workers and jobs.

Along with the job openings rate, trends in hires and separations may broadly identify which aggregate industries face the tightest labor markets. Quits rates, the number of persons who quit during an entire month as a percentage of total employment, may provide clues about workers' views of the labor market or their success in finding better jobs. In addition, businesses will be able to compare their own turnover rates to the national, regional, and major industry division rates.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- 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;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The BLS uses the JOLTS form to gather employment, job openings, hires, and total separations from business establishments. The information is collected once a month at the Bureau of Labor Statistics Data Collection Center (DCC) in Atlanta, Georgia. The information is collected using Computer Assisted Telephone Interviewing (CATI), Touch-tone Data Entry (TDE), FAX, and mail. An establishment is in the sample for 18 consecutive months.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Job Openings and Labor Turnover Survey (BLS–1411).

OMB Number: 1220–0170.

Affected Public: Federal Government; State, Local, or Tribal governments; Businesses or other for-profit; Not-for-profit institutions; Small businesses and organizations.

Total Respondents: 14,400.

Frequency: Monthly.

Total Responses: 129,600.

Average Time Per Response: 10 minutes.

Estimated Total Burden Hours: 21,600 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the Information Collection Request (ICR); they also will become a matter of public record.

Signed at Washington, DC, this 28th day of August, 2002.

Jesùs Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 02–22829 Filed 9–6–02; 8:45 am]

BILLING CODE 4510–24–P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Proposed Collection, Comment Request, Study of the Results of Outcomes-Based Evaluation Training for National Leadership Grants and State Program Grants

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burdens, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of the status of outcomes-measurement by IMLS National Leadership and State Program grantees and factors that influence the implementation and usefulness of outcomes-measured in grantee organizations.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or November 8, 2002. IMLS is particularly interested in comments that help the agency to:

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;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;

Enhance the quality, utility and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

ADDRESSES: Send comments to: Karen Motylewski, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Ms. Motylewski can be reached on Telephone: 202–606–5551, Fax: 202–606–1077 or by e-mail at *KMotylewski@imls.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services act, Public Law 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

Agency: Institute of Museum and Library Services.

Title: Study of the Results of Outcomes Based Evaluation Training.

OMB Number: n/a.

Agency Number: 3137.

Frequency: Every three years.

Affected Public: Staff of IMLS grantee museums and libraries.

Number of Respondents: 325.

Estimated Time Per Respondent: 25 minutes.

Total Burden Hours: 135 hours.

Total Annualized capital/startup costs: Zero.

Total Annual costs: 0.

Contact: Mamie Bittner, Director Office of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–4648.

Dated: September 3, 2002.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 02–22766 Filed 9–6–02; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143–MLA, ASLBP No. 02–803–04–MLA]

Nuclear Fuel Services, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: Nuclear Fuel Services, Inc., Erwin, Tennessee, (Material License Amendment).

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns requests for hearing submitted (1) on August 6, 2002 by David Wallack; (2) on August 7, 2002, by Trudy L. Wallack; (3) on August 8, 2002, by the Oak Ridge Environmental Peace Alliance, Tennessee Environmental Council, the State of Franklin Group/Sierra Club, and Friends of the Nolichuckey River Valley, Inc.; (4) on August 8, 2002, by the Blue Ridge Environmental Defense League, Inc.; and (5) on August 8, 2002, by fifteen Northeast Tennessee residents. The requests were filed in response to a notice of consideration by the NRC staff of a proposed request from Nuclear Fuel Services, Inc., (NFS) to amend its special nuclear material

license to authorize construction and operation of a Low-Enriched Uranyl Nitrate Storage Building at the NFS site in Erwin, Tennessee, and to increase the U^{235} possession limit. The notice of environmental assessment performed by the staff, finding of no significant impact, and opportunity for a hearing were published in the **Federal Register** on July 9, 2002 (67 FR 45,555).

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Richard F. Cole has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Rosenthal and Cole in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Alan S. Rosenthal, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Administrative Judge Richard F. Cole, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this third day of September, 2002.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–22788 Filed 9–6–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 AND 50–339]

Virginia Electric and Power Company; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its July 18, 2000, application, for proposed amendments to Facility Operating License Nos. NPF–4 and NPF–7 for the North Anna Power Station, Unit Nos. 1 and 2, located in Louisa County, Virginia.

The proposed amendments would have revised the Facility Operating Licenses to delay the implementation of Improved Technical Specifications to no later than December 20, 2002.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on July 25, 2002 (67 FR 48679), and repeated the notice in the **Federal Register** on August 6, 2002 (67 FR 50962). However, by letter dated August 26, 2002, the licensee stated they had implemented ITS on August 20, 2002. As such the proposed amendment is no longer needed.

For further details with respect to this action, see the application for amendments dated July 18, 2002, and the licensee's letter dated August 26, 2002, which withdrew the application for license amendments. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of August, 2002.

For the Nuclear Regulatory Commission.

Stephen R. Monarque,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–22789 Filed 9–6–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27564]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 30, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 24, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 24, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–9771)

The Southern Company (''Southern''), 270 Peachtree Street, NW., Atlanta, Georgia 30303, a registered holding company, and its wholly owned subsidiaries, Mobile Energy Services Holdings, Inc. (''Holdings'') and Mobile Energy Services Company, L.L.C. (''Mobile Energy'') [1] both of 1155 Perimeter Center West, Atlanta, Georgia 30338 (collectively, ''Applicants''), have filed an amended and restated application-declaration (''Application'') under sections 6(a), 7, 11(f), 11(g), 12(a), 12(b), 12(d), 12(e), 12(f) and rules 44, 45, 54, 62, 63 and 64 of the Act.

The Commission issued an initial notice of the filing of the Application on October 16, 2000 (HCAR No. 27254), which described the First Amended Joint Plan of Reorganization dated September 15, 2000 (''First Plan''). On April 11, 2001 the Commission issued a supplemental notice (HCAR No. 27377) that described the Second Amended Joint Plan of Reorganization dated February 21, 2001 (''Second Plan''). This supplemental notice describes the Third Joint Plan of Reorganization, as Modified (''Third Plan''). The Third Plan supercedes the First Plan and the Second Plan although it contains numerous similarities.

Applicants propose that the Commission issue: (1) An order under section 11(f) of the Act approving the Third Plan and certain related

[1] Mobile Energy is a wholly owned limited liability company subsidiary of Holdings to which Holdings transferred all of its assets other than its equity interest in Mobile Energy in July 1995. Mobile Energy is an electric utility company within the meaning of section 2(a)(3) of the Act.

transactions under the Third Plan;[2] and (2) a report on the Third Plan under section 11(g) to accompany a solicitation of creditors and any other interest holders for approval of the Third Plan in the bankruptcy proceedings.[3] Applicants also seek approval of the ballots and notice of confirmation date and objection deadline which will be sent to creditors entitled to vote on the Third Plan.

I. Background

The ''Industrial Complex'' is comprised of the ''Energy Complex'' (described below), a pulp mill, a paper mill and a tissue mill, all located in Mobile, Alabama. The Scott Paper Company (''Scott'') constructed some of the facilities in the early 1960s; additional generation capacity was added in the mid-1980s; and a new recovery boiler was added in 1994. Some of the facilities (*e.g.*, recovery boiler capacity) were financed with Industrial Revenue Bonds issued by the Industrial Development Board (''IDB'') of the City of Mobile, Alabama, and leased to Scott Paper. In 1985, the Federal Energy Regulatory Commission (''FERC'') determined the then-existing facilities constituted a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978 (''PURPA'').[4]

Southern is a registered public-utility holding company that holds the securities, directly or indirectly, of six operating public-utility companies.[5] Southern also holds, directly or indirectly, the securities of energy-related companies, exempt telecommunications companies, exempt wholesale generators and foreign utility companies and authorized intermediate and special purpose subsidiaries. The Southern system provides electric power in the majority of the states of Alabama and Georgia and portions of Florida and Mississippi, operating centrally dispatched electric power generation transmission and distribution assets. As of December 31, 2001, Southern's consolidated capitalization (including current portions) was $21 billion, comprised of 36.3% common stock equity, 12.6% preferred stock and preferred securities and 51.1% debt.

On Dec. 13, 1994 the Commission authorized Southern to organize Holdings as a new subsidiary and acquire all of its common stock.[6] Scott sold the energy facilities, black liquor recovery equipment, and related assets, permits and agreements (''Energy Complex'')[7] to Holdings. Upon acquisition of the Energy Complex, Holdings entered into three separate 25 year energy services agreements with the owners of each of the pulp, paper and tissue mills within the Industrial Complex under which Holdings would provide power and steam processing services to each of those mills and liquor processing services to the pulp mill. In July 1995, Southern formed Mobile Energy as a limited liability company subsidiary of Holdings. Holdings owns 100% of the equity interest in Mobile Energy. Mobile Energy acquired ownership from Holdings of the Energy Complex on July 14, 1995.

The mill facilities in the Industrial Complex are vast, covering more than 700 acres. The Energy Complex was constructed specifically to serve the Scott mill operations. In late 1995 Scott was merged into a subsidiary of Kimberly Clark Corporation (''KC'') and the resulting entity was renamed Kimberly Clark Tissue Company (''KCTC''). As a consequence of the merger, KCTC became Mobile Energy's largest customer, representing approximately 75% of Mobile Energy's revenues in 1998. Of that amount, KCTC's pulp mill accounted for approximately 50% of Mobile Energy's revenues. The pulp mill also provided 85% of the fuel used by the Energy Complex in the form of biomass and black liquor. In 1998 KCTC notified Mobile Energy that KCTC would close its pulp mill and terminate its contract to purchase energy services from Mobile Energy for the pulp mill effective September 1, 1999.

Mobile Energy owns and operates the Energy Complex. KC owns both the tissue mill and the pulp mill.[8] The paper mill is owned by S.D. Warren Company Alabama, LLC (''S.D. Warren''). Mobile Energy provides power and steam processing services to the mills located in the Industrial Complex and processed certain chemicals that were the by-product of the pulp mill, until the pulp mill ceased producing pulp in September 1999.

The effect of the pulp mill closure was that Mobile Energy's revenues would be significantly reduced while unit costs of electricity produced in the Energy Complex would be increased. The pulp mill closure meant that Mobile Energy's largest purchaser would cease buying energy services and Mobile Energy would lose the related revenue. Further, closure of the pulp mill also altered the demand for steam relative to the demand imposed on the Energy Complex for electricity, with the result that Mobile Energy's cost of electric power generation increased. Closure of the KCTC pulp mill meant that the by-products of pulping operations which had served as a plentiful and inexpensive source of fuel for the Energy Complex (*i.e.*, biomass and black liquor) would no longer be available. The consequences from the anticipated loss of the KCTC pulp mill contract and operations triggered the filing by Mobile Energy and Holdings of cases under Chapter 11 of the Bankruptcy Code.

On January 14, 1999, Mobile Energy and Holdings (collectively, ''Debtors'') filed voluntary petitions in the United States Bankruptcy Court for the Southern District of Alabama (''Bankruptcy Court'') for protection under Chapter 11 of the United States Bankruptcy Code (''Bankruptcy Code''). Both entities filed as debtors in possession continuing their operations; as a result, the Bankruptcy Court has appointed no trustee or receiver.

The Third Plan was filed with the Bankruptcy Court on December 14, 2001 along with the Second Amended Disclosure Statement, as modified. Under section 1125 of the Bankruptcy Code, the Debtors may not solicit votes for acceptances of the Third Plan until the Bankruptcy Court approves a disclosure statement that contains information of a kind, and in sufficient detail, adequate to enable creditors to make an informed judgment whether to

[2] Section 11(f) of the Act provides, in relevant part, that ''a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court.''

[3] Section 11(g)(2) of the Act provides, in relevant part, that any solicitation for consents to or authorization of any reorganization plan of a registered holding company or any subsidiary company thereof shall be ''accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission.''

[4] *Scott Paper Co.*, 32 FERC (CCH) ¶ 62,175 (1985).

[5] These companies are Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Power Company. In addition, Alabama Power Company and Georgia Power Company each own 50% of Southern Electric Generating Company.

[6] HCAR No. 26185.

[7] The Energy Complex is currently comprised of four power boilers, one recovery boiler, four turbine generators, two black liquor evaporator sets, various related waste treatment facilities, fuel and ''liquor'' storage, station control facilities and associated feedwater systems, air emissions controls, and other auxiliary systems.

[8] In December 2000, KC became the successor to KCTC by assignment. All assets and liabilities of KCTC were assigned to KC on or about December 31, 2000. KCTC was then dissolved.

vote for acceptance or rejection of the plan. A hearing was held with the Bankruptcy Court on December 14, 2001 to determine whether the Second Amended Disclosure Statement as modified meets the requirements of section 1125 of the Bankruptcy Code.

An ad hoc committee of holders of Debtors' tax-exempt bonds and first mortgage bonds established the ''Bondholder Steering Committee,'' which is comprised of certain holders of existing securities as constituted from time to time. Currently the Bondholder Steering Committee is comprised of Credit Suisse First Boston and Morgan Stanley, and Wachovia Bank, National Association, formerly known as First Union National Bank, the indenture trustee for each of the two bond issuances, as an ex officio member. The indenture trustees represent all of the bondholders. The Bondholder Steering Committee supports confirmation of the Third Plan, whose members collectively hold in excess of 70% of the taxable bonds and in excess of 64% of the tax-exempt bonds of Mobile Energy.[9]

The Application includes the Third Plan and the Second Amended Disclosure Statement as Modified for Mobile Energy and Holdings. The Third Plan was precipitated by a number of circumstances. The contemplated reactivation of pulp mill operations, part of the First Plan, did not materialize. A conditional settlement agreement with KC, another part of the First Plan, was rendered void *ab initio* due to the failure of certain conditions precedent. In addition, natural gas prices during the past year reached extremely high levels relative to previous forecasts, which made it difficult to proceed with a planned 165-megawatt cogeneration project (''Cogen Project''), also part of prior plans. In addition, the Third Plan as filed with the Bankruptcy Court on December 14, 2001, contained an election for the bondholders to receive either shares of stock of Holdings, or member interests in Mobile Energy. Which election to make depended on a variety of factors, including whether the Internal Revenue Service would issue a private letter ruling on certain income tax matters. The Internal Revenue Service declined to issue any ruling on the matter so the Debtors and the bondholders have decided not to pursue a plan with the election to receive member interests in Mobile Energy. Consequently, the Third Plan as modified, provides that the bondholders will receive shares of stock of Holdings without an election provision. As a result, Applicants state, the Third Plan is very similar to the Second Plan.

Applicants state the purposes of the transactions described in the Third Plan are to: (1) Permit Mobile Energy and Holdings to reorganize and emerge from bankruptcy; (2) maximize the recovery of Mobile Energy's bondholders on their capital investment; (3) eliminate the direct and indirect equity ownership of Southern in Mobile Energy and Holdings; and (4) allow Mobile Energy to operate as a qualifying facility (''QF'') under PURPA after the effective date of the Third Plan, which will cause Mobile Energy and Holdings to no longer be subject to the Act. Certain transactions contemplated by the Third Plan require Commission authorization. The jurisdictional aspects of the Third Plan are summarized below.

II. The Third Plan

A. Overview

Applicants request authorization for the solicitation regarding the Third Plan under sections 11(f) and 11(g) of the Act, and authorization under section 12(e) to solicit consents and approvals from the holders of the securities of Mobile Energy and Holdings, along with other ancillary and related authorizations to implement the Third Plan.[10]

Under the Third Plan, Southern's equity interests in Mobile Energy will be extinguished and the bondholders will become the exclusive equity interest holders in reorganized Mobile Energy. The allowed claims of non-insider creditors aside from the bondholders will be paid in full or reinstated. The claims of insiders of the Debtors are treated by agreement as set forth in the Third Plan.

Mirant Services L.L.C. (''Mirant Services''), previously known as Southern Energy Resources, Inc., was the operator of the Energy Complex through March 31, 2001. Following a solicitation process, Mobile Energy selected Operational Energy Corporation (''OEC''), an affiliate of Enron, as the operation and maintenance operator after March 31, 2001, pending confirmation of the Third Plan. OEC replaced Mirant Services and implemented cost reductions.[11]

The Third Plan focuses upon maintaining and furthering operating cost reductions in the context of continuing to provide services to those mills presently operating in the Industrial Complex, KC's tissue mill and the pulp mill. KC has demolished the pulp mill. However, KC continues to operate components of the pulp mill and these pulp mill legacy assets continue to use the services provided by Mobile Energy under the ''Pulp Mill Energy Services Agreement.'' S.D. Warren closed the paper mill on December 14, 2001.

In order to assess the merits of the business strategy incorporated in the Third Plan projections have been prepared. The projections reflect S.D. Warren's closure of the paper mill and presume that KC curtails tissue mill operations as suggested to the Debtors by KC representatives.[12] Applicants note the projections show positive cash flows and thus value to the bondholders, who will be the future owners of equity interests in Holdings under the Third Plan. Applicants further note the projections also show greater value to the bondholders under the Third Plan than they would receive in liquidation.

Under the projections, Mobile Energy estimates that it will provide approximately 1.1 million MMBtus of steam to the tissue mill during 2002 and approximately 932,000 MMBtus of steam thereafter. Applicants anticipate that Mobile Energy will provide approximately 341,000 megawatt hours of electricity in 2002 to the tissue mill and approximately 400,000 megawatt hours of electricity thereafter. The estimated usage for steam and power for 2003 and later years is approximately 55% and 124%, respectively, of the amount of steam and power provided to the tissue mill during 1998. Applicants

[9] On February 4, 1999, an official committee on unsecured creditors was appointed in the Chapter 11 cases (''Committee''). The Committee has not sought Bankruptcy Court approval to retain counsel or any other professionals to represent its interests. The Committee has not been actively involved in the Bankruptcy cases.

[10] The materials to be included in the solicitation include the Third Plan, the Second Amended Disclosure Statement as Modified and exhibits, the ballots and notice of confirmation hearing.

[11] OEC filed for bankruptcy in December 2001, as did Enron Corp. and other affiliates of OEC. OEC continues to operate the Energy Complex in accordance with an operating agreement between it and Mobile Energy. As a debtor under Chapter 11 of the Bankruptcy Code, OEC could elect to reject the operating agreement between it and Mobile Energy. Applicants state that the management of Mobile Energy understands that risk and believes that in such event it could replace OEC with a new operator that would perform the same functions as OEC, and that there would be no interruption in services to Mobile Energy's customers.

[12] A KC representative signed an affidavit stating the anticipated future level of steam and power processing services that the tissue mill would require. Mobile Energy used those levels in the projections. However, KC currently is exceeding the levels stated in the affidavit. Applicants state, to be conservative, Mobile Energy continues to use the lower levels of contemplated services in the projections.

further state that Mobile Energy intends to continue to sell electricity in excess of the mill owners' demands during peak periods into the wholesale market; an estimate of these additional revenues is also included in the projections.

The Third Plan contemplates that after Southern is divested of its ownership of Mobile Energy, Mobile Energy will qualify as a QF under PURPA, rendering it not a public-utility under the Act.[13] Applicants state the effect of Southern's disaffiliation with the Debtors is beneficial to Southern because Southern has written off its investment in the Debtors for financial accounting purposes and it removes a drain on Southern's management's time and attention. Applicants state that Southern will have substantially reduced obligations going forward with respect to Mobile Energy and Holdings.

B. The Cogeneration Development Agreement

In February 2000, the Debtors, Mirant Services and Mirant Corporation (''Mirant''), entered into the ''Cogeneration Development Agreement.'' The Debtors contemplated the development by Mobile Energy of the Cogen Project, a 165-megawatt gas fired cogeneration facility within the Industrial Complex. Mirant committed to provide to Mobile Energy a General Electric combustion turbine (''GE Combustion Turbine'') in exchange for certain payments and also committed to contribute equity to the Cogen Project. Mirant Services was to be the operator of the Cogen Project.

For several reasons, including a dramatic rise in long-term natural gas prices that negatively affected the economics of the Cogen Project, the Cogeneration Development Agreement was amended twice. On May 16, 2001, the Bankruptcy Court approved the second amendment, ''CDAA No. 2.'' As a result of CDAA No. 2, the Debtors received a net amount of $5.0 million in cash in exchange for the relinquishment to certain contract rights, such as, the Debtors' rights to the GE Combustion Turbine that was to be contributed by Mirant. The practical effect of CDAA No. 2 is that the Cogen Project will not be developed by Mobile Energy under the Third Plan. Because the Cogen Project will not go forward, the projections do not assume any revenues to be received from the Cogen Project. However, certain provisions of the Cogeneration Development Agreement remain in effect.

Under the Cogeneration Development Agreement, Applicants state, Southern, Mirant and Mirant Services had only limited ongoing obligations to the Debtors. Southern's existing obligations to the owners of the tissue mill, paper mill, and pulp mill under the Environmental Guaranty entered into in December 1994 and the Mill Owner Maintenance Reserve Account Agreement entered into in August 1995 are to continue. Mobile Energy agreed in the Cogeneration Development Agreement to compensate and indemnify Southern for any costs it incurred under either agreement. That compensation obligation is secured by a priority lien on Mobile Energy's assets. The indemnities in favor of Southern, Mirant and Mirant Services continue in effect under CDAA No. 2. Applicants state that the amounts, if any, that may be owed to Southern, Mirant or Mirant Services under the surviving indemnities are not capable of being quantified at this time. Applicants state that the Debtors' management is unaware of any current obligations under the underlying agreements, and in any event, does not believe the Debtors' future obligations under the indemnities will have a materially adverse effect on the Debtors' future business operations.

Under the Cogeneration Development Agreement, Mobile Energy and Holdings agreed to indemnify Southern from any taxes imposed on Southern attributable to any net taxable income recognized by Mobile Energy or Holdings which exceed Southern's excess loss account balance with respect to its stock investment in Holdings. This compensation obligation is limited to the tax owed on income equal to the amount of the excess loss account prior to it being triggered. The maximum Southern obligation concerning the excess loss account can be estimated, recognizing that the balance fluctuates periodically, depending upon, *inter alia*, the results of operations of Mobile Energy and Holdings. As of December 31, 2001 the excess loss account approximated $82.8 million. The federal statutory corporate income tax rate is 35%; therefore, under these circumstances, Applicants state that Southern's maximum potential exposure could approximate $29 million.

C. Treatment of Claims Under the Third Plan

The bondholders under the Third Plan will receive shares in reorganized Holdings (''New Common Stock'').

1. Unsecured Creditors; Others

Under the Third Plan, the claims of the general unsecured creditors and the claims of all other creditors, except Southern, Mirant, Mirant Services and the bondholders, will be paid in full. The claims of unsecured creditors are approximately $431,000 without consideration of proof of claims (some of which claims have not been quantified by the claimants) from the mill owners against the Debtors. Debtors are contesting the mill owners' proof of claims.

2. First Mortgage Bonds

Mobile Energy issued the first mortgage bonds on August 1, 1995, in the principal amount of $255,210,000 due January 1, 2017 and bearing annual interest at 8.665%. Each holder of a First Mortgage Bondholder Claim shall receive in complete settlement, satisfaction and discharge of their First Mortgage Bondholder Claims, a *pro rata* share of 72.594% of the New Common Stock of Holdings.

3. Tax Exempt Bonds

In December 1983, the IDB issued tax-exempt bonds (''1983 Tax-Exempt Bonds'') to finance the construction of the No. 7 Power Boiler and certain auxiliary systems. In December 1984 (''1984 Tax-Exempt Bonds''), the IDB issued tax-exempt bonds to refund the 1983 Tax-Exempt Bonds.

Refunding of the 1984 Tax-Exempt Bonds occurred in 1995 by means of tax-exempt bonds in the original principal amount of $85,000,000 scheduled to mature January 1, 2020 (''Tax-Exempt Bonds''). Under the Third Plan, each holder of a Tax-Exempt Bondholder Claim shall receive in complete settlement, satisfaction and discharge of their Tax-Exempt Bondholder Claims, (1) a pro rata share of 27.406% of the New Common Stock of Holdings, and (2) these holders shall retain a pro rata share of $1 million of their outstanding Tax-Exempt Bonds.

4. Southern's, Mirant's and Mirant Services' Claims

Under the Third Plan, Southern, Mirant and Mirant Services will receive the treatment provided in the Cogeneration Development Agreement, as amended, in full satisfaction of their claims. Generally, Southern's claims receive one of two different types of treatment in the Third Plan. The

[13] Mobile Energy previously filed an application with the FERC seeking certification as a QF as of the effective date of the First Plan; however, the configuration presumed in the original application has been superceded by the configuration that serves as the basis for the Third Plan. Applicants state an appropriate application will be made to seek qualification of assets of reorganized Mobile Energy that satisfy pertinent regulatory tests as a QF consistent with the business plan that forms the basis of the Third Plan.

estimated recovery for Southern's pre-petition claims is approximately 0.3%.[14] Southern's post-petition claims will receive 100% payment under the Third Plan.

III. Post Reorganization Ownership Structure

On the effective date of the Third Plan, Southern's interest in Holdings shall be cancelled and extinguished. As a consequence, Southern's pre-petition shares in Holdings would no longer have any claim to voting rights, dividends or in fact any rights with respect to Holdings. Neither Southern nor any of its affiliates would hold any interest of any kind in either Holdings or Mobile Energy. The existing bondholders will hold the New Common Stock, which will constitute the entire equity interest in the reorganized Holdings. Holdings will continue to own 100% of the equity ownership of Mobile Energy.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22768 Filed 9–6–02; 8:45 am]

BILLING CODE 8010–01–P

[14] As a reflection of that level of recovery, Southern recorded an expense of approximately $69 million in the third quarter of 1999 to write down its equity investment in Holdings to zero. An additional expense of approximately $10 million was recorded in the third quarter of 2000 to reflect additional liabilities under the Cogeneration Development Agreement, as amended by Amendment No. 1. Applicants state no further material impact on Southern's consolidated capitalization is expected as a result of the implementation of the Third Plan.

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration on the Boston Stock Exchange; (Stratus Services Group, Inc., Common Stock, $.01 par value) File No. 1–15789

September 3, 2002.

Stratus Services Group, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the Boston Stock Exchange (''BSE'').

The Issuer stated in its application that it has complied with all applicable laws in effect in the State of Delaware, in which it is incorporated, and with the BSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

In making the decision to withdraw the Security from listing on the Exchange, the Board of Directors of the Issuer determined that the continuing costs of maintaining the Security's listing on the BSE outweighed the benefits of listing. The Issuer represents that the Security is quoted on the OTC Bulletin Board. The Issuer's application relates solely to the Security's withdrawal from listing on the BSE and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4] Any interested person may, on or before September 24, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–22767 Filed 9–6–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25724]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

August 30, 2002.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August, 2002. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 24, 2002, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

CDC Kobrick Investment Trust [File No. 811–8435]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 16, 2001, each series of applicant transferred its assets to a corresponding series of CDC NVEST Funds Trust I, based on net asset value. Expenses of $632,656 incurred in connection with the reorganization were paid by Kobrick Funds LLC and CDC IXIS Asset Management North America, L.P., applicant's investment advisers.

Filing Dates: The application was filed on July 25, 2002, and amended on August 20, 2002.

Applicant's Address: CDC IXIS Asset Management Services, Inc., 399 Boylston St., Boston, MA 02116.

Merrill Lynch Premier Growth Fund, Inc. [File No. 811–9653]

Master Premier Growth Trust [File No. 811–9733]

Summary: Applicants, a feeder fund and a master fund, respectively, in a master-feeder structure, seek an order declaring that each has ceased to be an investment company. On May 20, 2002, applicants transferred their assets to Merrill Lynch Large Cap Growth Fund, a series of Merrill Lynch Large Cap Series Funds, Inc., based on net asset value. Expenses of $235,933 incurred in connection with the reorganization will be paid by the surviving fund.

Filing Date: The applications were filed on August 7, 2002.

Applicants' Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Merrill Lynch Mid Cap Growth Fund, Inc. [File No. 811–10025]

Master Mid Cap Growth Trust [File No. 811–10125]

Summary: Applicants, a feeder fund and a master fund, respectively, in a master-feeder structure, seek an order declaring that each has ceased to be an investment company. On May 20, 2002, applicants transferred their assets to Merrill Lynch Large Cap Growth Fund, a series of Merrill Lynch Large Cap Series Funds, Inc., based on net asset value. Expenses of $99,206 incurred in connection with the reorganization will be paid by the surviving fund.

Filing Date: The applications were filed on August 7, 2002.

Applicants' Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Centennial Capital Appreciation Fund, Inc. [File No. 811–3545]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 15, 1986, applicant transferred its assets to Oppenheimer Variable Accounts Fund, based on net asset value. Expenses of less than $7,300 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on September 7, 2001, and amended on August 9, 2002.

Applicant's Address: Centennial Asset Management Corporation, 6803 S. Tucson Way, Englewood, CO 80112.

MuniYield Sunshine Fund, Inc. (Formerly MuniYield California Insured Fund, Inc.) [File No. 811–6645]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On February 4, 2002, applicant transferred its assets to MuniYield California Insured Fund, Inc. (formerly MuniYield California Insured Fund II, Inc.) based on net asset value. Applicant's shareholders who held auction market preferred stock (''AMPS'') received the equivalent number of a newly created series of AMPS of the acquiring fund. Expenses of $257,483 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on August 2, 2002.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Franklin Capital Corporation [File No. 811–5103]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company, as of November 18, 1997, the date applicant elected to be regulated as a business development company.

Filing Date: The application was filed on August 2, 2002.

Applicant's Address: 450 Park Ave., 10th Floor, New York, NY 10022.

AH&H Partners Fund Limited Partnership [File No. 811–7579]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Between January 18, 2002 and March 31, 2002, applicant made liquidating distributions to its limited partners, based on net asset value. Applicant has 59 remaining limited partners. Applicant's remaining assets consist of illiquid securities which will be liquidated and the proceeds distributed to the partners. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on March 8, 2002, and amended on June 18, 2002, August 1, 2002 and August 2, 2002.

Applicant's Address: Adams, Harkness & Hill, Inc., 60 State St., Boston, MA 02109.

Gintel ERISA Fund [File No. 811–3279]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 30, 1996, applicant transferred its assets to Gintel Fund, based on net asset value. Expenses of $113,125 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Dates: The application was filed on June 6, 2002, and amended on August 1, 2002.

Applicant's Address: 6 Greenwich Office Park, Greenwich, CT 06831.

The Aronhalt Trust [File No. 811–10483]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 23, 2002 and June 25, 2002, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of approximately $5,000 incurred in connection with the liquidation were paid by Aronhalt Capital Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on July 17, 2002.

Applicant's Address: 13 Eavenson Way, Glen Mills, PA 19342.

Independence One Mutual Funds [File No. 811–5752]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By June 17, 2002, each of applicant's portfolios had transferred its assets to a corresponding portfolio of ABN AMRO Funds or Money Market Obligations Trust, based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Date: The application was filed on July 16, 2002.

Applicant's Address: 5800 Corporate Dr., Pittsburgh, PA 15237–7001.

Merrill Lynch Short-Term Global Income Fund, Inc. [File No. 811–6089]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 17, 2002, applicant transferred its assets to Merrill Lynch Low Duration Fund, a series of Merrill Lynch Investment Managers Funds, Inc., based on net asset value. Expenses of $208,188 incurred in connection with the reorganization will be paid by the surviving fund.

Filing Date: The application was filed on July 19, 2002.

Applicant's Address: Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

UAM Funds, Inc. II [File No. 811–8605]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 24, 2002, each portfolio of applicant transferred its assets to a corresponding portfolio of The Advisors' Inner Circle Fund, based on net asset value. Expenses of $101,170 incurred in connection with the reorganization were paid by Old Mutual (US) Holdings Inc., parent of applicant's investment adviser.

Filing Date: The application was filed on July 26, 2002.

Applicant's Address: One Freedom Valley Dr., Oaks, PA 19456.

UAM Funds, Inc. [File No. 811–5683]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 24, 2002, fifteen of applicant's sixteen portfolios transferred their assets to corresponding portfolios of The Advisors' Inner Circle Fund, based on net asset value. On June 25, 2002, applicant's remaining portfolio, Dwight Limited Maturity Bond Portfolio, made a liquidating distribution to its shareholders, based on net asset value. Expenses of $457,873

incurred in connection with the reorganization and liquidation were paid by Old Mutual (US) Holdings Inc., parent of applicant's investment adviser.

Filing Date: The application was filed on July 26, 2002.

Applicant's Address: One Freedom Valley Dr., Oaks, PA 19456.

Putnam Preferred Income Fund [File No. 811–3873]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 17, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant has retained assets in the amount of $44,250 to pay outstanding liabilities. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on May 31, 2002, and amended on July 25, 2002.

Applicant's Address: One Post Office Sq., Boston, MA 02109.

Friends Ivory Funds [File No. 811–9601]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 29, 2002, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $5,000 incurred in connection with the liquidation were paid by Friends Ivory Social Awareness Fund and Friends Ivory European Social Awareness Fund.

Filing Dates: The application was filed on July 3, 2002, and amended on July 26, 2002.

Applicant's Address: 1209 Orange St., Wilmington, DE 19801.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22845 Filed 9–6–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commissions will hold the following meeting during the week of September 9, 2002: A Closed Meeting will be held on Tuesday, September 10, 2002, at 10 a.m.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissions, the Secretary of 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 10, 2002, will be: Litigation matter; 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: September 4, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22887 Filed 9–4–02; 4:41 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46440; File No. SR–MSRB–2002–09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Arbitration

August 30, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] 15 U.S.C. 78s(b)(1),[2] notice is hereby given that on August 19, 2002, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–2002–09). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change relating to arbitration. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rule G–35. Arbitration

[Every broker, dealer and municipal securities shall be subject to the Arbitration Code set forth herein.

Arbitration Code]

Section 1 through Section 37. Deleted.

[Section 38.] Arbitration Involving Bank Dealers.

As of January 1, 1998, every bank dealer (as defined in rule D–8) shall be subject to the Code of Arbitration Procedure of the National Association of Securities Dealers, Inc. (''NASD'') for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. For purposes of this rule, each bank dealer shall be subject to, and shall abide by, the NASD's Code of Arbitration Procedure, *including any amendments thereto*, as if the bank dealer were a ''member'' of the NASD.

Rule A–16. Arbitration Fees and Deposits

Rescinded

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The MSRB 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

(a) In 1997, the MSRB amended Rule G–35, on arbitration, to provide that it would not accept any new arbitration claims filed on or after January 1, 1998

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(the ''1997 amendments'').[3] The MSRB noted that any customer or securities dealer with a claim, dispute or controversy against a broker, dealer or municipal securities dealer (''dealer'') involving its municipal securities activities may submit that claim to the arbitration forum of any self-regulatory organization (''SRO'') of which the dealer is a member, including the National Association of Securities Dealers, Inc. (''NASD''). Bank dealers, however, are unique in that they are subject to the MSRB's rules but are not members of any other SRO. Thus, it was necessary to provide an alternative arbitration forum for claims involving the municipal securities activities of bank dealers. The 1997 amendments accomplished this by providing that as of January 1, 1998 every bank dealer, as defined in Rule D–8,[4] shall be subject to the NASD's Code of Arbitration Procedure (the ''NASD's Code'') for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. The 1997 amendments further required that bank dealers abide by the NASD's Code as if they were ''members'' of the NASD for purposes of arbitration. However, the enforcement mechanism for bank dealers was not altered by the amendments; the bank regulatory agencies continue to be responsible for the inspection and enforcement of bank dealers' municipal securities activities, including arbitration.[5]

At the time of the 1997 amendments, the MSRB stated that it would ''continue to operate its program in order to administer its current, open cases and any new claims received prior to January 1, 1998, but will discontinue administering its arbitration program when all such cases have been closed.''[6] The MSRB further stated that, at such time, it would submit a filing to the Commission to delete Sections 1 through 37 of Rule G–35, and rescind Rule A–16, on arbitration fees and deposits.[7] On May 14, 2002, the MSRB transferred its final, open arbitration case to the NASD. There are no further arbitration cases pending before the MSRB. Accordingly, the MSRB is submitting the proposed rule change to delete Sections 1 through 37 of Rule G–35, on arbitration, and to rescind Rule A–16, on arbitration fees and deposits. The proposed rule change also incorporates by reference into Rule G–35 changes to the NASD's Code.[8] The MSRB notes that any customer or securities dealer with a claim, dispute or controversy against a bank dealer involving its municipal securities activities may continue to submit that claim to the NASD's arbitration program.

(b) The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) and (D) of the Act, which provide that the MSRB's rules shall:

> be designed * * *, in general, to protect investors and the public interest * * * [and] if the Board deems appropriate, provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities * * *.

As noted in the 1997 amendments, the MSRB deems it no longer appropriate to administer an arbitration program. All non-bank dealers engaged in municipal securities activities are members of the NASD, and the NASD's arbitration program is available to those dealers and their customers for any claim, dispute or controversy arising out of, or in connection with, the municipal securities activities of such dealers. The MSRB believes that the proposed rule change provides for the protection of investors and the public interest including those investors who wish to pursue arbitration claims against bank dealers in connection with their municipal securities activities by ensuring that there is an arbitration forum available (*i.e.*, the NASD arbitration program) for such claims.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would continue to subject bank dealers to the NASD's Code of Arbitration Procedure in connection with their municipal securities activities. Non-bank dealers already are subject to the NASD's Code by virtue of being NASD members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 the 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 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 submissions, 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 the filing will also be available for inspection and copying at the Board's offices. All submissions should refer to File No. SR–MSRB–2002–09 and should be submitted by September 30, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated Authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22770 Filed 9–6–02; 8:45 am]

BILLING CODE 8010–01–P

[3] File No. SR–MSRB–97–04, approved in Release No. 34–39378 (Dec. 1, 1997).

[4] Rule D–8 defines ''bank dealer'' to mean a municipal securities dealer which is a bank or a separately identifiable department or division of a bank as defined in Rule G–1.

[5] Thus, for example, a bank dealer's refusal to submit to arbitration pursuant to the NASD's Code, or a bank dealer's failure to pay an arbitration award rendered pursuant to that Code, would constitute a violation of MSRB Rule G–35 since it is this rule that subjects bank dealers to the NASD's Code.

[6] File No. SR–MSRB–97–04 at page 2.

[7] Id. at page 3.

[8] In April 2002, at the request of the SEC's Division of Market Regulation, the MSRB requested that, pursuant to Section 36 of the Act and Rule 0–12 thereunder, the SEC grant an exemption from the requirements of Section 19(b) of the Act and Rule 19b–4 thereunder to allow the MSRB to incorporate by reference into Rule G–35 any changes to the NASD's Code without requiring that the MSRB submit a separate filing for each such change. *See* letter from Diane G. Klinke, General Counsel, MSRB, to Jonathan G. Katz, Secretary, SEC, dated April 4, 2002.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46444; File No. SR–NASD–2002–108]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Business Continuity Plans and Emergency Contact Information

August 30, 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 7, 2002, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing a rule change to require member firms to create and maintain business continuity plans and supply NASD with certain information to be used in the event of future significant business disruptions. Below is the text of the proposed rule change. Proposed new language is in italics.

Rule 3500. EMERGENCY PREPAREDNESS

Rule 3510. Business Continuity Plans

(a) Each member must create and maintain a written business continuity plan identifying procedures to be followed in the event of an emergency or significant business disruption. The business continuity plan must be made available promptly upon request to NASD staff.

(b) Each member must conduct an annual review of its business continuity plan to determine whether any modifications are necessary in light of changes to the member's operations, structure, business or location.

(c) The requirements of a business continuity plan are flexible and may be tailored to the size and needs of a member. Each plan, however, must at a minimum, address:

(1) Data back-up and recovery (hard copy and electronic);

(2) All mission critical systems;

(3) Financial and operational assessments;

(4) Alternate communications between customers and the member;

(5) Alternate communications between the member and its employees;

(6) Business constituent, bank and counter-party impact;

(7) Regulatory reporting; and

(8) Communications with regulators.

(d) For purposes of this rule, the following terms shall have the meanings specified below:

(1) ''Mission critical system'' means any system that is necessary, depending on the nature of a member's business, to ensure prompt and accurate processing of securities transactions, including, but not limited to, order taking, order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts and the delivery of funds and securities.

(2) ''Financial and operational assessment'' means a set of written procedures that allows a member to identify changes in its operational, financial, and credit risk exposures.

Rule 3520. Emergency Contact Information

(a) Each member shall report to NASD, via such electronic or other means as NASD may require, prescribed emergency contact information for the member. The emergency contact information for the member includes designation of two emergency contact persons. Each emergency contact person shall be a member of senior management and a registered principal of the member.

(b) Each member must update its emergency contact information, via such electronic or other means as NASD may require, in the event of any material change, but at a minimum must review the information contained therein twice a year to ensure its accuracy.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD 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 help to ensure that NASD members will be able to continue their business in the event of future significant business disruptions. In the wake of the events of September 11, 2001, the securities markets and industry showed an impressive ability to recover and continue their business. Given the events of this period, NASD examined the industry's recovery capability in greater detail to determine whether any regulatory action was needed to assure swift recovery in the event of any future significant business disruptions. Based upon these findings, NASD is proposing a rule change that will require members to create and maintain business continuity plans and supply NASD with emergency contact information. NASD believes that this proposed rule change is essential to investor protection and market integrity.

NASD Survey Initiative

To fully understand the ability of members to respond to significant business disruptions, such as those resulting from the tragedy of September 11th, NASD surveyed 150 randomly selected member firms and 120 of the largest member firms. The 150 firms chosen to participate in the survey represent a statistically random sample of the entire NASD membership (approximately 5,600 NASD members) proportionately separated into the three categories of introducing, clearing/self-clearing, and specialty products firms. In addition, NASD selected 120 of the largest member firms to survey based on the number of registered persons associated with the firm. These firms collectively represent 70 percent of the registered representative population. The survey questions sent to the 120 large firms were identical to those sent to the 150 randomly selected firms. The results received from the survey sent to the larger firms are distinct from the random sample results and do not overlap.

As further detailed below, the survey revealed many encouraging results. At

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the New York Stock Exchange, Inc. (''NYSE'') has proposed a substantially similar business continuity plan rule (File No. SR–NYSE–2002–35). The Commission intends to notice concurrently both the NASD proposal and the NYSE proposal. The Commission further notes that, while the NASD rule would potentially apply to dual NASD and NYSE members, the similarity of the NASD and NYSE proposed rules should prevent conflicting compliance obligations on the part of such dual members.

the same time, the survey showed that a significant number of the randomly selected NASD member firms do not have business continuity plans in place. In addition, a significant number of smaller and mid-sized firms do not store back-up data and systems in a geographically separate location from their primary systems and records. Approximately two-thirds of the randomly selected firms and almost all of the larger firms can recover data from a remote site. Further, less than half of the randomly selected firms and three-fourths of the larger firms have back-up facilities in place that have the capacity to handle the same volume of trading as the primary facility. Nearly all member firms perform daily or weekly back-up of records.

Not surprisingly, the maintenance of trading and investor records by a clearing firm for an introducing firm is common. Financial records, however, are less likely to be maintained by a correspondent's clearing firm. Although clearing firms do maintain certain records for introducing firms, over one-fourth of the introducing firms reported that there are significant records that are not kept at their clearing firm. This was confirmed by clearing firms. The survey results showed that approximately 85 percent of the larger firms have back-up systems to accommodate investor communications between the firm and its customers. In comparison, less than half of the randomly selected firms maintain such systems. Almost three-fourths of the larger firms and less than one-fourth of the randomly selected firms maintain Internet Web sites that allow for customer transactions and emergency communications with investors.

Importantly, the survey also focused on the capability of firms following the September 11th tragedy to ensure that customers had access to their accounts. Very few firms reported that their customers were unable to execute securities transactions in their accounts when the markets became operational following the September 11th tragedy.

The survey examined the ability of NASD members to communicate with key staff during a significant business disruption. Virtually all of the randomly selected firms and the larger firms maintain a readily available list of contact information for the purpose of locating and communicating with key staff during a significant business disruption. In addition, approximately three-fourths of the randomly selected firms and almost all of the larger firms maintain a readily available list of contact information for clearance and settlement organizations, banks, counter-parties, key business relationships, and regulators.

Finally, the survey questioned whether it would be helpful for NASD to serve as a central repository for firms' business continuity plans and emergency contact numbers for key organizations (*e.g.*, Securities and Exchange Commission, Depository Trust & Clearing Corporation, National Securities Clearing Corporation, and Federal Reserve Bank). A substantial number of firms responded that a repository service would be helpful.

NASD Proposed Rules

Rule 3510. Business Continuity Plan Requirement

Based upon the survey findings, discussions with the SEC and the United States General Accounting Office, the experiences of September 11th, and comment letters received in response to *Notice to Members 02–23* (April 2002) (''NtM 02–23''), NASD believes that member firms should be required to create and maintain business continuity plans. The proposed rule change recognizes that business continuity plans should reflect the particular operations and activities of a member. Given the diverse nature of the NASD membership, the proposed rule change allows member firms to tailor plans to suit their size, business, and structure. The proposed rule change, however, requires that a member's business continuity plan must, at a minimum, address:

- data back-up and recovery (hard copy and electronic);
- mission critical systems;
- financial and operational assessments;
- alternate communications between customers and the member;
- alternate communications between the member and its employees;
- business constituent, bank and counter-party impact;
- regulatory reporting; and
- communications with regulators.

The proposed rule change defines ''mission critical system'' as any system that is necessary, depending on the nature of a member's business, to ensure prompt and accurate processing of securities transactions, including, but not limited to, order taking, entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts, and the delivery of funds and securities. This definition is materially consistent with the SEC's definition of ''mission critical system'' in its Year 2000 Rule.[4]

Under the proposed rule change, plans must be made available to NASD staff for inspection during routine examinations and promptly upon request by NASD staff. The proposed rule change requires that each member conduct an annual review of its business continuity plan to determine whether any modifications are necessary in light of changes to the member's operations, structure, business, or location. In addition, modifications may be necessary due to significant changes in technology that affect a member's operations or business.

NASD also will offer a voluntary repository service for members' business continuity plans. In the event that a member is unable to gain access to its business continuity plan, the member using the repository service could contact NASD staff to obtain a copy of its plan. Similarly, if NASD could not contact a particular firm due to a disaster, it would have a greater opportunity to protect investors and the marketplace, and address concerns, if it had the firm's plan on file. A reasonable, but yet undetermined, fee will be charged to those that opt to take advantage of this service.

Rule 3520. Emergency Contact Information

NASD's experience in the aftermath of September 11th confirms that NASD needs a fully reliable means of contacting firms in the event of an emergency. The proposed rule change would require NASD members to file and keep current with the NASD certain key information that would be of particular importance during significant business disruptions, including:

- emergency contact information for key staff;
- identification of two designated contact persons;
- location of books and records (including back-up locations);
- clearance and settlement information;
- identification of key banking relationships; and
- alternative communication plans for investors.

To lessen any burden imposed by the proposed rule change, NASD intends initially to collect the emergency contact information through the Member Firm Contact Questionnaire on the NASD Web-Site. Pursuant to Article IV, Section 3 of the NASD By-Laws, NASD members are required to appoint

[4] *See* 17 CFR 240.15b7–3T(g)(1).

an executive representative to represent, vote, and act for the member in nearly all of the affairs of NASD. An NASD member must appoint an executive representative and update contact information for the executive representative via the Member Firm Contact Questionnaire on the NASD Web site. At this point in time, NASD believes that amending the questionnaire, rather than creating a new form or pursuing amendments to Form U–4 or Form BD, minimizes any regulatory burden placed on NASD members and limits the costs associated with supplying NASD with emergency contact information. Finally, the proposed rule change requires NASD members to update their emergency contact information in the event of any material change, and at a minimum to review the information twice a year, to ensure its accuracy.

Finally, NASD anticipates issuing additional guidance, including a template, to assist firms in satisfying obligations under the proposed rule change.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will help to ensure that members are prepared for significant business disruptions, and that it is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change would 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

The proposed rule change was published for comment in NtM 02–23. Seventeen comment letters were received in response to the *Notice*. Of the 17 comment letters received, 14 were in favor of the proposed rule change and 3 were opposed. The specific concerns raised by commenters are addressed below.

Categories of a Member Firm's Business Continuity Plan

A few commenters to NtM 02–23 believed that the enumerated categories for a member's business continuity plan were over-inclusive. NASD, however, believes that the categories strike an appropriate balance between ensuring that a member's plan adequately addresses all key areas of its business and allowing a member firm to tailor its plan to its specific size, business, and structure. Further, each member's business continuity plan will only be required to address the eight listed categories stated in proposed NASD Rule 3510(c)(1–8) to the extent applicable and necessary. For example, if a member does not maintain customer accounts at its firm, the member's plan should indicate this fact in its plan.

One commenter to NtM 02–23 stated that NASD should review individual plans to ensure adequacy. In contrast, another commenter indicated that NASD should not review individual plans for adequacy. NASD will limit its review of a member firm's business continuity plan to whether the plan addresses the eight listed categories stated in proposed NASD Rule 3510(c)(1–8). The nature of the review will ensure that NASD is not micro-managing the business operations of each individual firm while ensuring that each plan addresses certain basic areas to protect the investing public and integrity of the markets.

Definition of Mission Critical System

One commenter to NtM 02–23 believed that the definition of ''mission critical system'' should include infrastructure. While the term infrastructure is not expressly included in the definition of ''mission critical system,'' NASD believes that infrastructure is fully addressed through the definition of ''mission critical system'' because the rule's purpose is to help to ensure that a member firm will have the ability to continue business during a significant business disruption. As a result, any damage to any infrastructure that affects a member's ability to conduct business because of its effect on a mission critical system must be addressed in any plan.

Definition of Financial and Operational Assessments

Based upon comment letters received in response to NtM 02–23, NASD has amended the definition of ''financial and operational assessment.'' In NtM 02–23, NASD defined ''financial and operational assessment'' as ''a procedure created by a firm to test and determine the firm's capability to conduct business.'' The new definition states that financial and operational assessment means ''a set of written procedures that allows a member firm to identify changes in its operational, financial, and credit risk exposures.'' Operational risk focuses on the firm's ability to maintain communications with customers and to retrieve key activity records through its ''mission critical systems.'' Financial risk relates to the firm's ability to continue to generate revenue, and obtain new or retain adequate financing and sufficient equity. In addition to the possibility of experiencing operating losses, the value of the firm's investments may deteriorate due to the lack of liquidity in the broader market, which would also hinder the ability of the firm's counter-parties to fulfill their obligations. A firm would be expected to periodically assess the changes in these exposures, and quickly make such an assessment in connection with a significant business disruption. The procedures should be written and implemented to reflect the interrelationship among these risks. NASD believes that the new definition and guidance contain the appropriate level of specificity to assist members in creating their business continuity plans.

Proposed Rule Change's Applicability to Subsidiaries

One comment letter raised a concern over whether a parent corporation would need to create a business continuity plan for each subsidiary member firm or whether the parent corporation could institute a corporate-wide business continuity plan. NASD believes that a subsidiary member firm may satisfy its obligations under the proposed rule change by participation in a corporate-wide business continuity plan of a parent corporation that addresses its subsidiary member firms. As a result, a subsidiary member firm may rely on the corporate-wide business continuity plan of its parent corporation regardless of whether the parent corporation is a member or non-member. The parent corporation's business continuity plan, however, must comply fully with proposed NASD Rule 3510 and address all requirements under the proposed rule change. In addition, the parent and subsidiary corporations must both comply with NASD rules on record-keeping and supervision for purposes of proposed NASD Rule 3510. Finally, the parent corporation must grant NASD access to its business continuity plan upon request.

[5] 15 U.S.C. 78o–3(b)(6).

Updating Business Continuity Plans

The proposed rule change requires that each member conduct an annual review of its business continuity plan to determine whether any modifications are necessary in light of changes to the member's operations, structure, business, or location. A comment letter received from the Securities Industry Association (''SIA'') stated that the duty to update should only be triggered by changes in the nature of a member's business and other material factors. In addition, another commenter suggested that plans might need to be updated more frequently based on changes in technology. NASD believes that it is good business practice for members to update their business continuity plans each time there is a material change but that a regulatory requirement for this would be unduly burdensome. Accordingly, the proposed rule change requires members to annually update their business continuity plans.

SIA also pointed out that the duty to update a business continuity plan may implicate NASD rules on record keeping and supervision. Members must document and keep records of the annual review or any modification to their business continuity plan in accordance with NASD record keeping requirements. In addition, when updating plans, the member must conduct the review in accordance with NASD rules on supervision.

Repository Service

Comments received in response to NtM 02–23 indicated substantial support for a voluntary repository filing service for member's business continuity plans. Ameritrade, Inc. commented that it was concerned about the confidentiality of proprietary information under this service. NASD intends that all proprietary information contained in a member firm's business continuity plan and held by NASD through its repository service will remain confidential unless the information is otherwise publicly available or NASD is required to disclose the information by subpoena or otherwise by law. In addition, since NASD is subject to oversight by the SEC, it will provide the SEC with access to business continuity plans held by NASD.

Burden on Small Firms

Three commenters were concerned about the burden that the proposed rule change would have on small firms. Given the flexibility of the rule and the recognition given to the diverse nature of the NASD membership, NASD believes that small firms will be able to comply with the rule through reasonable efforts and cost. Importantly, the rule should not require firms to hire outside consultants to create business continuity plans. In addition, NASD anticipates issuing future guidance, including a template, to assist member firms, particularly small firms, in creating their own business continuity plans.

Emergency Contact Information

Originally, the proposed rule only required a member to designate one emergency contact person. In light of comments received in response to NtM 02–23, NASD has changed the requirements under the proposed rule to include two emergency contact persons. NASD believes that designating two persons will increase the likelihood that, in the event of a significant business disruption, NASD staff will be able to contact the member firm.

In addition, SIA commented that NASD should proactively query firms for contact information. NASD, however, believes that this duty should lie with the member firm because the member will be best able to identify when a material change has taken place. Further, SIA commented that NASD should provide contacts for member firm problems. NASD believes that it has already established avenues for member firms to contact NASD in the event of a significant business disruption. For example, the NASD Web site provides phone numbers for members to call with any questions.

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, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–108 and should be submitted by September 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22772 Filed 9–6–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46446; File No. SR–NASD–2002–117]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Extension of the Fee Pilot for the National (Nasdaq) Quotation Data Service

August 30, 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 30, 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 (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend a one-year pilot program under NASD Rule 7010(h), which reduced from $50 to $10 the monthly fee that non-professional users pay to receive National Quotation Data Service (''NQDS'').[3] The purpose of this filing is to extend the one-year fee reduction pilot program for non-professional users of NQDS. Accordingly, there is no new proposed rule language. Pursuant to Rule 19b–4(f) under the Act, Nasdaq has designated this proposal as non-controversial and requests that the Commission waive the 30-day pre-operative requirement contained in Rule 19b–4(f)(6)(iii).[4] If the Commission grants the waiver, Nasdaq will implement this rule change immediately.

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 the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to extend a one-year fee reduction pilot program that was established under NASD Rule 7010(h) on August 31, 2000 and extended on September 4, 2001, that reduced from $50 to $10 the monthly fee that non-professional users pay to receive NQDS.[5]

NQDS delivers market maker quotations, Nasdaq Level 1 service (including calculation and display of the inside market), and last sale information that is dynamically updated on a real-time basis. NQDS data is used not only by firms, associated persons, and other market professionals, but also by non-professionals who receive the service through authorized vendors, including, for example, on-line brokerage firms. Prior to August 31, 2000, NQDS data was available through authorized vendors at a monthly rate of $50 for professionals and non-professionals users alike. In August 2000, the NASD through Nasdaq filed a rule change to reduce from $50 to $10 the monthly fee that non-professional users pay to receive NQDS data. The Commission approved the pilot on August 22, 2000, and the fee reduction commenced on August 31, 2000 on a one-year pilot basis. On September 4, 2001, Nasdaq filed a proposed rule change to extend the one-year pilot for another one-year period through August 31, 2002.

Nasdaq has consistently supported broad, effective dissemination of market information to public investors. Thus, Nasdaq is proposing to extend the one-year fee-reduction pilot for another year. The pilot would cover twelve months, commencing on September 1, 2002 and expiring on August 31, 2003. Nasdaq notes that the existing pilot reduced by 80% the fees that non-professionals paid for NQDS data prior to August 31, 2000. Continuing the reduction of NQDS for non-professional users demonstrates Nasdaq's continued commitment to individual investors and responds to the dramatic increase in the demand for real-time market data by non-professional market participants. In addition, NASD member firms often supply real-time market data to their customers through automated means. Thus, NASD member firms' customers will benefit from the continued fee reduction.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of sections 15A(b)(5) and 15A(b)(6) of the Act[6] in that the proposal is designed to provide for the equitable allocation of reasonable fees among members and other persons using any facility or system which the Association operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, Nasdaq believes that the fee reduction enhances the public's access to market data that is relevant to investors when they make financial decisions. Nasdaq further believes that the public's enhanced access to this data may encourage increased public participation in the securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date should prevent the lapsing of a pilot that provides non-professional users with a valuable source of market data at a significantly discounted rate. Among other benefits, the Commission believes that providing non-professional users

[3] *See* Securities Exchange Act Release Nos. 43190 (August 22, 2000), 65 FR 52460 (August 29, 2000); 44788 (September 13, 2001), 66 FR 48303 (September 19, 2001).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* note 3.

[6] 15 U.S.C. 78o–3(b)(5) and 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] As required under Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii), Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 14, 2002.

[10] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

with such data at a discounted rate should assist individual investors in their analysis of the financial markets. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NASD–2002–117 and should be submitted by September 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22773 Filed 9–6–02; 8:45 am]

BILLING CODE 8010–01–P

[11] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46437; File No. SR–NYSE–2002–42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans through October 30, 2002

August 29, 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 29, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend, until October 30, 2002, the effectiveness of the amendments to sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a ''broadly-based'' stock option plan, which were approved by the Commission on a pilot basis (the ''Pilot'') on June 4, 1999.[3] The Pilot was subsequently amended and extended on March 30, 2001 until September 30, 2001.[4] The Pilot has since been extended until January 11, 2002,[5] March 11, 2002,[6] May 13, 2002,[7] June 30, 2002,[8] and August 31, 2002.[9]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 Exchange has had the Pilot with respect to the definition of a ''broadly-based'' stock option plan since June 4, 1999.[10] On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.[11] Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of ''broadly based'' under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.[12] On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.[13] The Exchange's 2001 Extension Request extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.[14] The Pilot was

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR–NYSE–98–32) (''Original Pilot Approval Order'').

[4] *See* Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR–NYSE–00–32).

[5] *See* Securities Exchange Act Release No. 44886 (September 28, 2001), 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–37) (''2001 Extension Request'').

[6] *See* Securities Exchange Act Release No. 45275 (January 14, 2002), 67 FR 2718 (January 18, 2002) (File No. SR–NYSE–2002–03).

[7] *See* Securities Exchange Act Release No. 45546 (March 12, 2002), 67 FR 10272 (March 18, 2002) (File No. SR–NYSE–2002–14).

[8] *See* Securities Exchange Act Release No. 45918 (May 13, 2002), 67 FR 35174 (May 17, 2002) (File No. SR–NYSE–2002–18).

[9] *See* Securities Exchange Act Release No. 46143 (June 28, 2002), 67 FR 35174 (July 5, 2002) (File No. SR–NYSE–2002–22).

[10] *See* Original Pilot Approval Order note 3 *supra.*

[11] *See* Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR–NYSE–00–32) (''2000 Extension Request'').

[12] *See* Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–04).

[13] *See* note 4 *supra.*

[14] *See* note 5 *supra.* One comment letter was received regarding the extension of the Pilot by the 2001 Extension Request. *See* letter from Sarah A.B. Teslick, Executive Director, Council of Institutional Investors (''CII'') to Jonathan G. Katz, Secretary, Office of the Secretary, Commission, dated October 16, 2001. The CII commented that the 2001 Extension Request should have been released for public comment prior to the Commission approving another extension to the Pilot and that any future proposed extensions should be released for prior public comment, that the Pilot not be extended after January 11, 2002, that the NYSE should be required to submit a dilution standard for approval which should be in place before the 2002 proxy season, and that the Commission act on the proposed disclosure standards for stock option plans. The Commission notes that the disclosure standards were approved by it on December 21, 2001. *See*

again extended several times, most recently until August 31, 2002 for the same reasons.[15]

On June 6, 2002, the Exchange's special Committee on Corporate Accountability and Listing Standards recommended to the Exchange's Board of Directors that shareholders ''be given the opportunity to vote on all equity-compensation plans.''[16] The Exchange's Board of Directors approved the final recommendations of the Committee at its August 2002 Board meeting. The proposed corporate governance standards were filed pursuant to Rule 19b–4 under the Act with the Commission on August 16, 2002.[17] The Exchange requests an extension of the Pilot until October 30, 2002 to provide time for notice, public comment and approval of such rule changes by the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

The Exchange 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

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6)[20] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[21] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[22] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative prior to the end of the last extension in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission waived the five-day pre-notice requirement for this proposed rule change. In addition, for the reasons discussed below, the Commission has also waived the thirty-day operative date requirement for this proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change to extend the Pilot through October 30, 2002, become operative on August 31, 2002. The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

The Commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of ''broadly-based'' stock option plans under the Pilot.[23] The Commission also notes that many commenters were critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the rules prior to the Pilot will go into effect. The proposed rule change merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself.

In addition, the Commission notes that the Exchange has filed a proposed rule change on proposed corporate governance listing standards with the Commission which would, in part, require shareholder approval of all equity compensation plans.[24]

Based on these reasons, the Commission has determined that it is consistent with the protection of investors and the public interest that the proposed rule change to extend the Pilot through October 30, 2002, become operative on August 31, 2002.[25] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the 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 above-mentioned self-regulatory organization. All submissions should refer to the File

Release Nos. 33–8048 and 34–45189 (December 21, 2001), 67 FR 232 (January 2, 2002).

[15] *See* notes 6 through 9 *supra.*

[16] *Report of Corporate Accountability and Listing Standards Committee,* June 6, 2002, p. 17.

[17] *See* File No. SR–NYSE–2002–33.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] *Id.*

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] *See* Original Pilot Approval Order, note 3 *supra.*

[24] *See* note 17 *supra.*

[25] For purposes only of accelerating the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

No. SR–NYSE–2002–42 and should be submitted by September 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22769 Filed 9–6–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46443; File No. SR–NYSE–2002–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Business Continuity and Contingency Planning

August 30, 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 16, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to adopt new NYSE Rule 446, Business Continuity and Contingency. The proposed rule would require members and member organizations to develop, maintain, review, and update business continuity and contingency plans that establish procedures to be followed in the event of an emergency or significant business disruption. The text of the proposed rule change is below. Proposed new language is in italics.

Business Continuity and Contingency Plans

New Rule 446

(a) Members and member organizations must develop and maintain a written business continuity and contingency plan establishing procedures to be followed in the event of an emergency or significant business disruption. Members and member organizations must make such plan available to the Exchange upon request.

(b) Members and member organizations must conduct a yearly review of their business continuity and contingency plan to determine whether any modifications are necessary in light of changes to the member's or member organization's operations, structure, business or location.

(c) The requirements of a business continuity and contingency plan shall be tailored to the size and needs of a member or member organization. Each plan, however, must, at a minimum, address:

(1) Books and records back-up and recovery (hard copy and electronic);

(2) identification of all mission critical systems and back-up for such systems;

(3) financial and operational risk assessments;

(4) alternate communications between customers and the firm;

(5) alternate communications between the firm and its employees;

(6) alternate physical location of employees;

(7) business constituent, bank and counter-party impact;

(8) regulatory reporting; and

(9) communications with regulators.

(d) The term ''mission critical system,'' for purposes of this Rule, means any system that is necessary, depending on the nature of a member's or member organization's business, to ensure prompt and accurate processing of securities transactions, including order taking, entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts and the delivery of funds and securities.

(e) The term ''financial and operational risk assessments,'' for purposes of this Rule, means a set of written procedures that allow members and member organizations to identify changes in their operational, financial, and credit risk exposure.

(f) Members and member organizations must designate a senior officer, as defined in Rule 351(e), to approve the Plan, who shall also be responsible for the required annual review, as well as an Emergency Contact Person(s). Such individuals must be identified to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number). Prompt notification must be given to the Exchange of any change in such designations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 events of September 11, 2001, and its disruptive impact on the manner in which the securities industry operated has re-emphasized the need for greater contingency planning for business continuity.

The Exchange proposes new Rule 446 as set forth above, which will require members and member organizations to develop, maintain, review, and update business continuity and contingency plans that establish procedures to be followed in the event of an emergency or significant business disruption. Members and member organizations will be required to make such plans available to the Exchange upon request. Members and member organizations will also be required to conduct a yearly review of their business continuity and contingency plan to determine whether any modifications are necessary in light of changes to the member's or member organization's operations, structure, business or location.

Plans must, at a minimum, address: books and records back-up and recovery (hard copy and electronic); identification of all mission critical systems and back-up for such systems; financial and operational risk assessments; alternate communications between customers and the firm; alternate communications between the firm and its employees; alternate physical location of employees; business constituent, bank and counter-

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[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the National Association of Securities Dealers, Inc. (''NASD'') has proposed a substantially similar business continuity plan rule (File No. SR–NASD–2002–108). The Commission intends to notice concurrently both the NASD proposal and the NYSE proposal. The Commission further notes that, while the NYSE rule would potentially apply to dual NASD and NYSE members, the similarity of the NASD and NYSE proposed rules should prevent conflicting compliance obligations on the part of such dual members.

party impact; regulatory reporting; and communications with regulators.

The term ''mission critical system,'' as defined in the Rule, means any system that is necessary, depending on the nature of a member's or member organization's business, to ensure prompt and accurate processing of securities transactions, including order taking, entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts and the delivery of funds and securities.

The term ''financial and operational risk assessments,'' for purposes of this Rule, means a set of written procedures that allow members and member organizations to identify changes in their operational, financial, and credit risk exposure.

The proposed rule also requires that members and member organizations designate and notify the Exchange of a senior officer designated to approve and annually review the plans and an Emergency Contact person(s). Members and member organizations would be required to make such plans available to the Exchange upon request.

The Exchange has worked cooperatively with the NASD in the development of this rule and expects that the NASD will file substantially the same rule with the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[4] in general, and section 6(b)(5) of the Act,[5] in particular, which requires, among other things, that the rules of an exchange be designed, among other things, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange 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 Exchange 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, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2002–35 and should be submitted by September 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22771 Filed 9–6–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4119]

Culturally Significant Objects Imported for Exhibition Determinations: ''Painted Prints: The Revelation of Color in Northern Renaissance and Baroque Engravings, Etchings and Woodcuts''

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition; ''Painted Prints: The Revelation of Color in Northern Renaissance and Baroque Engravings, Etchings and Woodcuts,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Baltimore Museum of Art, Baltimore, MD, from on or about October 6, 2002, to on or about January 5, 2003; and the St. Louis Art Museum, St. Louis, MO, from on or about February 14, 2003, to on or about May 18, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 30, 2002.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–22833 Filed 9–6–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–99–6156 (OMCS–99–6156), FMCSA–2000–7006, and FMCSA–2000–7165]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice announces the FMCSA's decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 76 individuals.

DATES: This decision is effective September 21, 2002. Comments from interested persons should be submitted by October 9, 2002.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments as well as view the submissions of other commenters at *http://dms.dot.gov.* Please include the docket numbers that appear in the heading of this document in your submission. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped envelope or postcard or print a copy of the acknowledgement page that appears after you submit comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, contact Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Seventy-six individuals have requested renewal of their exemptions from the vision requirement in 49 CFR 391.41(b)(10) which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' Accordingly, the FMCSA has evaluated the 76 petitions for renewal on their merits and decided to extend each exemption for a renewable 2-year period. The names of the applicants for exemption are listed in Table 1 under the section entitled ''Conclusion.''

On January 3, 2000, the agency published a notice of final disposition announcing its decision to exempt 40 individuals, including 3 of these applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (65 FR 159). The qualifications, experience, and medical condition of each applicant were stated and discussed in detail at 64 FR 54948 (October 8, 1999). Two comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the petitions (65 FR 159). On September 21, 2000, the agency published a notice of final disposition announcing its decision to exempt 56 individuals, including 31 of these applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (65 FR 57230). The qualifications, experience, and medical condition of each applicant were stated and discussed in detail at 65 FR 20245 (April 14, 2000). Three comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the petitions (65 FR 57230). Also on September 21, 2000, the agency published a second notice of final disposition announcing its decision to exempt 60 individuals, including 42 of these applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (65 FR 57234). The qualifications, experience, and medical condition of each applicant were stated and discussed in detail at 65 FR 33406 (May 23, 2000). One comment was received, and its contents were carefully considered by the agency in reaching its final decision to grant the petitions (65 FR 57234). The agency determined that exempting the individuals from 49 CFR 391.41(b)(10) was likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as the vision in each applicant's better eye continued to meet the standard specified in 49 CFR 391.41(b)(10). As a condition of the exemption, therefore, the agency imposed requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are as follows: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 76 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 54948, 65 FR 159, 65 FR 20245, 65 FR 33406, 65 FR 57230, 65 FR 57234), and each has requested timely renewal of the exemption. Each of these 76 applicants has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10), and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption for each renewal applicant.

Discussion of Comments

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the

exemptions without any opportunity for public comment prior to the decision to renew and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). We will not address these points again here, but refer interested parties to that earlier discussion.

Conclusion

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA extends the exemptions from the vision requirement in 49 CFR 391.41(b)(10) granted to the individuals listed in Table 1 below:

TABLE 1.—APPLICANTS FOR EXEMPTION FROM § 391.41(B)(1) VISION REQUIREMENTS

Elijah A. Allen, Jr	James W. Frion	Larry D. Johnson	Wayne R. Sears.
John W. Arnold	Marcellus A. Garland	Marvin L. Kiser, Jr	Lee R. Sidwell
James H. Bailey	Shawn G. Gaston	David R. Lambert	David L. Slack.
Victor F. Brast, Jr	James F. Gereau	James R. Lanier	Philip Smiddy.
John P. Brooks	George J. Ghigliotty	Ronnie L. LeMasters	James C. Smith.
Benny J. Burke	Ronald E. Goad	James S. Lewis	Daniel A. Sohn.
Derric D. Burrell	Esteban G. Gonzalez	Steven G. Luther	James N. Spencer, Jr.
Monty G. Calderon	Harlan L. Gunter	Lewis V. McNeice	Roger R. Strehlow.
Anthony J. Cesternino	Thanh Van Ha	Duane D. Mims	John T. Thomas.
Milton Coleman	Reginald I. Hall	William A. Moore, Jr	Darel E. Thompson.
Adam D. Craig	James O. Hancock	Barry B. Morgan	Ralph A. Thompson.
Eric L. Dawson III	Paul A. Harrison	Leonard J. Morton	Denney V. Traylor.
Roger A. Dennison	Sherman W. Hawk, Jr	Kevin J. O'Donnell	Noel S. Wangerin.
Richard L. Derick	Daniel J. Hillman	Gregory M. Preves	Brian W. Whitmer.
Craig E. Dorrance	Thomas J. Holtmann	James M. Rafferty	Jeffrey D. Wilson.
Joseph A. Dunlap	Gordon W. Howell	Richard O. Rankin	Larry M. Wink.
John C. Edwards, Jr	Roger L. Jacobson	Paul C. Reagle, Sr	Joseph F. Wood.
Calvin J. Eldridge	Robert C. Jeffres	Doyle R. Roundtree	William E. Woodhouse.
Willie P. Estep	Alfred C. Jewell, Jr	Daniel Salinas	Rick A. Young.

The exemption is subject to the following conditions: (1) Each individual must have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) Each individual must provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) Each individual must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Request for Comments

The FMCSA has evaluated the qualifications and driving performance of each of the 76 applicants here and extends their exemptions based on the evidence introduced. The agency will review any comments received concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). While comments of this nature will be entertained at any time, the FMCSA requests that interested parties with information concerning the safety records of these drivers submit comments by October 9, 2002. All comments will be considered and will be available for examination as stated in the **ADDRESSES** section. The FMCSA will also continue to file in the docket relevant information that becomes available.

Issued on: September 9, 2002.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

[FR Doc. 02–22826 Filed 9–6–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2002–12294]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 29 individuals from the vision requirement in 49 CFR 391.41(b)(10).

DATES: September 9, 2002.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, you may contact Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

On July 11, 2002, the FMCSA published notice of its receipt of applications from 30 individuals, and requested comments from the public (67 FR 46016). The 30 individuals petitioned the FMCSA for an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are: Danny Adams, Michael D. Armstrong, Thomas E. Barnhart, William J. Bell, Frank R. Berritto, Robert B. Brewer, Jr., Jack D. Clodfelter, James W. Collins, Douglas W. Cotney, Tommy J. Cross, Jr., Daniel K. Davis III, Eric D. Davis, Gary R. Evans, Shelton L. Harvey, Gary T. Hicks, Walter R. Morris, Barbara C. Pennington, Stephen C. Perdue, Allen V. Pickard, Larry A. Priewe, Gary L. Reveal, Billy L. Riddle, Randolph L. Rosewicz, Robert L. Savage, Kenneth D. Sisk, Kenneth E. Suter, Jr., Patrick D. Talley, Loren R. Walker, Edward C. Williams, and Timothy J. Wilson.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 30 petitions on their merits and made a determination to grant the exemptions to 29 of them. The comment period closed on August 12, 2002. One comment was received, and its contents were carefully considered by the FMCSA in reaching the final decision to grant the petitions.

The FMCSA has not made a decision on the application of Eric D. Davis. Subsequent to the publication of the notice of applications and request for comments, the agency received additional information from its check of his motor vehicle record, and we are evaluating that information. A decision on this petition will be made in the future.

Vision and Driving Experience of the Applicants

The vision requirement provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Beginning in 1992, the Federal Highway Administration (FHWA) has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (*See* Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., ''Visual Requirements and Commercial Drivers,'' October 16, 1998, filed in the docket, FHWA–98–4334.) The panel's conclusion supports the FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 29 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, macular scar, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but nine of the applicants were either born with their vision impairments or have had them since childhood. The nine individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 32 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. The Federal interstate qualification standards, *i.e.,* the FMCSRs, however, require more.

While possessing a valid CDL or non-CDL, these 29 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 40 years. In the past 3 years, two of the drivers have had convictions for traffic violations. One of these convictions was for Speeding, and one was for ''Using the Second Lane of a Three-Lane Highway.'' Three drivers were involved in one accident each, and one driver was involved in two accidents in a CMV, but none of these received a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the July 11, 2002, notice. Since there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published at 67 FR 46016.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting them to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have

been added to the docket. (FHWA–98–3637)

We believe we can properly apply the principle to monocular drivers, because data from the vision waiver program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (*See* 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (*See* Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (*See* Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 29 applicants receiving an exemption, we note that the applicants have had only five accidents and two traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to 29 of the 30 applicants listed in the July Notice.

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 29 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received one comment in this proceeding. The comment was considered and is discussed below.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a recent Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

After considering the comment to the docket and based upon its evaluation of the 29 exemption applications in accordance with *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration*, 95 F.3d 715 (8th Cir. 1996), the FMCSA exempts Danny Adams, Michael D. Armstrong, Thomas E. Barnhart, William J. Bell, Frank R. Berritto, Robert B. Brewer, Jr., Jack D. Clodfelter, James W. Collins, Douglas W. Cotney, Tommy J. Cross, Jr., Daniel K. Davis III, Gary R. Evans, Shelton L. Harvey, Gary T. Hicks, Walter R. Morris, Barbara C. Pennington, Stephen C. Perdue, Allen V. Pickard, Larry A. Priewe, Gary L. Reveal, Billy L. Riddle, Randolph L. Rosewicz, Robert L. Savage, Kenneth D. Sisk, Kenneth E. Suter, Jr., Patrick D. Talley, Loren R. Walker, Edward C. Williams, and Timothy J. Wilson from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye

continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: September 3, 2002.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

[FR Doc. 02–22827 Filed 9–6–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13272]

Defect and Noncompliance Reports, Part 573; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). This document describes a renewal of a collection of information for 49 CFR part 573, Defect and Noncompliance Reports, currently assigned the OMB control number 2127–0004, for which NHTSA intends to seek OMB approval.

Under the Paperwork Reduction Act of 1995 (PRA), before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document.

Pursuant to OMB's regulations (at 5 CFR 1320.8(d)), public comments are invited on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

DATES: Comments must be received on or before November 8, 2002.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and must be submitted to Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. The Docket is open on weekdays from 9:30 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. George Person, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Room 5326, Washington, DC 20590. Mr. Person's telephone number is (202) 366–5210.

SUPPLEMENTARY INFORMATION:

Title: 49 CFR part 573, Defect and Noncompliance Reports.

Type of Request: Renewal.

OMB Clearance Number: 2127–0004.

Requested Expiration Date of Approval: Three years from effective date of final rule.

Summary of Collection of Information: NHTSA's statute at 49 U.S.C. 30112 and 30116 through 30121 requires manufacturers of motor vehicles and motor vehicle equipment to recall and remedy their products that do not comply with applicable Federal motor vehicle safety standards or that contain a defect related to motor vehicle safety. The manufacturer must notify NHTSA, owners, purchasers, and dealers of such defects and noncompliances. Additionally, the manufacturer must furnish NHTSA with a true copy of all notices, bulletins, and other communications to the manufacturer's dealers, owners and purchasers regarding any defect or noncompliance in the manufacturer's vehicle or item of equipment.

To implement this authority, in 1978 NHTSA promulgated 49 CFR part 573, Defect and Noncompliance Reports, (with amendments through 2002). This regulation sets out the following requirements, among others:

(1) Manufacturers are to provide specific information in reports that must be filed with NHTSA within five working days of a decision that a safety-related defect or noncompliance exists;

(2) Manufacturers are to submit quarterly reports to NHTSA on the progress of recall campaigns for six consecutive calendar quarters beginning with the quarter in which the campaign was initiated;

(3) Manufacturers are to furnish copies to NHTSA of notices, bulletins, and other communications to dealers, owners, or purchasers regarding any defect or noncompliance; and

(4) Manufacturers are to retain records of owners or purchasers of their products that have been involved in a recall campaign.

Description of the Need for the Information and Proposed Use of the Information: NHTSA needs this information to ensure that manufacturers are remedying safety-related defects and noncompliances in their products. Additionally, NHTSA makes this information available to the public. If the manufacturers did not provide the information, it would be a violation of law which could subject the manufacturer to a civil penalty and possible injunctive sanctions, and NHTSA's efforts to monitor the effectiveness of recall campaigns, as part of its overall mission of improving public safety on the Nation's highways, would be substantially impaired.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information): All manufacturers of motor vehicles and motor vehicle equipment are required to comply with these requirements whenever they conduct a recall. There have been approximately 500 such reports provided to NHTSA annually in recent years. Although fewer than 250 manufacturers submit such reports in any given year, there are approximately

26,000 manufacturers of vehicles and equipment that could possibly be affected by this requirement. Additionally, all manufacturers must maintain records of the names and addresses of the owners of the products affected by their recalls.

Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information in the NPRM: We estimate that providing a notification letter to NHTSA would require 4 hours, each of the 6 quarterly reports would require 4 hours (for a total of 24 hours), providing copies of the other documents would require 1 hour, and maintenance of the list of owners would require 8 hours. The reporting and recordkeeping burden for each recall is therefore estimated to be 4+24+1+8 or 37 hours. The total annual burden is therefore estimated to be 37 x 500 or 17,500 hours.

Estimate of the Total Annual Costs of the Collection of Information in the NPRM: The total annual cost of this information collection is estimated to be $525,000 assuming an average burdened wage rate of $30 per hour.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 02–22799 Filed 9–6–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 30, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 9, 2002 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0163.

Form Number: ATF F 5210.5.

Type of Review: Revision.

Title: Report—Manufacturer of Tobacco Products or Cigarette Papers and Tubes.

Description: Manufacturers account for their taxable articles on this report. ATF uses this information to ensure that taxes have been properly paid and that Federal laws and regulations are complied with.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 150.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 1,800 hours.

Clearance Officer: Jacqueline White (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–22846 Filed 9–6–02; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Customs Service

General Program Test Expanded and Extended: Quota Preprocessing

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces that the quota preprocessing program test, which provides for the electronic processing of certain quota-class apparel merchandise prior to arrival of the importing carrier, will be expanded to all Customs ports and the duration of the program test will be extended until December 31, 2004.

The quota preprocessing program test is currently being conducted at a selected number of Customs ports and was set to expire on December 31, 2002. The program test is being expanded to all ports and the duration of the test extended so that Customs can continue to evaluate the program's effectiveness on a greatly increased scale pending the initiation and completion of a rulemaking process that will seek to establish the program permanently through appropriate amendments to the Customs Regulations. Public comments concerning any aspect of the program test as well as applications to participate in the test are requested.

DATES: The expansion of the test to all Customs ports is effective on October 9, 2002. The expanded program test is scheduled to run until December 31, 2004. Applications to participate in the test and comments concerning the test will continue to be accepted throughout the testing period.

ADDRESSES: Written comments regarding this notice or any aspect of the program test should be addressed to Stephen Silvestri, Quota Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Room 5.3–D, Washington, DC 20229, or may be sent via e-mail to *Stephen.Silvestri@customs.treas.gov.* An application to participate in the program test must be sent to the Customs port(s) (Attention: program coordinator for quota preprocessing) where the applicant intends to submit quota entries for preprocessing. If necessary, information on Customs port addresses may be obtained by contacting the Customs Web site at *http://www.customs.gov* (Office Locations).

FOR FURTHER INFORMATION CONTACT: Stephen Silvestri, Quota Branch, (202–927–5397).

SUPPLEMENTARY INFORMATION: On July 24, 1998, Customs published a general notice in the **Federal Register** (63 FR 39929) announcing the limited testing, pursuant to the provisions of § 101.9(a), Customs Regulations (19 CFR 101.9(a)), of a new operational procedure regarding the electronic processing of quota-class apparel merchandise. The test was initially to be conducted at the ports located in New York/Newark and Los Angeles.

Quota preprocessing permits certain quota entries (merchandise classifiable in chapter 61 or 62 of the Harmonized Tariff Schedule of the United States (HTSUS)) to be filed, reviewed for admissibility, and to have their quota priority and status determined by Customs prior to arrival of the carrier, similar to the method of preliminary review by which non-quota entries are currently processed. The purpose of quota preprocessing is to reduce Customs processing time for qualified quota entries and to expedite the release of the subject merchandise to the importer. To this end, participants in quota preprocessing have been allowed to submit quota entries to Customs up to 5 days prior to vessel arrival or after the wheels are up on air shipments.

The July 24, 1998, **Federal Register** notice principally described the new procedure, specified the eligibility and application requirements for participation in the program test, and

noted the acts of misconduct for which a participant in the test could be suspended and disqualified from continued participation in the program.

The initial test of the quota preprocessing procedure began on September 15, 1998, and was intended to continue for a six-month period that expired on March 14, 1999. However, on March 25, 1999, and on January 6, 2000, Customs published general notices in the **Federal Register** (64 FR 14499 and 65 FR 806, respectively) that extended the program test through 1999 and 2000. In addition, on November 30, 2000, Customs published another general notice in the **Federal Register** (65 FR 71356), further extending the program test through December 31, 2002.

These respective extensions of the test procedure were undertaken so that Customs could further evaluate the effectiveness of the program and determine whether the program test should be expanded to other ports. Consequently, by a notice published in the **Federal Register** (66 FR 66018) on December 21, 2001, the test was in fact expanded to a selected number of additional ports in order to enable Customs to further study the program's effectiveness and determine whether the program should be established nationwide on a permanent basis through appropriate amendments to the Customs Regulations.

Specifically, the additional ports selected to participate in the expanded program test pursuant to the December 21, 2001, **Federal Register** notice were: Atlanta; Boston seaport; Logan Airport, Boston; Buffalo-Niagara Falls; Champlain-Rouses Point; Chicago; Columbus; Memphis; Miami; Miami International Airport; Newport/Portland, Oregon (the area port of Portland); Puget Sound (the ports of Seattle; and Seattle/Tacoma International Airport); San Francisco seaport; and San Francisco International Airport.

The expansion of the test to these ports was determined by the volume of quota lines of apparel merchandise entered at these ports. Because two of the additional ports selected to participate in the program test received shipments by land (Buffalo-Niagara Falls; and Champlain-Rouses Point), Customs allowed quota entries in these circumstances to be presented to Customs after the carrier departed from its location in Canada destined for the U.S. border.

Program Test To Be Further Expanded and Its Duration Extended

In addition to the previously noted ports where the test is ongoing, Customs has now determined that the program test should be expanded to all Customs ports effective as of October 9, 2002, and that the duration of the program test should be extended until December 31, 2004. The test is being further expanded and the duration of the test extended so that Customs can continue to evaluate the program's effectiveness on a greatly increased scale pending the initiation and completion of a rulemaking process that will seek to establish the program permanently through appropriate amendments to the Customs Regulations.

Eligibility Criteria and Application Requirements for the Program Test

The eligibility criteria and application requirements for participation in this latest expansion of the quota preprocessing program test are set out below. They are largely repeated from the December 21, 2001, **Federal Register** notice, albeit revised as appropriate to reflect the further expansion of the test. Prospective applicants may also consult the December 21, 2001, **Federal Register** notice as well as the July 24, 1998, **Federal Register** notice for a more detailed discussion of the quota preprocessing program.

Importer/Entry Eligibility Criteria

Customs will only accept consumption entries of apparel merchandise subject to quota (types 02 and 07) for preprocessing which meet the following criteria:

(1) The entry must contain at least one line classifiable in chapter 61 or 62 of the Harmonized Tariff Schedule of the United States (HTSUS);

(2) The quota category for the line must be less than 90% full;

(3) The entry must be filed using the Automated Broker Interface (ABI);

(4) Payment must be made electronically through the Automated Clearinghouse (ACH); and

(5)(a) An importer must use a carrier that is operational on the Automated Manifest System (AMS) through which the carrier will transmit the estimated date of arrival for the quota shipment to Customs, as heretofore required under the program test; however,

(5)(b) For an importer entering merchandise at a land border port of entry where an AMS carrier is not available, the importer may transmit the estimated date of arrival for the quota shipment to Customs through ABI when transmitting the entry/entry summary data for the shipment to Customs.

In this latter regard, Customs port directors at land border ports will be responsible for monitoring the availability of AMS carriers at these ports to ensure that option (5)(b) is only exercised when appropriate. It is noted that, at present, most carriers on the land borders, especially those on the Southern border, are non-AMS. The requirement that an importer use an AMS carrier was imposed initially so that the estimated date of arrival of a preprocessed quota shipment could be provided to Customs electronically. Since the quota preprocessing prototype was begun, however, Customs has determined that, in those circumstances where an AMS carrier is not otherwise available, an importer may transmit the estimated date of arrival of a quota shipment through ABI when transmitting the entry/entry summary data for the shipment to Customs.

If an importer submits a quota entry for preprocessing and the entry does not meet the criteria set forth above in items ''(1)'' through ''(5)(a)'' or ''(5)(b)'' as applicable, the entry summary will be rejected and the filer may not resubmit the entry summary to Customs until after the carrier has arrived. Upon arrival of the carrier, merchandise covered by a preprocessed entry will be released unless Customs decides to perform an examination. In this respect, the fact that merchandise has been processed under the quota preprocessing program will not interfere with or impede Customs ability to examine the merchandise upon its arrival, should such an examination be found to be warranted. If an examination of the merchandise is necessary, the examination will occur during the port's regular inspectional hours.

Application To Participate in Quota Preprocessing

An importer wishing to participate in quota preprocessing must submit a written application to the attention of the program coordinator for quota preprocessing at each port where the applicant intends to submit quota entries for preprocessing. The application must include the following information:

1. The specific port(s) included under the program where entries of the quota merchandise are intended to be made;

2. The importer of record number(s), including suffix(es), and a statement of the importer's/filer's electronic filing capabilities; and

3. Names and addresses of any entry filers, including Customs brokers, that will be electronically filing entries at

each port under the program on behalf of the importer/participant.

Applicants will be notified in writing of their selection or nonselection to participate in quota preprocessing. An applicant denied participation may appeal in writing to the port director at the port where the application was denied.

Current participants in quota preprocessing that also wish to file entries under the program at any additional ports must notify, in writing, the additional port(s) at least 5 working days before submitting entries at such port(s). Also, for those that are selected to participate in the test, the July 24, 1998, **Federal Register** notice should be consulted regarding the acts of misconduct that may result in a participant being suspended from the program and the extent to which a participant may appeal a proposed suspension from the program.

Dated: August 30, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–22782 Filed 9–6–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Proposed Collection; Comment Request

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 Bureau of Engraving and Printing within the Department of the Treasury is soliciting comments concerning the Claim for Amounts Due in the Case of a Deceased Owner of Mutilated Currency.

DATES: Written comments should be received on or before October 28, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Department of the Treasury, Bureau of Engraving and Printing, Pamela V. Grayson, 14th & C Streets, SW., Washington, DC 20228, (202) 874–2212.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Department of the Treasury, Bureau of Engraving and Printing, Lorraine Robinson, 14th & C Streets, SW., Washington, DC 20228, (202) 874–2532.

SUPPLEMENTARY INFORMATION:

Title: Claim for Amounts Due in the Case of a Deceased Owner of Mutilated Currency.

OMB Number: 1520–0002.

Form Number: BEP 5287.

Abstract: This a request for an extension.

Current Action: The Office of Currency Standards, Mutilated Currency Division, Bureau of Engraving and Printing use BEP 5287 to determine ownership in cases of a deceased owner of damaged or mutilated currency.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: The estimated number of respondents for the next three years is 180, with a total estimated number of burden hours of 165.

Estimated Total Annual Burden Hours: The estimated number of annual burden hours is 165.

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.

Dated: August 28, 2002.

Pamela V. Grayson,

Management Analyst, Office of Budget and Strategic Planning, Bureau of Engraving and Printing.

[FR Doc. 02–22847 Filed 9–6–02; 8:45 am]

BILLING CODE 4840–01–P

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center

Notice of Meeting

AGENCY: Federal Law Enforcement Training Center, Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee to the National Center for State and Local Law Enforcement Training at the Federal Law Enforcement Training Center will meet on September 25, 2002, beginning at 8:30 a.m. The agenda for this meeting includes remarks by the Committee Co-Chairs, Kenneth Lawson, Assistant Secretary (LE), Department of the Treasury, and Deborah Daniels, Assistant Attorney General, Office of Justice Programs, Department of Justice; progress reports on initiatives and training programs; and presentations/discussions on collaborative programs presented by the National Center. This meeting is open to the public. Anyone desiring to attend the meeting must contact Reba Fischer, the Designated Federal Officer, no later than September 16, 2002, at (912) 267–2343, to arrange clearance into the facility.

ADDRESSES: Federal Law Enforcement Training Center, Building 261, Glynco, Georgia.

FOR FURTHER INFORMATION CONTACT: Bruce P. Brown, Director, National Center for State and Local Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, GA 31524, 912–267–2322.

Dated: August 29, 2002.

Bruce P. Brown,

Director, National Center for State and Local Law Enforcement Training.

[FR Doc. 02–22783 Filed 9–6–02; 8:45 am]

BILLING CODE 4810–32–P

Corrections

Federal Register

Vol. 67, No. 174

Monday, September 9, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

[FRL–7207–4]

RIN 2060–AJ43

Revisions to the Definitions and the Continuous Emission Monitoring Provisions of the Acid Rain Program and the NO_x Budget Trading Program

Correction

In rule document 02–11450 beginning on page 40394 in the issue of Wednesday, June 12, 2002, make the following corrections:

§ 75.33 [Corrected]

1. On page 40436, in § 75.33 (c)(8)(iv), in Table 1., in the column titled ''Method'', in the last line, ''H_2Ox'' should read, ''H_2O^x''.

2. On the same page, in § 75.33(c)(8)iv), in Table 2., in the column titled ''Method'', in the eleventh line, ''NO_x NO_x'' should read, ''NO_x''.

3. On the same page, in § 75.33(c)(8)iv), in the same table, in the footnotes, in the beginning of the second line, remove the bullet.

4. On page 40438, in § 75.33(e)(3), in Table 4., in the footnotes, in the beginning of the first line, the bullet should be an asterisk.

§ 75.53 [Corrected]

5. On page 40440, in § 75.53(a)(1), in the second column, beneath (a)(1), add ''* * * * *''.

§ 75.74 [Corrected]

6. On page 40448, in § 75.74(c)(7)(iii)(H), in the second column, in paragraph (H), in the seventh line from the bottom of the paragraph, '' ''Total unit operating hours'' should read, '' 'Total unit operating hours''.

7. On the same page, in § 75.74(c)(7)(iii)(H), in the same column, in paragraph (H), in the third line from the bottom of the paragraph, '' ''Total unit operating hours'' should read, '' 'Total unit operating hours''.

Appendix B to Part 75 – [Corrected]

8. On page 40457, in Appendix B, in the second column, in amendatory instruction 54.w., in the fourth line, ''<10.0 fps'' should read, ''≤10.0 fps''.

Appendix D to Part 75 – [Corrected]

9. On page 40467, in Appendix D, in 2.3.1.4, in the first column, in paragraph (a)(1), in the fifth line delete ''* * * * *''.

Appendix G to Part 75 – [Corrected]

10. On page 40475, in Appendix G, in the second column, in 2.3, in Eq. G–4, ''MW CO_2'' should read, ''MW_{CO2}''.

[FR Doc. C2–11450 Filed 9–6–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
September 9, 2002

Part II

Securities and Exchange Commission

17 CFR Parts 228, 229, et al.

Certification of Disclosure in Companies' Quarterly and Annual Reports, Management Investment Company Shareholder Reports and Designation of Certified Shareholder Reports as Exchange Act Periodic Reporting Forms; Final Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 232, 240, 249, 270 and 274

[Release Nos. 33–8124, 34–46427, IC–25722; File No. S7–21–02]

RIN 3235–AI54

Certification of Disclosure in Companies' Quarterly and Annual Reports

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; request for comments.

SUMMARY: As directed by Section 302(a) of the Sarbanes-Oxley Act of 2002, we are adopting rules to require an issuer's principal executive and financial officers each to certify the financial and other information contained in the issuer's quarterly and annual reports. The rules also require these officers to certify that: they are responsible for establishing, maintaining and regularly evaluating the effectiveness of the issuer's internal controls; they have made certain disclosures to the issuer's auditors and the audit committee of the board of directors about the issuer's internal controls; and they have included information in the issuer's quarterly and annual reports about their evaluation and whether there have been significant changes in the issuer's internal controls or in other factors that could significantly affect internal controls subsequent to the evaluation. In addition, we are adopting previously proposed rules to require issuers to maintain, and regularly evaluate the effectiveness of, disclosure controls and procedures designed to ensure that the information required in reports filed under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported on a timely basis.

DATES: *Effective Date:* August 29, 2002.

Comment Date: Comments on the extension of the certification requirement to definitive proxy and information statements should be received by October 9, 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 submitted by one method only. All comment letters should refer to File No. S7–21–02; 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: Mark A. Borges, Special Counsel, or Elizabeth M. Murphy, Chief, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, or, with respect to issuers of asset-backed securities, Paula Dubberly, Chief Counsel, Division of Corporation Finance, at (202) 942–2900, or, with respect to investment companies, Tara L. Royal, Attorney, Office of Disclosure Regulation, Division of Investment Management, at (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting new Item 307[2] of Regulation S–B,[3] new Item 307[4] of Regulation S–K,[5] new Rules 13a–14,[6] 13a–15,[7] 15d–14[8] and 15d–15[9] under the Securities Exchange Act of 1934 (''Exchange Act'')[10] and new Rule 30a–2[11] under the Investment Company Act of 1940 (''Investment Company Act'').[12] We also are adopting amendments to Rules 12b–15,[13] 13a–10[14] and 15d–10[15] and Forms 10–Q,[16] 10–QSB,[17] 10–K,[18] 10–KSB,[19] 20–F[20] and 40–F[21] under the Exchange Act, Rule 30b1–3 under the Investment Company Act,[22] Rule 302 of Regulation S–T[23] and Form N–SAR[24] under the Exchange Act and the Investment Company Act.

I. Introduction

On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the ''Act'') was enacted.[25] Section 302 of the Act, entitled ''Corporate Responsibility for Financial Reports,'' requires the Commission to adopt final rules that must be effective by August 29, 2002, 30 days after the date of enactment, under which the principal executive officer or officers and the principal financial officer or officers, or persons providing similar functions, of an issuer each must certify the information contained in the issuer's quarterly and annual reports. Section 302 also requires these officers to certify that: they are responsible for establishing, maintaining and regularly evaluating the effectiveness of, the issuer's internal controls; they have made certain disclosures to the issuer's auditors and the audit committee of the board of directors about the issuer's internal controls; and they have included information in the issuer's quarterly and annual reports about their evaluation and whether there have been significant changes in the issuer's internal controls or in other factors that could significantly affect internal controls subsequent to the evaluation.

On June 14, 2002, we proposed rules that would have required a company's principal executive officer and principal financial officer to certify the contents of the company's quarterly and annual reports.[26] The June Proposals also would have required companies to maintain procedures to provide reasonable assurance that they are able to collect, process and disclose the information required in their Exchange Act reports. Finally, the June Proposals would have required companies to undertake an annual evaluation of these procedures under the supervision of management. Shortly after enactment of the Act, we provided supplemental information on the Act and the June Proposals.[27]

In light of Congress' directive in Section 302 of the Act, we are adopting rules that implement the certification mandated by the Act instead of the

[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.

[2] 17 CFR 228.307.

[3] 17 CFR 228.10 *et seq.*

[4] 17 CFR 229.307.

[5] 17 CFR 229.10 *et seq.*

[6] 17 CFR 240.13a–14.

[7] 17 CFR 240.13a–15.

[8] 17 CFR 240.15d–14.

[9] 17 CFR 240.15d–15.

[10] 15 U.S.C. 78a *et seq.*

[11] 17 CFR 270.30a–2.

[12] 15 U.S.C. 80a–1 *et seq.*

[13] 17 CFR 240.12b–15.

[14] 17 CFR 240.13a–10.

[15] 17 CFR 240.15d–10.

[16] 17 CFR 249.308a.

[17] 17 CFR 249.308b.

[18] 17 CFR 249.310.

[19] 17 CFR 249.310b.

[20] 17 CFR 249.220f.

[21] 17 CFR 249.240f.

[22] 17 CFR 270.30b1–3.

[23] 17 CFR 232.302.

[24] 17 CFR 249.330; 17 CFR 274.101.

[25] Pub. L. 107–204, 116 Stat. 745 (2002).

[26] See Release No. 34–46079 (June 14, 2002) [67 FR 41877] (the ''June Proposals'').

[27] See Release No. 34–46300 (Aug. 2, 2002) [67 FR 51508] notifying interested parties of the rules that we are required to adopt pursuant to Section 302 of the Act and highlighting some of the major differences between those rules and the June Proposals.

certification contained in the June Proposals. We received 102 comment letters in response to the June Proposals.[28] Although responding to the form of certification set forth in the June Proposals, a majority of the commenters supported a certification requirement for senior corporate officers.[29] In addition, the comment letters we have received since the enactment of the Act also express support for a certification requirement.[30] Because Section 302 of the Act prescribes the form of certification that we are to adopt, the new rules do not reflect many of the comments and suggestions that we received on the June Proposals.

While Section 302 of the Act requires an issuer's principal executive and financial officers to make specific certifications regarding their responsibilities to establish and maintain internal controls, it does not directly address the issuer's responsibility for controls and procedures related to the issuer's Exchange Act reporting obligations.[31] The June Proposals included requirements that companies maintain sufficient procedures to provide reasonable assurances that they are able to collect, process and disclose, within the time periods specified in the Commission's rules and forms, the information required to be disclosed in their Exchange Act reports.[32] We have adopted this requirement largely as proposed. Because of the broad scope of Section 302 of the Act, the new rules are applicable to all types of issuers that file reports under Section 13(a) or 15(d) of the Exchange Act, including foreign private issuers, banks and savings associations, issuers of asset-backed securities, small business issuers and registered investment companies.[33]

II. Certification of Quarterly and Annual Reports

A. Rule Requirements

As adopted, new Exchange Act Rules 13a–14 and 15d–14 require an issuer's principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, each to certify in each quarterly and annual report, including transition reports, filed or submitted by the issuer under Section 13(a) or 15(d) of the Exchange Act[34] that:

- He or she has reviewed the report;
- Based on his or her knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;[35]
- Based on his or her knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in the report;
- He or she and the other certifying officers:
- Are responsible for establishing and maintaining ''disclosure controls and procedures'' (a newly-defined term reflecting the concept of controls and procedures related to disclosure embodied in Section 302(a)(4) of the Act) for the issuer;
- Have designed such disclosure controls and procedures to ensure that material information is made known to them, particularly during the period in which the periodic report is being prepared;
- Have evaluated the effectiveness of the issuer's disclosure controls and procedures as of a date within 90 days prior to the filing date of the report; and
- Have presented in the report their conclusions about the effectiveness of the disclosure controls and procedures based on the required evaluation as of that date;
- He or she and the other certifying officers have disclosed to the issuer's auditors and to the audit committee of the board of directors (or persons fulfilling the equivalent function):
- All significant deficiencies in the design or operation of internal controls (a pre-existing term relating to internal controls regarding financial reporting)[36] which could adversely affect the issuer's ability to record, process, summarize and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and
- Any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and
- He or she and the other certifying officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

For purposes of the new rules, ''disclosure controls and procedures'' are defined as controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports filed or submitted by it

[28] The commenters included 56 individual and institutional investors, 21 companies and company associations, one domestic governmental agency, one foreign governmental agency and 23 members of the accounting and legal communities. These comment letters and a summary of comments are available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549, in File No. S7–21–02. Public comments submitted electronically and the summary of comments are available on our Web site <*http://www.sec.gov*>.

[29] See, for example, the Letter dated June 13, 2002 of Robert E. Jones, the Letter dated June 24, 2002 of Dan Jamieson and the Letter dated July 5, 2002 of T. Jeffrey Mangin.

[30] See, for example, the Letter dated August 9, 2002 of the American Society of Corporate Securities and the Letter dated August 14, 2002 of the National Association of Real Estate Investment Trusts.

[31] Separately, Section 404 of the Act directs the Commission to prescribe rules for issuers to state in their annual reports required by Section 13(a) or 15(d) of the Exchange Act the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting.

[32] See proposed Exchange Act Rules 13a–15 and 15d–15.

[33] See Section IV below for a discussion of registered investment companies. Registered investment companies generally are required to file periodic reports under Section 13(a) or 15(d) of the Exchange Act on Form N–SAR and, therefore, would provide the certification required by Section 302 of the Act. However, because Section 302 of the Act only applies to issuers that file periodic reports under Section 13(a) or 15(d) of the Exchange Act, the rules we are adopting today will not apply to registered investment companies that do not file periodic reports under either Section 13(a) or 15(d).

[34] 15 U.S.C. 78m(a) or 78o(d). Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 78l] to file with the Commission such annual reports and such quarterly reports as the Commission may prescribe. Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] to file such supplementary and periodic information, documents and reports as may be required pursuant to Section 13 in respect of a security registered pursuant to Section 12. The duty of an issuer to file under Section 15(d) is automatically suspended for any fiscal year, other than a fiscal year in which its registration statement becomes effective or is required to be updated pursuant to Section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)], if an issuer's securities are held of record by less than 300 persons. See Exchange Act Rule 12h–3(c) [17 CFR 240.12h–3(c)].

[35] As permitted under our rules, a registrant may satisfy its disclosure obligations under Part III of Forms 10–K and 10–KSB by incorporating the required information by reference from its definitive proxy or information statement, if that statement involves the election of directors and is filed not later than 120 days after the end of the fiscal year covered by the annual report. See General Instruction G(3) to Form 10–K and General Instruction E(3) to Form 10–KSB. For purposes of this provision, the certification in the annual report on Form 10–K or 10–KSB would be considered to cover the Part III information in a registrant's proxy or information statement as and when filed.

[36] See American Institute of Certified Public Accountants (''AICPA'') Codification of Statements on Auditing Standards, AU § 319.

under the Exchange Act[37] is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.[38] ''Disclosure controls and procedures'' include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in its Exchange Act reports is accumulated and communicated to the issuer's management, including its principal executive and financial officers, as appropriate to allow timely decisions regarding required disclosure.

B. Discussion of Certification Requirement

1. Issuers Subject to Certification Requirement

Section 302 of the Act states that the certification requirement is to apply to each company filing periodic reports under Section 13(a) or 15(d) of the Exchange Act.[39] Accordingly, new Exchange Act Rules 13a–14 and 15d–14 apply to the principal executive officers and principal financial officers, or persons performing similar functions, of any issuer that files quarterly and annual reports with the Commission under either Section 13(a) or 15(d) of the Exchange Act, including foreign private issuers, banks and savings associations, issuers of asset-backed securities and small business issuers.[40]

(a) Foreign Private Issuers

While the June Proposals would not have applied to foreign private issuers,[41] Section 302 of the Act makes no distinction between domestic and foreign issuers and, by its terms, clearly applies to foreign private issuers. New Exchange Act Rules 13a–14 and 15d–14, therefore, apply the certification requirement to the principal executive officers and principal financial officers of foreign private issuers that file reports under Section 13(a) or 15(d) of the Exchange Act.[42]

(b) Banks and Saving Associations

The certification requirement of Section 302 of the Act also applies to principal executive officers and principal financial officers of banks and savings associations that file periodic reports under Section 13(a) or 15(d) of the Exchange Act. The Act amended Section 12(i) of the Exchange Act to make it clear that the federal banking agencies have the authority to administer and enforce various provisions of the Act, including the certification required by Section 302.[43]

(c) Asset-Backed Securities Issuers

Issuers of asset-backed securities in public offerings have a reporting obligation under either Section 13(a) or 15(d) of the Exchange Act, at least for a period of time.[44] Because of the nature of asset-backed issuers, the staff of the Division of Corporation Finance has granted requests allowing asset-backed issuers to file modified reports under the Exchange Act.[45]

The modified reporting structure for asset-backed issuers allows issuers or depositors to file modified annual reports on Form 10–K and to file reports tied to payments on the underlying assets in the trust. These reports include a copy of the servicing or distribution report required by the issuer's governing documents and information on the performance of the assets, payments on the asset-backed securities and any other material developments that affect the issuer. Because the reported information for asset-backed issuers differs significantly from that for other issuers, the certification requirement of Section 302 of the Act must be specifically tailored for asset-backed issuers. The new rules require asset-backed issuers to certify their reports. The staff of the Division of Corporation Finance today is providing guidance for asset-backed issuers regarding compliance with the certification requirement.

(d) Small Business Issuers

The June Proposals generally did not distinguish between large and small issuers. Similarly, Section 302 of the Act directs that the certification requirement apply to any company filing periodic reports under Section 13(a) or 15(d) of the Exchange Act. Accordingly, new Rules 13a–14 and 15d–14 apply to all issuers that file Exchange Act periodic reports regardless of their size. We note, however, that because many small business issuers do not file Exchange Act reports, not all small business issuers will be subject to the certification requirement.

2. Reports Subject to Certification Requirement

Section 302 of the Act states that the required certification is to be included in each annual or quarterly report filed or submitted under either Section 13(a) or 15(d) of the Exchange Act.[46] Accordingly, the certification requirement applies to annual reports on Forms 10–K, 10–KSB, 20–F and 40–F.[47] The certification requirement also applies to quarterly reports on Forms 10–Q and 10–QSB. Finally, the certification requirement applies to amendments to, and transition reports on, any of the foregoing reports.[48]

Reports that are current reports, such as reports on Forms 6–K[49] and 8–K, rather than periodic (quarterly and annual) reports are not covered by the certification requirement.[50] Disclosure

[37] These reports include quarterly reports on Form 10–Q or 10–QSB, annual reports on Form 10–K, 10–KSB, 20–F or 40–F, current reports, definitive proxy materials filed under Section 14(a) of the Exchange Act [15 U.S.C. 78n(a)], definitive information statements filed under Section 14(c) of the Exchange Act [15 U.S.C. 78n(c)] and amendments to any of these reports or documents.

[38] See new Exchange Act Rules 13a–14(c) and 15d–14(c).

[39] See Section 302(a) of the Act.

[40] The new rules achieve the objective of Section 302(b) of the Act, which states that nothing in the provision is to be interpreted or applied in any way to allow any issuer to lessen the legal force of the certification requirement by an issuer that has reincorporated or engaged in any other transaction resulting in the transfer of the corporate domicile or offices of the issuer from inside of the United States to outside of the United States, because they are applicable to all issuers without regard to their jurisdiction of incorporation or domicile.

[41] For purposes of the Exchange Act, a ''foreign private issuer'' is any foreign issuer (other than a foreign government) except an issuer meeting the following conditions: (1) More than 50% of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the U.S.; and (2) the majority of the executive officers or directors are U.S. citizens or residents; or more than 50% of the assets of the issuer are located in the U.S.; or the business of the issuer is administered principally in the U.S. See Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. We sought comment on whether to apply a certification requirement to foreign private issuers in the June Proposals.

[42] The new rules do not apply to foreign private issuers that furnish materials to the Commission pursuant to Exchange Act Rule 12g3–2(b) [17 CFR 240.12g3–2(b)].

[43] See Section 3(b)(4) of the Act.

[44] Asset-backed issuers also sometimes voluntarily file Exchange Act reports in order to comply with provisions in the indenture or pooling and servicing agreements.

[45] See, for example, Release No. 34–16520 (Jan. 23, 1980) (order granting application pursuant to Section 12(h) of the Exchange Act [15 U.S.C. 78*l*(h)] of Home Savings and Loan Association); Release No. 34–14446 (Feb. 6, 1978) (order granting application pursuant to Section 12(h) of the Exchange Act of Bank of America National Trust and Savings Association); Division of Corporation Finance no-action letters to *Key Bank USA, N.A.* (May 9, 1997) and *Bay View Securitization Corp.* (Jan. 15, 1998).

[46] See Section 302(a) of the Act.

[47] The certification requirement does not apply to annual reports on Form 11–K [17 CFR 239.311].

[48] See amended Exchange Act Rules 12b–15, 13a–10 and 15d–10. In the case of the amendment on or after the compliance date of the new rules of a quarterly or annual report filed prior to August 29, 2002, the certification requirement will apply.

[49] 17 CFR 249.306.

[50] A foreign private issuer must furnish under cover of Form 6–K material information that it makes public or is required to make public under its home country laws or the rules of its home country stock exchange or that it distributes to security holders. While foreign private issuers may submit interim financial information under cover of Form 6–K, they do so pursuant to their home country requirements and not because of a

controls and procedures, however, are required to be designed, maintained and evaluated to ensure full and timely disclosure in current reports, as well as definitive proxy materials and definitive information statements, even though there is no specific certification requirement relating to reports on those forms.[51]

The new rules apply the certification requirement to foreign private issuers filing annual reports on Form 20–F and Canadian issuers filing annual reports on Form 40–F under our Multi-jurisdictional Disclosure System. Although Form 20–F is not required to be signed by any specific executive officer of a foreign registrant,[52] we believe that it is the clear intent of Congress to require that the appropriate officers execute and submit the required certification in an annual report filed under the Exchange Act on Form 20–F or 40–F.

As we first indicated in the June Proposals, we continue to consider whether we should extend a certification requirement to other documents filed under the Exchange Act, such as registration statements on Forms 10 and 10–SB[53] and definitive proxy and information statements. We solicit comment on whether any or all of these documents, or any other documents, should be certified by an issuer's senior officers.

3. Content of Certification

Section 302 of the Act states that the required certification is to made by an issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions. The required certification contains several statements. The certification statement concerning the material accuracy and completeness of the periodic reports that are covered by the statement mirrors the existing statutory disclosure standards for ''material'' accuracy and completeness of information contained in reports.[54]

The certification statement regarding fair presentation of financial statements and other financial information included in the report was not part of the June Proposals. This statement separately addresses the presentation of an issuer's financial disclosure. This financial disclosure includes financial statements (including footnote disclosure), selected financial data, management's discussion and analysis of financial condition and results of operations and other financial information in a report. The certification, as adopted, states that the overall financial disclosure fairly presents, in all material respects, the company's financial condition, results of operations and cash flows. We have added a specific reference to cash flows even though Section 302 of the Act does not include such an explicit reference. We believe that it is consistent with Congressional intent to include both income or loss and cash flows within the concept of ''fair presentation'' of an issuer's results of operations.

The certification statement regarding fair presentation of financial statements and other financial information is not limited to a representation that the financial statements and other financial information have been presented in accordance with ''generally accepted accounting principles'' and is not otherwise limited by reference to generally accepted accounting principles. We believe that Congress intended this statement to provide assurances that the financial information disclosed in a report, viewed in its entirety, meets a standard of overall material accuracy and completeness that is broader than financial reporting requirements under generally accepted accounting principles.[55] In our view, a ''fair presentation'' of an issuer's financial condition, results of operations and cash flows encompasses the selection of appropriate accounting policies, proper application of appropriate accounting policies, disclosure of financial information that is informative and reasonably reflects the underlying transactions and events and the inclusion of any additional disclosure necessary to provide investors with a materially accurate and complete picture of an issuer's financial condition, results of operations and cash flows.[56]

Both of the foregoing certification statements are to be made based on the knowledge of the certifying officer. This is not meant to change the current obligations of corporate officers in connection with the discharge of their duties. Both of the foregoing statements are also made in the context of the requirements of the reports in which they are included. In particular, quarterly reports on Forms 10–Q and 10–QSB have less extensive disclosure and financial statement and footnote requirements than annual reports. The certification requirement is not intended to require expansion of quarterly reports to satisfy the requirements of annual reports. Rather, completeness of disclosure will be determined through application of standards derived from our existing rules, forms and interpretations.[57]

While the certification described in the June Proposals contained a statement regarding the completion of a review of an issuer's internal procedures and controls aimed at assuring adequate disclosure, the certification required by Section 302 of the Act includes several, more detailed, statements concerning an issuer's ''internal controls'' and the ongoing oversight of these controls. For purposes of the certification required by Section 302(a)(4) of the Act, we have defined the term ''disclosure controls and procedures'' to incorporate a broader concept of controls and procedures designed to ensure compliance with disclosure requirements generally. This definition is included in new Exchange Act Rules 13a–14 and 15d–14 and applies to the portion of the certification required by Section 302(a)(4) of the Act.[58]

We have defined the term ''disclosure controls and procedures'' to make it explicit that the controls contemplated

Commission requirement to submit updated financial information for specified periods and according to specified standards. Therefore, we do not believe that a Form 6–K constitutes a ''periodic'' report analogous to a quarterly report on Form 10–Q or 10–QSB for which certification is required.

[51] See new Exchange Act Rules 13a–15 and 15d–15.

[52] See General Instruction D to Form 20–F.

[53] 17 CFR 249.210 and 249.210b.

[54] See Exchange Act Rules 10b–5(b) [17 CFR 230.10b–5(b)] and 12b–20 [17 CFR 240.12b–20.]. See also *Basic, Inc.* v. *Levinson*, 485 U.S. 224 (1988); *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. (1976).

[55] Presenting financial information in conformity with generally accepted accounting principles may not necessarily satisfy obligations under the antifraud provisions of the federal securities laws. See *United States* v. *Simon*, 425 F.2d 796 (2d Cir. 1969). See also *In re Caterpillar, Inc.*, Release No. 34–30532 (Mar. 31, 1992); *Edison Schools, Inc.*, Release No. 34–45925 (May 14, 2002).

[56] See Exchange Act Rule 12b–20 and the case and proceedings referenced in n. 55 above. In addition, both International Accounting Standard IAS 1, ¶ 14 and 15 and AICPA, Codification of Statements on Auditing Standards, AU § 411.04 speak to the essential elements that must be considered, within the framework of generally accepted accounting principles, in evaluating whether an issuer's financial statements fairly present its financial condition and results of operations. These statements, without being limited by reference to generally accepted accounting principles, provide guidance as to what elements should be considered in determining whether an issuer's financial information, taken as a whole, provides a fair presentation of its financial condition and results of operations. These elements include, without limitation, whether the accounting principles selected are appropriate in the circumstances and whether the disclosure is informative and reasonably reflects the underlying transactions and events.

[57] See, for example, *In re Caterpillar, Inc.,* Release No. 34–30532 (Mar. 31, 1992); Exchange Act Rule 12b–20.

[58] See new Exchange Act Rules 13a–14(c) and 15d–14(c).

by Section 302(a)(4) of the Act are intended to embody controls and procedures addressing the quality and timeliness of disclosure. We also have included this definition to differentiate this concept of disclosure controls and procedures from the pre-existing concept of ''internal controls'' that pertains to an issuer's financial reporting and control of its assets, as currently embodied in Section 13(b) of the Exchange Act [59] and as addressed in Sections 302(a)(5) and (a)(6) and Section 404 of the Act. We make this distinction based on our review of Section 302 of the Act as well as to effectuate what we believe to be Congress' intent—to have senior officers certify that required material non-financial information, as well as financial information, is included in an issuer's quarterly and annual reports. Under this interpretation, we maintain the pre-existing concept of internal controls without expanding it by relating it to non-financial information.

As discussed in the June Proposals, we are not requiring any particular procedures for conducting the required review and evaluation. Instead, we expect each issuer to develop a process that is consistent with its business and internal management and supervisory practices. We do recommend, however, that, if it has not already done so, an issuer create a committee with responsibility for considering the materiality of information and determining disclosure obligations on a timely basis.[60] As is implicit in Section 302(a)(4) of the Act, such a committee would report to senior management, including the principal executive and financial officers, who bear express responsibility for designing, establishing, maintaining, reviewing and evaluating the issuer's disclosure controls and procedures.

We believe that the concept of ''internal controls'' contemplated by Sections 302(a)(5) and (6) of the Act concern an issuer's controls and procedures for financial reporting purposes as required by Section 13(b) of the Exchange Act. They also relate to the ''internal controls'' addressed in Section 404 of the Act.[61] The certification required by new Exchange Act Rules 13a–14 and 15d–14 makes reference to certain disclosures regarding both disclosure controls and procedures and internal controls that must be made in the reports in which the certification is contained. These disclosure requirements appear in new Item 307 of Regulation S–K, Item 307 of Regulation S–B, Item 15 of Form 20–F and General Instruction B(6) of Form 40–F.

Because the statements involving disclosure controls and procedures and internal controls require the certifying officers to take certain specified actions, such as evaluating the effectiveness of the disclosure controls and procedures prior to the date of the report to which the certification relates, these statements will be required as part of the certification only with respect to any reports that cover periods ending on or after August 29, 2002, the effective date of the rules required by Section 302 of the Act.[62]

4. Form of Certification

The certification required by new Exchange Act Rules 13a–14 and 15d–14 must be in the exact form set forth in the amendments to the affected reports. The wording of the required certification may not be changed in any respect (even if the change would appear to be inconsequential in nature).[63]

5. Location of Certification

Section 302 of the Act states that the required certification is to be included ''in'' each quarterly or annual report filed or submitted under either Section 13(a) or 15(d) of the Exchange Act. To implement this directive, we have amended Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F and 40–F under the Exchange Act to require that the certifications follow immediately after the signature sections of these reports.

The required certification is in addition to, and, thus, does not alter, the current signature requirements for quarterly and annual reports filed under the Exchange Act. The signatures required by the certifications will be part of these reports, and, therefore, also will be subject to the signature requirement of our rules.[64] We have amended Rule 302 of Regulation S–T [65] to make it clear that its requirements apply to the signatures appearing in these certifications.

6. Liability for False Certification

An issuer's principal executive and financial officers already are responsible as signatories for the issuer's disclosures under the Exchange Act liability provisions [66] and can be liable for material misstatements or omissions under general antifraud standards [67] and under our authority to seek redress against those who cause or aid or abet securities law violations.[68] An officer providing a false certification potentially could be subject to Commission action for violating Section 13(a) or 15(d) of the Exchange Act and to both Commission and private actions for violating Section 10(b) of the Exchange Act [69] and Exchange Act Rule 10b–5.[70]

III. Disclosure Controls and Procedures

A. Rule Requirements

As adopted, new Exchange Act Rules 13a–15 and 15d–15 require each issuer filing reports under Section 13(a) or Section 15(d) of the Exchange Act to maintain disclosure controls and procedures (as defined in new Exchange Act Rules 13a–14(c) and 15d–14(c)). We believe that, to assist principal executive and financial officers in the discharge of their responsibilities in making the required certifications, as well as to discharge their responsibilities in providing accurate and complete information to security holders, it is necessary for companies to ensure that their internal

[59] 15 U.S.C. 78m(b). See also AICPA Professional Standards AU Section 319.06 (''Internal controls is a process—effected by an entity's board of directors, management and other personnel—designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (a) Reliability of financial reporting, (b) effectiveness and efficiency of operations and (c) compliance with applicable laws and regulations.'').

[60] Officers and employees of an issuer who have an interest in, and the expertise to serve on, the committee could include the principal accounting officer (or the controller), the general counsel or other senior legal official with responsibility for disclosure matters who reports to the general counsel, the principal risk management officer, the chief investor relations officer (or an officer with equivalent responsibilities) and such other officers or employees, including individuals associated with the issuer's business units, as the issuer deems appropriate.

[61] The rules called for under Section 404 of the Act will be the subject of separate Commission rulemaking. See n. 75 below.

[62] See Section V below.

[63] To further emphasize the importance of the required certification, a principal executive officer or principal financial officer is not permitted to have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority. See new Exchange Act Rules 13a–14(d) and 15d–14(d).

[64] See Exchange Act Rule 12b–11(d) [17 CFR 240.12b–11(d)].

[65] 17 CFR 232.302.

[66] See Sections 13(a) and 18 of the Exchange Act [15 U.S.C. 78m(a) and 78r].

[67] See, for example, *Howard* v. *Everex Systems, Inc.* 228 F.3d 1057 (9th Cir. 2000) (a corporate officer who signs a Commission filing containing representations ''makes'' the statement in the filing and can be liable as a primary violator of Section 10(b) of the Exchange Act).

[68] See Sections 20, 21, 21C and 21D of the Exchange Act [15 U.S.C. 78t, 78u, 78u–3 and 78u–4].

[69] 15 U.S.C. 78j(b).

[70] A false certification also may have liability consequences under Sections 11 and 12(a)(2) of the Securities Act [15 U.S.C. 77k and 77*l*(a)(2)] where a quarterly or annual report is incorporated by reference into a registration statement on Form S–3 [17 CFR 239.13] or F–3 [17 CFR 239.33] or into a prospectus filed pursuant to Securities Act Rule 424(b) [17 CFR 230.424(b)].

communications and other procedures operate so that important information flows to the appropriate collection and disclosure points in a timely manner.

B. Discussion of Disclosure Controls and Procedures

New Exchange Act Rules 13a–15 and 15d–15 complement existing requirements for reporting companies to establish and maintain systems of internal controls with respect to their financial information.[71] They are intended to ensure that an issuer maintains commensurate procedures for gathering, analyzing and disclosing all information that is required to be disclosed in its Exchange Act reports.

As discussed in the June Proposals, these procedures are intended to cover a broader range of information than is covered by an issuer's internal controls related to financial reporting. For example, the procedures should ensure timely collection and evaluation of information potentially subject to disclosure under the requirements of Regulation S–X,[72] Regulation S–K or S–B and Forms 20–F and 40–F. The procedures should capture information that is relevant to an assessment of the need to disclose developments and risks that pertain to the issuer's businesses.[73] They also should cover information that must be evaluated in the context of the disclosure requirement of Exchange Act Rule 12b–20. We believe that the new rules will help to ensure that an issuer's systems grow and evolve with its business and are capable of producing Exchange Act reports that are timely, accurate and reliable.[74]

New Exchange Act Rules 13a–15 and 15d–15 also are entirely complementary to the objectives of Section 302 of the Act. While Section 302 requires an issuer's principal executive and financial officers to make specific statements in their certifications and to take the actions satisfying the representations made in the statements as to the issuer's disclosure controls and procedures, it does not directly address the issuer's obligations with respect to these controls and procedures. The new rules will ensure that an issuer also has a responsibility to maintain adequate disclosure controls and procedures, so that its principal executive and financial officers can supervise and review these periodic evaluations and report the results to security holders through the issuer's Exchange Act reports.[75]

New Exchange Act Rules 13a–15 and 15d–15 also require the issuer, under the supervision of the principal executive and financial officers, to conduct an evaluation of the effectiveness of the design and operation of the issuer's disclosure controls and procedures within 90 days of the filing date of any quarterly or annual report filed under the Exchange Act. While the new rules do not provide detailed procedures for such an evaluation, the evaluation must, at a minimum, address the matters specified by the rules. We expect that this evaluation would be carried out in a manner that would form the basis for the certification statements required by Section 302 of the Act regarding disclosure controls and procedures required by new Exchange Act Rules 13a–14(b)(4)(ii)–(iii) and 15d–14(b)(4)(ii)–(iii) in an issuer's quarterly and annual reports.

We noted in the June Proposals that mandatory requirements regarding disclosure controls and procedures may raise several issues for foreign private issuers. Section 302 of the Act, however, does not provide any exception to the certification requirement for foreign private issuers. Because we believe that the maintenance of disclosure controls and procedures is an important part of satisfying the certification requirement, it is appropriate to require foreign private issuers to comply with new Exchange Act Rules 13a–15 and 15d–15 with respect to the implementation of the controls and procedures outlined in Section 302(a)(4) of the Act.

IV. Certification of Registered Investment Company Annual and Semi-Annual Reports

We are implementing Section 302 of the Act with respect to registered investment companies by adopting new Investment Company Act Rule 30a–2. This rule requires a registered investment company that files periodic reports under Section 13(a) or 15(d) of the Exchange Act (that is, Form N–SAR) to include the certification specified by Section 302 in those periodic reports. We are also amending the instructions to Form N–SAR, the annual and semi-annual reporting form for registered investment companies, to require the specified certification to be filed as an exhibit to Form N–SAR.[76]

Section 302 requires the specified certification to be included in ''each annual or quarterly report filed or submitted'' under either Section 13(a) or 15(d) of the Exchange Act.[77] Form N–SAR is the form designated for registered investment companies to comply with their reporting requirements under Sections 13(a) and 15(d) of the Exchange Act, as well as periodic reporting requirements under Sections 30(a) and 30(b)(1)[78] of the Investment Company Act.[79] Registered management investment companies are required to file annual and semi-annual reports on Form N–SAR not more than 60 calendar days after the close of each fiscal year and fiscal second quarter.[80] Registered unit investment trusts are required to file annual reports on Form N–SAR with respect to each calendar year, not more than 60 calendar days after the close of each year.[81]

Unlike Forms 10–K and 10–Q, Form N–SAR does not require the filing of financial statements. However, Form N–SAR requires management investment companies to provide certain financial information based on the financial statements as of the same date contained in the investment company's annual and semi-annual reports to shareholders.[82] Therefore, we are

[71] See Section 13(b)(2) of the Exchange Act [15 U.S.C. 78m(b)(2)] and Rules 13b2–1 and 13b2–2 [17 CFR 240.13b2–1 and 240.13b2–2].

[72] 17 CFR 210.1–01 *et seq.*

[73] For example, for some businesses, an assessment and evaluation of operational and regulatory risks may be necessary.

[74] Accordingly, a company that failed to maintain adequate procedures, review them and otherwise comply with the rule could be subject to Commission action for violating Section 13(a) of the Exchange Act even where the failure did not lead to flawed disclosure.

[75] We note that Section 404 of the Act directs us to prescribe rules requiring each annual report filed under Section 13(a) or 15(d) of the Exchange Act to contain an internal control report, which shall: (1) State the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting: and (2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting. These rules will be the subject of a separate rulemaking project.

[76] 17 CFR 249.330; 17 CFR 274.101; Item 133 and Instructions to Items 77Q3, 102P3 and 133 of Form N–SAR.

[77] See n. 34 above. Because Section 302 of the Sarbanes-Oxley Act only applies to companies that file periodic reports under Section 13(a) or 15(d) of the Exchange Act, the rules we are adopting today will not apply to registered investment companies that do not file periodic reports under Section 13(a) or 15(d).

[78] 15 U.S.C. 80a–30(a) and (b)(1).

[79] General Instruction A to Form N–SAR. See Release No. IC–14299 (Jan. 4, 1985) [50 FR 1442] (release adopting Form N–SAR).

[80] Investment Company Act Rule 30b1–1 [17 CFR 270.30b1–1]; General Instruction C to Form N–SAR.

[81] Investment Company Act Rule 30a–1 [17 CFR 270.30a–1]; General Instruction C to Form N–SAR. A unit investment trust is ''an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities; but does not include a voting trust.'' Section 4(2) of the Investment Company Act [15 U.S.C. 80a–4(2)].

[82] See Items 72 and 74 of Form N–SAR and the Instructions to those items.

requiring the signing officers of a registered management investment company to certify under new Investment Company Act Rule 30a–2(b)(3) that the financial information included in the report and the financial statements on which the financial information is based fairly present, in all material respects, the financial condition, results of operations, changes in net assets and cash flows (if the financial statements are required to include a statement of cash flows) of the investment company.[83] We have added a specific reference to changes in net assets and cash flows even though Section 302 of the Act does not include such an explicit reference. We believe that it is consistent with Congressional intent to include both income or loss, and changes in net assets and, in the case where the financial statements are required to include a statement of cash flows, within the concept of ''fair presentation'' of an investment company's results of operations.

The certification required by new Investment Company Act Rule 30a-2 must be in the exact form set forth in the amendments to Form N–SAR.[84] The wording of the required certification may not be changed in any respect (even if the change would appear to be inconsequential in nature).

Investment companies filing reports on Form N–SAR under Sections 13(a) and 15(d) of the Exchange Act will also be required to maintain disclosure controls and procedures under new Exchange Act Rules 13a–15 and 15d–15.[85] New Rules 13a–15 and 15d–15 also require an investment company, under the supervision and with the participation of the principal executive and financial officers, to conduct an evaluation of the effectiveness of the design and operation of the investment company's disclosure controls and procedures within 90 days of the filing date of each report requiring certification under new Investment Company Act Rule 30a–2. We expect that this evaluation would be carried out in a manner that would form the basis for the certification statements required by Section 302 of the Act regarding disclosure controls and procedures required by new Investment Company Act Rule 30a–2(b)(4)(i)–(iii) in an investment company's Form N–SAR.[86]

The certification required by new Investment Company Act Rule 30a–2 makes reference to certain disclosures regarding both disclosure controls and procedures and internal controls that must be made in the reports in which the certification is contained. These disclosure requirements appear in the new instructions to Form N–SAR.[87]

Unit investment trusts will be required to provide the specified certification with respect to the items of Form N–SAR specific to them, which include very limited financial information.[88] We recognize that unit investment trusts, which are unmanaged, fixed portfolios of securities, have no corporate management structure and hence will not have a principal executive officer or principal financial officer. Therefore, in the case of a unit investment trust, the required certification should be signed by personnel of the sponsor, trustee, depositor or custodian who perform functions similar to those of a principal executive officer and principal financial officer on behalf of the trust.[89]

Unit investment trusts and small business investment companies are not required to transmit reports to their shareholders containing their financial statements, and Form N–SAR does not require unit investment trusts and small business investment companies to report financial information based on their financial statements.[90] Therefore, the certification requirement applicable to these investment companies does not include the requirement of new Investment Company Act Rule 30a–2(b)(3) that the signing officers certify that the financial information included in the periodic report and the financial statements on which it is based fairly present, in all material respects, the financial condition, results of operations, changes in net assets and cash flows (if the financial statements are required to include a statement of cash flows) of the investment company.[91]

Business development companies and face-amount certificate companies file periodic reports on Forms 10–K and 10–Q under the Exchange Act, and they are required to comply with the certification requirements applicable to these forms.[92]

We note that, in a companion release, we are proposing to require registered management investment companies to file certified shareholder reports with the Commission on new Form N–CSR and would designate these certified shareholder reports as reports that are required under Sections 13(a) and 15(d) of the Exchange Act. For registered management investment companies, the required reports to shareholders, rather than Form N–SAR, are the primary vehicle for providing financial statements to investors. We believe that the information in these reports to shareholders should be certified. In addition, we are proposing an amendment to Form N–SAR that would uniformly apply to all registered investment companies, and not just those subject to Section 13(a) or 15(d) of the Exchange Act, the requirement to include in Form N–SAR the certification required by Section 302 of the Act. We are also proposing a new rule to apply disclosure controls and procedures requirements, similar to those contained

[83] In the case of a master-feeder fund, the report of the master fund on Form N–SAR would be expected to include a certification based upon the financial statements of the master fund included in the report to shareholders of the feeder fund.

[84] The certification must be filed as an exhibit to the report on Form N–SAR. The EDGAR document type must be EX–99.77Q3 CERT for an Exhibit filed in response to the instructions to sub-item 77Q3, EX–99.102P3 CERT for an Exhibit filed in response to the instructions to sub-item 102P3 and EX–99.133 CERT for an Exhibit filed in response to the instructions to item 133 of this form.

[85] New Exchange Act Rule 13a–15 applies to every issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act. New Exchange Act Rule 15d–15 applies to every issuer that is required to file reports pursuant to Section 15(d) of the Exchange Act.

[86] New Investment Company Act Rule 30a–2(c) incorporates the definition of ''disclosure controls and procedures'' contained in new Exchange Act Rules 13a–14(c) and 15d–14(c). We recognize that, in the case of a series fund or family of investment companies, the disclosure controls and procedures for each fund in the series or family may be the same. Therefore, for purposes of new Investment Company Act Rule 30a–2(b)(4)(ii) and (iii), a single evaluation of the effectiveness of the disclosure controls and procedures for the series or family could be used in multiple certifications for the funds in the series or family, as long as the evaluation has been performed within 90 days of the date of the report on Form N–SAR.

[87] Instructions (a)(i) and (ii) to sub-item 77Q3 of Form N–SAR.

[88] See Items 111 to 132 of Form N–SAR.

[89] Signing officers could include, for example, the officers of the depositor required to sign a registration statement on Form N–4 [17 CFR 239.17b; 17 CFR 274.11c] or N–6 [17 CFR 239.17c; 17 CFR 274.11d], or the officers of the depositor, trustee or custodian required to sign a registration statement on Form N–8B–2 [17 CFR 274.12].

[90] Cf. Investment Company Act Rule 30e–2 [17 CFR 270.30e–2] (requiring registered unit investment trusts substantially all of the assets of which consist of securities issued by a management investment company to transmit to their shareholders semi-annually a report containing all of the applicable information and financial statements or their equivalent required to be included in reports of the management investment company for the same fiscal period).

[91] Instruction to item 133 of Form N–SAR.

[92] Business development companies are a category of closed-end investment company that are not required to register under the Investment Company Act. See 15 U.S.C. 80a–2(a)(48) (defining business development companies). A face-amount certificate company is an investment company that engages or proposes to engage in the business of issuing certain face amount certificates. See 15 U.S.C. 80a–4(1). See Release No. IC–14080 (Aug. 6, 1984) [49 FR 32370, 32372] (business development companies and face-amount certificate companies are required to file reports on other forms prescribed under the Exchange Act rather than Form N–SAR).

in Exchange Act Rules 13a–15 and 15d–15, uniformly to all registered investment companies.

V. Transition Provisions

Paragraphs (b)(1), (2) and (3) of new Exchange Act Rules 13a–14 and 15d–14 apply to quarterly and annual reports, including transition reports, filed after the Effective Date. Paragraphs (b)(4), (5) and (6) of Rules 13a–14 and 15d–14 apply to quarterly and annual reports, including transition reports, filed for periods ending after the Effective Date. Paragraph (a) of Item 307 of Regulations S–B and S–K and paragraph (b) of new Exchange Act Rules 13a–15 and 15d–15 apply to quarterly and annual reports, including transition reports, filed for periods ending after the Effective Date.

Paragraphs (b)(1), (2) and (3) of new Investment Company Act Rule 30a–2 apply to annual and semi-annual reports, including transition reports, on Form N–SAR filed after the Effective Date. Paragraphs (b)(4), (5) and (6) of Rule 30a–2 apply to annual and semi-annual reports, including transition reports, filed for periods ending after the Effective Date. Paragraph (a)(i) of the Instruction to sub-item 77Q3 of Form N–SAR and paragraph (b) of new Exchange Act Rules 13a–15 and 15d–15 apply to annual and semi-annual reports, including transition reports, on Form N–SAR filed for periods ending after the Effective Date.

VI. Paperwork Reduction Act

The new rules and amendments to existing rules and forms contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[93] We published a notice requesting comment on the collection of information requirements in the June Proposals, and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[94] The titles for those collections of information are ''Form 10–K,'' ''Form 10–KSB,'' ''Form 10–Q'' and ''Form 10–QSB.''[95]

While we received only one comment letter specifically remarking on our PRA estimates included in the June Proposals,[96] we revised the proposed amendments in response to the directives in Section 302 of the Act. The revisions made to the rules and amendments do not alter the burden estimates for Forms 10–K (OMB Control No. 3235–0063), 10–KSB (OMB Control No. 3235–0420), 10–Q (OMB Control No. 3235–0070) and 10–QSB (OMB Control No. 3235–0416) previously submitted to and approved by OMB.

The new rules and form amendments that we are adopting cover the more expansive reach of Section 302 of the Act and contain additional ''collection of information requirements'' within the meaning of the PRA. Accordingly, we submitted additional materials to OMB for emergency review in accordance with the PRA.[97] The titles for these collections of information are ''Form 20–F'' (OMB Control No. 3235–0288), ''Form 40–F'' (OMB Control No. 3235–0381) and ''Form N–SAR'' (OMB Control No. 3235–0330). An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Form 10–K prescribes information that registrants must disclose annually to the market about its business. Form 10–KSB prescribes information that registrants that are ''small business issuers'' as defined under our rules must disclose annually to the market about its business.

Form 10–Q prescribes information that registrants must disclose quarterly to the market about its business. Form 10–QSB prescribes information that registrants that are ''small business issuers'' as defined under our rules must disclose quarterly to the market about its business.

Form 20–F is used by foreign private issuers to either register a class of securities under the Exchange Act or provide an annual report required under the Exchange Act. Form 40–F is used by foreign private issuers to file reports under the Exchange Act after having registered securities under the Securities Act and by certain Canadian registrants. Form N–SAR is used by registered investment companies to file annual and semi-annual reports under the Exchange Act and the Investment Company Act.

New Exchange Act Rules 13a–14 and 15d–14[98] require an issuer's principal executive and financial officers to certify the information contained in the issuer's quarterly and annual reports and that they have taken certain actions with respect to the issuer's internal controls for the collection and reporting of financial and other information that is subject to disclosure in the issuer's quarterly and annual Exchange Act reports. This certification requirement would become part of the ''collection of information'' required in each quarterly and annual report.

New Exchange Act Rules 13a–15 and 15d–15[99] require an issuer to maintain disclosure controls and procedures to provide reasonable assurance that the issuer is able to record, process, summarize and report the information required in the issuer's Exchange Act reports. These procedures would become part of the ''collection of information'' required in these reports.

New Investment Company Act Rule 30a–2 requires an investment company's principal executive and financial officers to certify the information contained in the investment company's annual and semi-annual reports on Form N–SAR and that they have taken certain actions with respect to the investment company's internal controls for the collection and reporting of financial and other information that is subject to disclosure in the investment company's reports on Form N–SAR. This certification requirement would become part of the ''collection of information'' required in each report on Form N–SAR.

The purpose of the certification and disclosure controls and procedures requirements is to ensure that the information that is collected and disclosed in Exchange Act reports is complete and accurate. Consequently, the senior officer certification, as well as the periodic evaluations of internal reporting systems, required by the rules and amendments will become part of the process in which issuers engage to comply with the reporting requirements of the affected forms.

The compliance burden estimates for the collections of information are based on several assumptions.[100] The number

[93] 44 U.S.C. 3501 *et seq.*

[94] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[95] The burden hour and cost estimates for these collections of information are as follows: with respect to Form 10–K (OMB Control No. 3235–0063) an increase in annual reporting and recordkeeping burden hours and cost of 35,190 hours and $3,519,000, respectively; with respect to Form 10–KSB (OMB Control No. 3235–0420) an increase in annual reporting and recordkeeping burden hours and cost of 14,209 hours and $1,421,000, respectively; with respect to Form 10–Q (OMB Control No. 3235–0070) an increase in annual reporting and recordkeeping burden hours and cost of 100,298 hours and $10,030,000, respectively; and respectively; with respect to Form 10–QSB (OMB Control No. 3235–0416) an increase in annual reporting and recordkeeping burden hours and cost of 43,530 hours and $4,353,000, respectively.

[96] See the Letter dated August 2, 2000 of Bernard E. Klein.

[97] 44 U.S.C. 3507(j) and 5 CFR 1320.13.

[98] References to new Exchange Act Rule 13a–14 in this section also refer to new Exchange Act Rule 15d–14.

[99] References to new Exchange Act Rule 13a–15 in this section also refer to new Exchange Act Rule 15d–15.

[100] We have based our estimates of the effects that the new rules and amendments to existing rules and forms will have on these information collections primarily on our review of actual filings of these forms and the forms' requirements.

of foreign private issuers that file annual reports on Form 20–F or 40–F is approximately 1,300 entities.[101] The number of registered investment companies that file Form N–SAR is approximately 4,450 entities.[102]

New Exchange Act Rule 13a–14 and new Investment Company Act Rule 30a–2 require an issuer's principal executive and financial officers to certify the information contained in the issuer's periodic reports. The compliance burden associated with new Exchange Act Rule 13a–14 and new Investment Company Act Rule 30a–2 is the burden associated with reading and thinking critically about each quarterly and annual report to be filed by the issuer so that the certifying officers can make the required certification. For purposes of the PRA, we estimate that the new certification requirement will result in an increase of five burden hours[103] per issuer in connection with preparing each annual report on Form 20–F or 40–F and an increase of five burden hours per issuer in connection with preparing each report on Form N–SAR.

New Exchange Act Rule 13a–15 requires an issuer to maintain sufficient procedures to collect, process and disclose the information required in its Exchange Act reports. We expect that issuers already maintain procedures, whether formal or informal, to comply with their Exchange Act disclosure obligations and for their own internal purposes. We do not believe that this requirement will result in any change in either the reporting or cost burden associated with preparing annual reports on Forms 20–F and 40–F or reports on Form N–SAR.

Based on a burden hour estimate of five hours per respondent per year, we estimate that the total burden hours of complying with Form 20–F and Form 40–F, revised to include the burden hours expected from the new rules, is estimated to be 586,248 hours for Form 20–F, an increase of 4,500 hours[104] from the current annual burden of 581,748 hours, and 525 hours for Form 40–F, an increase of 475 hours[105] from the current annual burden of 50 hours. The total burden hours of complying with Form N–SAR, revised to include the burden hours expected from the new rules, is estimated to be 154,450 hours,[106] an increase of 52,702 hours[107] from the current annual burden of 101,748 hours.

The total burden hours of complying with Forms 10–Q and 10–QSB, revised to include the burden hours expected from the new rules, is estimated to be 3,129,283 hours for Form 10–Q, an increase of 100,298 hours[108] from the current annual burden of 3,028,985 hours, and 1,288,488 hours for Form 10–QSB, an increase of 43,530 hours[109] from the current annual burden of 1,244,958 hours. The total burden hours of complying with Forms 10–K and 10–KSB, revised to include the burden hours expected from the new rules, is estimated to be 12,344,652 hours for Form 10–K, an increase of 35,190 hours[110] from the current annual burden of 12,309,462 hours, and 3,438,518 hours for Form 10–KSB, an increase of 14,209 hours[111] from the current annual burden of 3,424,309 hours.

In addition to the internal hours they will expend to comply with Forms 20–F and 40–F, we expect that respondents will retain outside professionals to assist in compliance with the information collection requirements. The total dollar cost of complying with Forms 20–F and 40–F, revised to include outside professional costs expected from the new rules, is estimated to be $523,596,000 for Form 20–F, an increase of $450,000[112] from the current annual burden of $523,146,000, and $52,500 for Form 40–F, an increase of $26,500[113] from the current annual burden of $26,000.

The total dollar cost of complying with Forms 10–Q and 10–QSB, revised to include outside professional costs expected from the new rules, is estimated to be $312,929,000 for Form 10–Q, an increase of $10,030,000[114] from the current annual burden of $302,899,000, and $128,849,000 for Form 10–QSB, an increase of $4,353,000[115] from the current annual burden of $124,496,000. The total dollar cost of complying with Forms 10–K and 10–KSB, revised to include outside professional costs expected from the new rules, is estimated to be $1,234,465,000 for Form 10–K, an increase of $3,519,000[116] from the current annual burden of $1,230,946,000, and $343,852,000 for Form 10–KSB, an increase of $1,421,000[117] from the current annual burden of $342,431,000.

Comments concerning the accuracy of these burden estimates, and any suggestions for reducing the burden, should be directed to the Commission.

[101] This estimate is based on 1,200 foreign private issuers that file annual reports on Form 20–F and 100 Canadian issuers that file annual reports on Form 40–F.

[102] This estimate is based on 3,650 registered management investment companies and 800 registered unit investment trusts that file reports under Section 13(a) or 15(d) of the Exchange Act.

[103] This estimate is based on consultations with several law firms and other persons who regularly assist registrants in preparing and filing quarterly and annual reports with the Commission.

[104] This estimate is based on the current annual burden per filing for each foreign private issuer. The estimate of 4,500 hours is calculated by 1,200 foreign private issuers × one filing per year × five burden hours × .75).

[105] This estimate is based on the current annual burden per filing for each Canadian issuer. The estimate of 475 hours is calculated by 100 Canadian issuers × one filing per year × five burden hours × .75 + 100 hours to reflect an adjustment in the distribution of burden hours and associated costs). The estimate has then been increased by 100 hours due to an adjustment to reflect a revised burden hour/cost allocation (75%/25%) for the report.

[106] This estimate is based on the current annual burden per filing for each investment company. With regard to Form N–SAR, the current estimated average burden hours per response for registered management investment companies and registered small business investment companies is 14.75 hours and the current estimated average burden hours per response for registered unit investment trusts is six hours. The estimated average burden hours per response, if new Investment Company Act Rule 30a–2 is adopted, for Form N–SAR would increase the average burden hours per response by five hours per filing that is required to be certified. We estimate that 50 registered management investment companies are not subject to Section 13(a) or 15(d) of the Exchange Act and hence would not be required to include the certification. Therefore, the estimate of 154,450 hours is calculated by: (3,650 registered management investment companies × two filings per year × 19.75 burden hours) + (50 registered management investment companies not subject to Section 13(a) or 15(d) of the Exchange Act × two filings per year × 14.75 burden hours) + (800 registered unit investment trusts × one filing per year × 11 burden hours).

[107] The increase in burden hours is attributed to an increase of 400 registered management investment companies and 67 registered unit investment trusts that are required to file reports pursuant to the Exchange Act from the previous number of these issuers calculated for the current annual burden, and the certification requirement required by the new rule.

[108] The estimate of 100,298 hours is calculated by 26,746 quarterly reports × five burden hours × .75.

[109] The estimate of 43,350 hours is calculated by 11,608 quarterly reports × five burden hours × .75.

[110] The estimate of 35,190 hours is calculated by 9,384 annual reports x five burden hours × .75.

[111] The estimate of 14,209 hours is calculated by 3,789 annual reports × five burden hours × .75.

[112] This estimate is based on the current annual burden per filing for each foreign private issuer. The estimate of $450,000 is calculated by 1,200 foreign private issuers x one filing per year x five burden hours x .25 x $300.00).

[113] This estimate is based on the current annual burden per filing for each foreign private issuer. The estimate of $26,500 is calculated by 100 foreign private issuers x one filing per year x five burden hours x .25 x $300.00). The estimate has then been reduced by $11,000 due to an adjustment to reflect a revised burden hour/cost allocation (75%/25%) for the report.

[114] The estimate of $10,030,000 is calculated by 26,746 quarterly reports x five burden hours x .25 x $300.00.

[115] The estimate of $4,353,000 is calculated by 11,608 quarterly reports x five burden hours x .25 x $300.00.

[116] The estimate of $3,519,000 is calculated by 9,384 annual reports x five burden hours x .25 x $300.00.

[117] The estimate of $1,421,000 is calculated by 3,789 annual reports x five burden hours x .25 x $300.00.

Compliance with the new rules is mandatory. Under our rules for the retention of manual signatures, issuers will be required to maintain the certifications for five years.[118] The information required by the new rules will not be kept confidential.

VII. Cost-Benefit Analysis

The certification requirement that we are adopting today implements a Congressional mandate. We recognize that any implementation of the Sarbanes-Oxley Act will likely result in costs as well as benefits and have an effect on the economy. We are sensitive to the costs and benefits of our adoption of a rule that requires issuers to maintain disclosure controls and procedures. We discuss these costs and benefits below.

The new certification requirement may lead to some additional costs for issuers. The new rules require an issuer's principal executive and financial officers to review the issuer's periodic reports and to make the required certification. To the extent that corporate officers would need to spend additional time thinking critically about the overall context of their company's disclosure, issuers would incur costs (although investors would benefit from improved disclosure). The certification requirement creates a new legal obligation for an issuer's principal executive and financial officers, but does not change the standard of legal liability.

Issuers are already required to maintain reporting controls and procedures for identifying and processing the information needed to satisfy their disclosure obligations under the Exchange Act. The new rules do not dictate that issuers follow any particular procedure. By allowing issuers to determine what procedures are necessary to meet the obligation of the rules, we are mitigating the costs associated with compliance. Some issuers may need to institute appropriate controls and procedures. Other issuers may need to enhance existing informal or ad hoc controls and procedures. These incremental costs are difficult to quantify. While we requested comment and supporting data in connection with the June Proposals on the cost of implementing, or upgrading and strengthening existing, reporting controls and procedures, we received no specific comment letters in response to that request.

The required periodic evaluation of reporting controls and procedures likely will result in costs for issuers. The new certification requirement likely will require issuers to create or strengthen internal controls to enable their senior executive officers to meet their certification obligations under the new rules. Many issuers already regularly monitor and evaluate their controls and procedures. Because the size and scope of these internal reporting systems is likely to vary among issuers, it is difficult to provide an accurate cost estimate.

Conversely, the new rules are likely to provide significant benefits by ensuring that information about an issuer's business and financial condition is adequately reviewed by the issuer's principal executive and financial officers and the issuer's internal systems keep pace with the growth of the business.

We believe that investor confidence in corporate disclosure has suffered, in part, because of a belief that corporate officers may not devote sufficient attention to the preparation of their companies' periodic reports and to the disclosure controls and procedures that generate the data from which they are prepared.

The new rules should help to ensure that issuers maintain sufficient internal reporting controls and procedures to provide reasonable assurance that they can record, process, summarize and report the information that is required in all Exchange Act reports. To the extent that issuers do not maintain adequate controls and procedures, the new rules should lead to the development, or enhancement and modernization, of these controls and procedures. The required periodic evaluation of these controls and procedures should ensure that issuers devote adequate resources and attention to the maintenance of their internal reporting systems. Additionally, the required evaluation should help to identify potential weaknesses and deficiencies in advance of a system breakdown, thereby ensuring the continuous, orderly and timely flow of information within the company and, ultimately, to investors and the marketplace.

VIII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis, or FRFA, has been prepared in accordance with the Regulatory Flexibility Act.[119] The FRFA pertains to new Exchange Act Rules 13a–15 and 15d–15 adopted for operating companies, for which we gave notice and sought comment. The Sarbanes-Oxley Act of 2002 directs us to adopt rules for registered investment companies. Because we find good cause to adopt those rules without notice and comment, we do not analyze them in the FRFA. New Exchange Act Rules 13a–15 and 15d–15 require an issuer to maintain disclosure controls and procedures to provide reasonable assurance that the issuer is able to record, process, summarize and report the information required in their Exchange Act reports.[120]

A. Reasons for, and Objectives of, New Rules

New Exchange Act Rules 13a–15 and 15d–15 complement existing requirements for reporting companies to establish and maintain systems of internal controls with respect to their financial information. They are intended to ensure that an issuer maintains commensurate procedures for gathering, analyzing and disclosing all information that is required to be disclosed in its Exchange Act reports.

B. Legal Basis

We are adopting the new rules under the authority set forth in Sections 10(b), 13, 15(d) and 23(a) of the Exchange Act and Sections 3(a) and 302 of the Act.

C. Small Entities Subject to the Final Rules

The new rules will affect small entities that are subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act. For purposes of the Regulatory Flexibility Act, the Exchange Act[121] defines the term ''small business,'' other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, has total assets of $5 million or less.[122] We estimate that there are approximately 2,500 companies subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act that

[118] See the amendment to Rule 302(b) of Regulation S–T [17 CFR 232.302(b)].

[119] 5 U.S.C. 603.

[120] The Initial Regulatory Flexibility Analysis (''IRFA'') prepared in connection with the June Proposals also involved proposed rules under the Exchange Act that would have required an issuer's principal executive officer and principal financial officer to certify the information contained in their quarterly and annual reports That proposal has been superseded by the statutory mandate of Section 302 of the Act. The Act's directive to adopt rules for all issuers makes no distinction based on the size of the issuer. We, therefore, do not analyze the new rules adopted under the Exchange Act requiring certifications by an issuer's principal executive and financial officers.

[121] 17 CFR 240.0–10(a).

[122] A similar definition is provided under Securities Act Rule 157 [17 CFR 230.157].

are not investment companies and that have assets of $5 million or less.[123]

D. Significant Issues Raised by Public Comment

The IRFA appeared in the June Proposals.[124] We requested comment on any aspect of the IRFA, including the number of small businesses that would be affected by the proposals, the nature of the impact, how to quantify the number of small entities that would be affected and how to quantify the impact of the proposals. We received one comment letter responding to that request.[125] This commenter recommended that we provide a transition period for small businesses and that we clarify the need for small businesses to audit their internal controls quarterly. This release contains a transition provision that delays compliance with the certification requirement as it relates to disclosure controls and procedures and internal controls.[126] The requirements for periodic audit of an issuer's internal controls will be considered at a future date.

E. Reporting, Recordkeeping and Other Compliance Requirements

The new rules require issuers, including ''small businesses,'' to maintain sufficient procedures to provide reasonable assurance that the issuer is able to record, process, summarize and report the information required in their Exchange Act reports filed with the Commission, and to periodically review and evaluate these procedures. We do not dictate the specifics of these procedures. The new rules may increase the costs associated with compliance with issuers' Exchange Act reporting obligations.

F. Duplicative, Overlapping or Conflicting Federal Rules

Section 13(b)(2)(B) of the Exchange Act[127] requires issuers that are subject to the reporting requirements of Section 13(a) or 15(d) to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the transactions and information are recorded as necessary to permit the preparation of the issuer's financial statements. New Exchange Act Rules 13a–15 and 15d–15 are intended to address the issuer's controls and procedures for recording, processing summarizing and reporting the information that is required to be disclosed in Exchange Act reports.

G. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In that regard, we considered the following alternatives: (a) Establishing different compliance or reporting requirements that take into account the resources of small entities, (b) clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities and (c) exempting small entities from all or part of the proposed rules. We solicited comment as to whether small business issuers should be excluded from the new rules. We received no comment letters responding to that request.

The periodic review and evaluation of information collection and reporting procedures required by the new rules involves a performance standard. The new rules do not mandate how issuers should conduct this review and evaluation. This flexibility will enable small and large entities to develop approaches for the review and evaluation that are appropriate to their individual circumstances. Because Congress has directed the senior officers of all issuers, regardless of size, to certify issuers' quarterly and annual reports, we do not believe it is consistent with that mandate to exempt small issuers from the new rules. We are not aware of any way to further clarify or simplify compliance for small entities.

IX. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[128] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act[129] and Section 2(c) of the Investment Company Act[130] requires 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 new rules are intended to enhance investor confidence in the quality of the information available to them in quarterly and annual reports filed under the Exchange Act. We believe that by requiring an issuer's principal executive and financial officers to provide the required certification, investor confidence in the securities markets will be enhanced, thereby leading to a more efficient market.

We do not believe that the new rules will impose any burden on competition. Issuers will incur some costs in complying with the new rules. These costs will include conducting periodic evaluations of the issuer's internal controls and procedures to record, process, summarize and report, on a timely basis, the information required in periodic and current reports filed by the issuer under the Exchange Act. We requested comment in connection on the June Proposals on whether the proposed rules, if adopted, would impose a burden on competition. We received no comment letters in response to that request.

X. Administrative Procedure Act

The Administrative Procedure Act, or APA, generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[131] The APA's notice and comment 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.''[132] The Commission believes that it is appropriate to waive notice and comment for the portions of the new rules that were not included in the June Proposals and for the application of the new rules to investment companies. Congress has directed the Commission to implement Section 302 of the Act by rule within 30 days after the date of enactment.[133] It is impractical to provide notice and comment within the statutory deadline. It would be

[123] This estimate is based on filings with the Commission.

[124] See the June Proposals at Section V.

[125] See the Letter dated August 19, 2002 of the Office of the Chief Counsel for Advocacy of the U.S. Small Business Administration.

[126] See Section V above.

[127] 15 U.S.C. 78m(b)(2)(B).

[128] 15 U.S.C. 78w(a)(2).

[129] 15 U.S.C. 78c(f).

[130] 15 U.S.C. 80a–2(c).

[131] See 5 U.S.C. 553(b).

[132] Id. The Commission previously published notice and sought comment on a certification proposal that was somewhat similar to, but different in several material respects, from the new rules we are adopting today to implement Section 302 of the Sarbanes-Oxley Act. We did not propose rules that would apply to investment companies or foreign private issuers (although we sought comment on the latter).

[133] See Section 302 (a) and (c) of the Act.

unnecessary and against the public interest to provide notice and opportunity for comment on a directive from Congress to implement specific rules. Accordingly, the Commission for good cause finds that delaying adoption of these rules until after a notice and comment period would be impractical, unnecessary and contrary to the public interest.

The APA also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[134] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[135] For the same reasons as it is waiving notice and comment, the Commission finds good cause to make the new Exchange Act Rules 13a–14 and 15d–14 and new Investment Company Act Rule 30a–2, and the amendments to related rules and forms, effective immediately. In addition, because new Exchange Act Rules 13a–15 and 15d–15 effectuate the purpose of the Section 302 certification requirement and might create a hardship if they did not become effective simultaneously with new Exchange Act Rules 13a–14 and 15d–14, the Commission finds good cause to make the rules effective immediately as to all issuers filing reports under Section 13(a) or 15(d) of the Exchange Act.[136]

XI. Statutory Authority

The rules and amendments contained in this release are being adopted under the authority set forth in Sections 10(b), 13, 15(d) and 23(a) of the Exchange Act, Section 8, 30 and 38 of the Investment Company Act and Sections 3(a) and 302 of the Sarbanes-Oxley Act of 2002.

List of Subjects in 17 CFR Parts 228, 229, 232, 240, 249, 270 and 274

Securities, Investment Companies, Reporting and recordkeeping requirements.

Text of Final Rules and Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

[134] See 5 U.S.C. 553(d).

[135] Id.

[136] 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 agency finds that notice and public comment procedure are ''impractical, unnecessary, or contrary to the public interest,'' a rule ''shall take effect at such time as the Federal agency promulgating the rule determines'').

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

Section 228.307 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.

2. By adding § 228.307 to read as follows:

§ 228.307 (Item 307) Controls and procedures.

(a) *Evaluation of disclosure controls and procedures.* Disclose the conclusions of the small business issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the small business issuer's disclosure controls and procedures (as defined in §§ 240.13a–14(c) and 240.15d–14(c) of this chapter) based on their evaluation of these controls and procedures as of a date within 90 days of the filing date of the quarterly or annual report that includes the disclosure required by this paragraph.

(b) *Changes in internal controls.* Disclose whether or not there were significant changes in the small business issuer's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(c) *Asset-Backed Issuers.* A small business issuer that is an Asset-Backed Issuer (as defined in Rule 13a–14(g) and Rule 15d–14(g) under the Securities Exchange Act of 1934 (17 CFR 240.13a–14(g) and 17 CFR 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

Section 229.307 is also issued under secs. 3(a) and 302, Pub.L.No. 107–204, 116 Stat. 745.

4. By adding § 229.307 to read as follows:

§ 229.307 (Item 307) Controls and procedures.

(a) *Evaluation of disclosure controls and procedures.* Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures (as defined in §§ 240.13a–14(c) and 240.15d–14(c) of this chapter) based on their evaluation of these controls and procedures as of a date within 90 days of the filing date of the quarterly or annual report that includes the disclosure required by this paragraph.

(b) *Changes in internal controls.* Disclose whether or not there were significant changes in the registrant's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(c) *Asset-Backed Issuers.* A registrant that is an Asset-Backed Issuer (as defined in § 240.13a– 14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

PART 232—REGULATION S–T–GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

5. The authority citation for part 232 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

Section 232.302 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.

6. By amending § 232.302 by revising paragraphs (a) and (b) to read as follows:

§ 232.302 Signatures.

(a) Required signatures to, or within, any electronic submission (including, without limitation, signatories within the certifications required by §§ 240.13a–14, 240.15d–14 and 270.30a–2 of this chapter) must be in typed form rather than manual format. Signatures in an HTML document that are not required may, but are not

required to, be presented in an HTML graphic or image file within the electronic filing, in compliance with the formatting requirements of the EDGAR Filer Manual. When used in connection with an electronic filing, the term ''signature'' means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letters or series of letters or characters comprising a name, executed, adopted or authorized as a signature. Signatures are not required in unofficial PDF copies submitted in accordance with § 232.104.

(b) Each signatory to an electronic filing (including, without limitation, each signatory to the certifications required by §§ 240.13a-14, 240.15d–14 and 270.30a–2 of this chapter) shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is made and shall be retained by the filer for a period of five years. Upon request, an electronic filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for Part 240 is amended by revising the sectional authority citation for § 240.15d–10 and adding the following additional citations in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

Section 240.12b–15 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.

* * * * *

Section 240.13a–10 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.

Section 240.13a–14 is also issued under secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745.

Section 240.13a–15 is also issued under secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

Section 240.15d–10 is also issued under 15 U.S.C. 80a–20(a) and 80a–37(a), and secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745.

Section 240.15d–14 is also issued under secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745.

Section 240.15d–15 is also issued under secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

8. By revising § 240.12b–15 to read as follows:

§ 240.12b–15 Amendments.

All amendments must be filed under cover of the form amended, marked with the letter ''A'' to designate the document as an amendment, *e.g.*, ''10–K/A,'' and in compliance with pertinent requirements applicable to statements and reports. Amendments filed pursuant to this section must set forth the complete text of each item as amended. Amendments must be numbered sequentially and be filed separately for each statement or report amended. Amendments to a statement may be filed either before or after registration becomes effective. Amendments must be signed on behalf of the registrant by a duly authorized representative of the registrant. In addition, each principal executive officer and principal financial officer of the registrant must provide a new certification as specified in § 240.13a–14 or § 240.15d–14. The requirements of the form being amended will govern the number of copies to be filed in connection with a paper format amendment. Electronic filers satisfy the provisions dictating the number of copies by filing one copy of the amendment in electronic format. *See* Rule 309 of Regulation S–T (§ 232.309 of this chapter).

9. By amending § 240.13a–10 to redesignate the ''Note'' at the end of the section as ''Note 1'' and a ''Note 2'' to read as follows:

§ 240.13a–10 Transition reports.

* * * * *

Note 2: The report or reports to be filed pursuant to this section must include the certification required by § 240.13a–14.

10. By adding § 240.13a–14 to read as follows:

§ 240.13a-14 Certification of disclosure in annual and quarterly reports.

(a) Each report, including transition reports, filed on Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, Form 20–F or Form 40–F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f and 249.240f of this chapter) under section 13(a) of the Act (15 U.S.C. 78m(a)), other than a report filed by an Asset-Backed Issuer (as defined in paragraph (g) of this section), must include a certification containing the information set forth in paragraph (b) of this section in the form specified in the report. Each principal executive officer or officers and principal financial officer or officers of the issuer, or persons performing similar functions, at the time of filing of the report must sign the certification.

(b) The certification included in each report specified in paragraph (a) of this section must be in the form specified in the report and consist of a statement of the certifying officer that:

(1) He or she has reviewed the report being filed;

(2) Based on his or her knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;

(3) Based on his or her knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in the report;

(4) He or she and the other certifying officers are responsible for establishing and maintaining disclosure controls and procedures (as such term is defined in paragraph (c) of this section) for the issuer and have:

(i) Designed such disclosure controls and procedures to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to them by others within those entities, particularly during the period in which the periodic reports are being prepared;

(ii) Evaluated the effectiveness of the issuer's disclosure controls and procedures as of a date within 90 days prior to the filing date of the report (''Evaluation Date''); and

(iii) Presented in the report their conclusions about the effectiveness of the disclosure controls and procedures based on their evaluation as of the Evaluation Date;

(5) He or she and the other certifying officers have disclosed, based on their most recent evaluation, to the issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize and report financial data and have

identified for the issuer's auditors any material weaknesses in internal controls; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(6) He or she and the other certifying officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(c) For purposes of this section and § 240.13a–15 of this chapter, the term ''disclosure controls and procedures'' means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Act is accumulated and communicated to the issuer's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

(d) A person required to provide the certification specified in paragraph (a) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

(e) Each annual report filed by an Asset-Backed Issuer (as defined in paragraph (g) of this section) under section 13(a) of the Act (15 U.S.C. 78m(a)) must include a certification addressing the following items:

(1) Review by the certifying officer of the annual report and other reports containing distribution information for the period covered by the annual report;

(2) The absence in these reports, to the best of the certifying officer's knowledge, of any untrue statement of material fact or omission of a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) The inclusion in these reports, to the best of the certifying officer's knowledge, of the financial information required to be provided to the trustee under the governing documents of the issuer; and

(4) Compliance by the servicer with its servicing obligations and minimum servicing standards.

(f) With respect to Asset-Backed Issuers, the certification required by paragraph (e) of this section must be signed by the trustee of the trust (if the trustee signs the annual report) or the senior officer in charge of securitization of the depositor (if the depositor signs the annual report). Alternatively, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) may sign the certification.

(g) For purposes of this section, the term Asset-Backed Issuer means any issuer whose reporting obligation results from the registration of securities it issued that are primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

11. By adding § 240.13a–15 to read as follows:

§ 240.13a–15 Issuer's disclosure controls and procedures related to preparation of required reports.

(a) Every issuer that has a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*), other than an Asset-Backed Issuer (as defined in § 240.13a–14(g) of this chapter), must maintain disclosure controls and procedures (as defined in § 240.13a–14(c) of this chapter).

(b) Within the 90-day period prior to the filing date of each report requiring certification under § 240.13a–14 and § 270.30a–2 of this chapter, an evaluation must be carried out under the supervision and with the participation of the issuer's management, including the issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness of the design and operation of the issuer's disclosure controls and procedures.

12. By amending § 240.15d–10 to redesignate the ''Note'' at the end of the section as ''Note 1'' and add a ''Note 2'' to read as follows:

§ 240.15d–10 Transition reports.

* * * * *

Note 2: The report or reports to be filed pursuant to this section must include the certification required by § 240.15d–14.

13. By adding § 240.15d–14 to read as follows:

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

(a) Each report, including transition reports, filed on Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, Form 20–F or Form 40–F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f and 249.240f of this chapter) under section 15(d) of the Act (15 U.S.C. 78o(d)), other than a report filed by an Asset-Backed Issuer (as defined in paragraph (g) of this section), must include a certification containing the information set forth in paragraph (b) of this section in the form specified in the report. Each principal executive officer or officers and principal financial officer or officers of the issuer, or persons performing similar functions, at the time of filing of the report must sign the certification.

(b) The certification included in each report specified in paragraph (a) of this section must be in the form specified in the report and consist of a statement of the certifying officer that:

(1) He or she has reviewed the report being filed;

(2) Based on his or her knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;

(3) Based on his or her knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in the report;

(4) He or she and the other certifying officers are responsible for establishing and maintaining disclosure controls and procedures (as such term is defined in paragraph (c) of this section) for the issuer and have:

(i) Designed such disclosure controls and procedures to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to them by others within those entities, particularly during the period in which the periodic reports are being prepared;

(ii) Evaluated the effectiveness of the issuer's disclosure controls and procedures as of a date within 90 days prior to the filing date of the report (the ''Evaluation Date''); and

(iii) Presented in the report their conclusions about the effectiveness of the disclosure controls and procedures

based on their evaluation as of the Evaluation Date;

(5) He or she and the other certifying officers have disclosed, based on their most recent evaluation, to the issuer's auditors and the audit committee of the board or directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(6) He or she and the other certifying officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(c) For purposes of this section and § 240.15d–15 of this chapter, the term ''disclosure controls and procedures'' means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Act is accumulated and communicated to the issuer's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

(d) A person required to provide the certification specified in paragraph (a) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

(e) Each annual report filed by an Asset-Backed Issuer (as defined in paragraph (g) of this section) under section 13(a) of the Act (15 U.S.C. 78m(a)) must include a certification addressing the following items:

(1) Review by the certifying officer of the annual report and other reports containing distribution information for the period covered by the annual report;

(2) The absence in these reports, to the best of the certifying officer's knowledge, of any untrue statement of material fact or omission of a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) The inclusion in these reports, to the best of the certifying officer's knowledge, of the financial information required to be provided to the trustee under the governing documents of the issuer; and

(4) Compliance by the servicer with its servicing obligations and minimum servicing standards.

(f) With respect to Asset-Backed Issuers, the certification required by paragraph (e) of this section must be signed by the trustee of the trust (if the trustee signs the annual report) or the senior officer in charge of securitization of the depositor (if the depositor signs the annual report). Alternatively, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) may sign the certification.

(g) For purposes of this section, the term Asset-Backed Issuer means any issuer whose reporting obligation results from the offering of securities it issued that are primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

14. By adding § 240.15d–15 to read as follows:

§ 240.15d–15 Issuer's disclosure controls and procedures related to preparation of required reports.

(a) Every issuer that files reports under section 15(d) of the Act (15 U.S.C. 78o(d)), other than an Asset-Backed Issuer (as defined in § 240.15d–14(g) of this chapter), must maintain disclosure controls and procedures (as defined in § 240.15d–14(c) of this chapter).

(b) Within the 90-day period prior to the filing date of each report requiring certification under § 240.13a–14 and § 270.30a–2 of this chapter, an evaluation must be carried out under the supervision and with the participation of the issuer's management, including the issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness of the design and operation of the issuer's disclosure controls and procedures.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

15. The authority citation for part 249 is amended by revising the sectional authority for §249.310 and adding the following additional citations in numerical order to read as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

Section 249.308a is also issued under secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.308b is also issued under secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.310 is also issued under 15 U.S.C. 78m, 78*o*(d) and 78w(a), and secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.310b is also issued under secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.220f is also issued under secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

16. By amending Form 10–Q (referenced in § 249.308a) by revising General Instruction G, by adding new Item 4 to ''Part I—Financial Information'' and by adding a ''Certifications'' section after the ''Signatures'' section to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

General Instructions

* * * * *

G. Signature and Filing of Report

If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*), three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits must be filed with the Commission. At least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, must be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such

copy filed with each exchange must be manually signed on the registrant's behalf by a duly authorized officer of the registrant and by the principal financial or chief accounting officer of the registrant. (See Rule 12b–11(d) (17 CFR 240.12b–11(d).) Copies not manually signed must bear typed or printed signatures. In the case where the principal executive officer, principal financial officer or chief accounting officer is also duly authorized to sign on behalf of the registrant, one signature is acceptable provided that the registrant clearly indicates the dual responsibilities of the signatory. In addition, each principal executive officer and principal financial officer of the registrant must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14) exactly as specified in this form.

* * * * *

Part I—Financial Information

* * * * *

Item 4. Controls and Procedures

Furnish the information required by Item 307 of Regulation S–K (§ 229.307 of this chapter).

* * * * *

Signatures

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this quarterly report on Form 10-Q of [identify registrant];

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–14 and 15d–14) for the registrant and we have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the ''Evaluation Date''); and

(c) Presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

_____

[Signature]
[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

17. By amending Form 10–QSB (referenced in § 249.308b) by revising General Instruction F, by adding new Item 3 to ''Part I—Financial Information'' and by adding a ''Certifications'' section after the ''Signatures'' section to read as follows:

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

General Instructions

* * * * *

F. Signature and Filing of Report

1. If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*), file three ''complete'' copies and five ''additional'' copies of the report with the Commission and file at least one complete copy with each exchange on which any class of securities of the small business issuer is registered. A ''complete'' copy includes financial statements, exhibits and all other papers and documents. An ''additional'' copy excludes exhibits.

2. Manually sign at least one complete copy of the report filed with the Commission and with each exchange; other copies should have typed or printed signatures. (See Rule 12b–11(d) (17 CFR 240.12b–11(d).) In the case where the principal executive officer, principal financial officer or chief accounting officer is also duly authorized to sign on behalf of the small business issuer, one signature is acceptable provided that the issuer clearly indicates the dual responsibilities of the signatory. Each principal executive officer and principal financial officer of the small business issuer must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14) exactly as specified in this form.

* * * * *

Part I—Financial Information

* * * * *

Item 3. Controls and Procedures

Furnish the information required by Item 307 of Regulation S–B (§ 228.307 of this chapter).

* * * * *

Signatures

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this quarterly report on Form 10–QSB of [identify registrant];

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such

statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–14 and 15d–14) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the ''Evaluation Date''); and

(c) Presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

_____
[Signature]
[Title]

• Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

* * * * *

18. By amending Form 10–K (referenced in § 249.310):

a. By revising General Instruction D(2)(a),

b. By redesignating Item 14 as Item 15 in Part IV,

c. Adding new Item 14 to Part III, and

d. By adding a ''Certifications'' section after the ''Signatures'' section and before the reference to ''Supplemental information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Registrants Which Have Not Registered Securities Pursuant to Section 12 of the Act.''

The revisions read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10–K

* * * * *

General Instructions

* * * * *

D. Signature and Filing of Report

(1) * * *

(2)(a) The report must be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers (who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14) exactly as specified in this form), its principal financial officer or officers (who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14) exactly as specified in this form), its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions. Where the registrant is a limited partnership, the report must be signed by the majority of the board of directors of any corporate general partner who signs the report.

* * * * *

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Part III

* * * * *

Item 14. Controls and Procedures

Furnish the information required by Item 307 of Regulation S–K (§ 229.307 of this chapter).

* * * * *

Signatures

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 10–K of [identify registrant];

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–14 and 15d–14) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the ''Evaluation Date''); and

(c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the

registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

_____
[Signature]
[Title]

*Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

* * * * *

19. By amending Form 10–KSB (referenced in § 249.310b):

a. By revising General Instruction C.2.,

b. By adding new Item 14 to Part III, and

c. By adding a ''Certifications'' section after the ''Signatures'' section and before the reference to ''Supplemental information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Exchange Act By Non-reporting Issuers.'' The revisions read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10–KSB

* * * * *

General Instructions

* * * * *

C. Signature and Filing of Report

1. * * *

2. Who must sign. The small business issuer, its principal executive officer or officers (who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14) exactly as specified in this form), its principal financial officer (who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14) exactly as specified in this form), its controller or principal accounting officer and at least a majority of the board of directors or persons performing similar functions. If the small business issuer is a limited partnership, then the general partner and a majority of its board of directors if a corporation must sign the report. Any person who occupies more than one of the specified positions must indicate each capacity in which he or she signs the report. See Rule 12b–11 concerning manual signatures under powers of attorney.

* * * * *

Part III

* * * * *

Item 14. Controls and Procedures

Furnish the information required by Item 307 of Regulation S–B (§ 228.307 of this chapter).

* * * * *

Signatures

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 10–KSB of [identify registrant];

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–14 and 15d–14) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the ''Evaluation Date''); and

(c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

_____
[Signature]
[Title]

*Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

* * * * *

20. By amending Form 20–F (referenced in § 249.220f):

a. By adding a new paragraph (e) to General Instruction B,

b. By adding new Item 15, and

c. By adding a ''Certifications'' section after the ''Signatures'' section and before the section referencing ''Instructions as to Exhibits.''

The revisions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

General Instructions

* * * * *

B. General Rules and Regulations That Apply to This Form

* * * * *

(e) Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14) exactly as specified in this form.

* * * * *

Part II

* * * * *

Item 15. Controls and Procedures

(a) Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures (as defined in §§ 240.13a–15(c) and 240.15d–15(c)) based on their evaluation the controls and procedures as of a date within 90 days prior to the filing date of the report.

(b) Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, disclose whether or not there were significant changes in the registrant's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

* * * * *

Signatures

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 20–F of [identify registrant];

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–14 and 15d–14) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the ''Evaluation Date''); and

(c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

_____

[Signature]

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

* * * * *

21. By amending Form 40–F (referenced in § 249.240f) by adding a new paragraph (6) to General Instruction B and by adding a ''Certifications'' section after the ''Signatures'' section to read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on this Form

* * * * *

(6) Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act:

(a) Provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14) exactly as specified in this form.

(b) Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures (as defined in §§ 240.13a–15(c) and 240.15d–15(c)) based on their evaluation the controls and procedures as of a date within 90 days prior to the filing date of the report.

(c) Disclose in the report whether or not there were significant changes in the registrant's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

* * * * *

Signatures

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 40–F of [identify registrant];

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–14 and 15d–14) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the ''Evaluation Date''); and

(c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (and persons performing the equivalent function):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

_____

[Signature]

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

22. The authority citation for part 270 is amended by adding the following citation in numerical order to read as follows:

Authority: 15 U.S.C. 80a–1, *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

Section 270.30a–2 is also issued under 15 U.S.C. 78m, 78o(d), and 80a–29, and secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

23. By adding § 270.30a–2 to read as follows:

§ 270.30a–2 Certification of disclosure in annual and semi-annual reports.

(a) Each report, including transition reports, filed on Form N-SAR (referenced in §§ 249.330 and 274.101) by a registered management investment company or unit investment trust must include a certification containing the information set forth in paragraph (b) of this section in the form specified in the report, except that a report of a unit investment trust or small business investment company on Form N-SAR may omit paragraph (b)(3) of this section. Each principal executive officer or officers and principal financial officer or officers of the investment company, or persons performing similar functions, at the time of filing of the report must sign the certification.

(b) The certification included in each report specified in paragraph (a) of this section must be in the form specified in the report and consist of a statement of the certifying officer that:

(1) He or she has reviewed the report being filed;

(2) Based on his or her knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;

(3) Based on his or her knowledge, the financial information included in the report, and the financial statements on which the financial information is based, fairly present in all material respects the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the investment company as of, and for, the periods presented in the report;

(4) He or she and the other certifying officers are responsible for establishing and maintaining disclosure controls and procedures (as such term is defined in paragraph (c) of this section) for the investment company and have:

(i) Designed such disclosure controls and procedures to ensure that material information relating to the investment company, including its consolidated subsidiaries, is made known to them by others within those entities, particularly during the period in which the periodic reports are being prepared;

(ii) Evaluated the effectiveness of the investment company's disclosure controls and procedures as of a date within 90 days prior to the filing date of the report (the ''Evaluation Date''); and

(iii) Presented in the report their conclusions about the effectiveness of the disclosure controls and procedures based on their evaluation as of the Evaluation Date;

(5) He or she and the other certifying officers have disclosed, based on their most recent evaluation, to the investment company's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies in the design or operation of internal controls which could adversely affect the investment company's ability to record, process, summarize, and report financial data and have identified for the investment company's auditors any material weaknesses in internal controls; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the investment company's internal controls; and

(6) He or she and the other certifying officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(c) For purposes of this section, the term ''disclosure controls and procedures'' means controls and other procedures of an investment company that are designed to ensure that information required to be disclosed by the investment company in the reports that it files or submits under the Securities Exchange Act of 1934 is recorded, processed, summarized, and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and

procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an investment company in the reports that it files or submits under the Securities Exchange Act of 1934 is accumulated and communicated to the investment company's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

(d) A person required to provide the certification specified in paragraph (a) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

24. Section 270.30b1–3 is amended by adding a sentence at the end of the section to read as follows:

§ 270.30b1–3 Transition reports.

* * * A report filed pursuant to this section must include the certification required by § 270.30a–2.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

25. The authority citation for Part 274 is revised 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, and secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745, unless otherwise noted.

26. By amending Form N-SAR (referenced in §§ 249.330 and 274.101) by:

a. Revising the reference ''132'' in item 6 to read ''133'';

b. Adding item 133;

c. Revising the reference ''132'' in the fifth paragraph of General Instruction A to read ''133'';

d. Revising General Instructions D and G, and the Instructions to sub-items 77Q3 and 102P3;

e. Adding an Instruction to item 133; and

f. Revising the reference ''132'' in the Instructions to the Signature Page to read ''133.''

These additions and revisions read as follows:

Note: The text of Form N-SAR does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–SAR

* * * * *

133. Include the certifications required by rule 30a–2 under the Investment Company Act (17 CFR 270.30a–2).

* * * * *

General Instructions

* * * * *

D. Preparation of Report

(1) No item of the form except items 77 and 102 shall be answered by incorporating any information by reference. No exhibits or supplemental information are required or permitted, except in response to these items and item 133.

* * * * *

G. Submitting an Amendment to Form N-SAR on Paper or Electronically

* * * * *

(5) In an exhibit to the amendment, each principal executive officer and principal financial officer must provide the certification required by Item 133, instruction (a) for sub-item 77Q3, and instruction (a) for sub-item 102P3. A registrant that is a unit investment trust or a small business investment company may omit paragraph 3 of the certification required by instruction 77Q3(a)(iii).

* * * * *

Instructions to Specific Items

* * * * *

Sub–Item 77Q3

Subject to Rule 201.24 of the General Rules of Practice regarding incorporation by reference, the rules applicable to electronic submission of filings, and General Instruction F of this form, the following exhibits shall be filed as part of this form, if not previously filed:

(a) If the form is filed under Section 13(a) or 15(d) of the 1934 Act, include the following information:

(i) Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures (as defined in rule 30a–2(c) under the Act (17 CFR 270.30a–2(c)) based on their evaluation of these controls and procedures as of a date within 90 days of the filing date of the report that includes the disclosure required by this paragraph.

(ii) Disclose whether or not there were significant changes in the registrant's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(iii) Include the certification of each principal executive officer and principal financial officer required by Rule 30a–2 under the Act (17 CFR 270.30a–2). Provide a separate certification for each principal executive officer and principal financial officer, or person performing similar functions, in the exact form set forth below:

Certifications

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form N–SAR of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial information included in this report, and the financial statements on which the financial information is based, fairly present in all material respects the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in rule 30a–2(c) under the Investment Company Act) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the ''Evaluation Date''); and

(c) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize, and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

_____
[Signature]
[Title]

(b) Furnish any other information required to be included as an exhibit pursuant to such rules and regulations as the Commission may prescribe.

* * * * *

Sub-Item 102P3

See instructions for sub-item 77Q3. The registrant may omit paragraph 3 of the certification required by instruction (a)(iii).

* * * * *

Item 133

Include the exhibit required by instruction (a) for sub-item 77Q3. The registrant may omit paragraph 3 of the certification required by instruction (a)(iii).

By the Commission.

Dated: August 28, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22572 Filed 9–4–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 249, 270 and 274

[Release Nos. 34–46441; IC–25723; File No. S7–33–02]

RIN 3235–AI63

Certification of Management Investment Company Shareholder Reports and Designation of Certified Shareholder Reports as Exchange Act Periodic Reporting Forms

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing rule amendments that would require registered management investment companies to file certified shareholder reports with the Commission, and would designate these certified reports as reports that are required under Sections 13(a) and 15(d) of the Securities Exchange Act of 1934. This proposal would require each registered management investment company's principal executive and financial officers to certify the information contained in these reports in the manner required by Section 302 of the Sarbanes-Oxley Act of 2002. In addition, we are proposing an amendment to Form N–SAR, the semi-annual reporting form for registered investment companies, that would uniformly apply to all registered investment companies the requirement to include in Form N–SAR the certification required by Section 302 of the Sarbanes-Oxley Act of 2002. Finally, we are proposing a new rule to require every registered investment company to maintain disclosure controls and procedures designed to ensure that the information required in its disclosure documents is recorded, processed, summarized, and reported on a timely basis.

DATES: Comments must be received on or before October 16, 2002.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only.

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.* All comment letters should refer to File No. S7–33–02; 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: John M. Faust, Law Clerk, Tara L. Royal, Attorney, or Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is proposing for comment new rules 30a–3 and 30d–1 under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act''), and amendments to rules 8b–15 [17 CFR 270.8b–15], 30a–1 [17 CFR 270.30a–1], 30a–2 [17 CFR 270.30a–2], 30b1–1 [17 CFR 270.30b1–1], and 30b2–1 [17 CFR 270.30b2–1] under the Investment Company Act. The Commission also is proposing for comment amendments to Form N–SAR [17 CFR 249.330; 17 CFR 274.101] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] (''Exchange Act'') and the Investment Company Act, and new Form N–CSR [17 CFR 249.331; 17 CFR 274.128] under the Exchange Act and the Investment Company Act.

I. Introduction and Background

On July 30, 2002, the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley Act'') was enacted.[2] Section 302 of the Sarbanes-Oxley Act, entitled ''Corporate Responsibility for Financial Reports,'' requires the Commission to adopt final rules that must be effective by August 29, 2002, 30 days after the date of enactment, under which the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, of an issuer each must certify the information contained in the issuer's quarterly and annual reports filed or submitted under Section 13(a) or 15(d) of the Exchange Act.[3] Form N–SAR is currently the form designated for registered investment companies to comply with their reporting requirements under Sections 13(a) and 15(d) of the Exchange Act, as well as periodic reporting requirements under Sections 30(a) and 30(b)(1) of the Investment Company Act.[4]

In a companion release to this proposing release, the Commission is implementing the certification requirement of Section 302 of the Sarbanes-Oxley Act with respect to registered investment companies by adopting new rule 30a–2 under the Investment Company Act and the Sarbanes-Oxley Act.[5] Rule 30a–2 requires a registered investment company that files periodic reports under Section 13(a) or 15(d) of the Exchange Act, *i.e.*, Form N–SAR, to include the certification specified by Section 302 in those periodic reports.[6]

II. Discussion of Proposed Amendments

Certified Shareholder Reports

Although Form N–SAR is currently the form designated for registered investment companies to comply with their reporting requirements under Sections 13(a) and 15(d) of the Exchange Act, we believe that certification of Form N–SAR alone is not sufficient to fully implement the intent of the certification requirement of Section 302 of the Sarbanes-Oxley Act for registered management investment companies. This certification requirement was intended to improve the quality of the

[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.

[2] Pub. L. 107–204, 116 Stat. 745 (2002).

[3] Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission such annual reports and such quarterly reports as the Commission may prescribe. 15 U.S.C. 78m(a). Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act of 1933 (''Securities Act'') to file such supplementary and periodic information, documents, and reports as may be required pursuant to Section 13 of the Exchange Act in respect of a security registered pursuant to Section 12. 15 U.S.C. 78o(d). The duty of an issuer to file under Section 15(d) is automatically suspended for any fiscal year, other than a fiscal year in which its registration statement becomes effective or is required to be updated pursuant to Section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)], if an issuer's securities are held of record by less than 300 persons. 15 U.S.C. 78o(d); 17 CFR 240.12h–3(c).

[4] General Instruction A to Form N–SAR; Rule 30a–1 under the Investment Company Act [17 CFR 270.30a–1]. *See* Investment Company Act Release No. 14299 (Jan. 4, 1985) [50 FR 1442] (release adopting Form N–SAR). Face-amount certificate companies, however, do not file reports on Form N–SAR, but rather file periodic reports on Forms 10–K and 10–Q. *See* Investment Company Act Release No. 14080 (Aug. 6, 1984) [49 FR 32370, 32372] (face-amount certificate companies are required to file reports on other forms prescribed under the Exchange Act rather than Form N–SAR).

[5] *See* Exchange Act Release No. 34–46427 (Aug. 28, 2002).

[6] In the companion release, we have also adopted amendments to Form N–SAR, to require the specified certification to be filed as an exhibit to Form N–SAR. Item 133 and instructions to items 77Q3, 102P3, and 133 of Form N–SAR.

disclosure that a company provides about its financial condition in its periodic reports to investors.[7] For registered management investment companies, the required reports to shareholders, rather than Form N-SAR, are the primary vehicle for providing financial statements to investors.[8] We believe that the information in these reports to shareholders should be certified.

Therefore, we are proposing to amend rule 30b2–1 under the Investment Company Act,[9] which currently requires registered investment companies to file copies of reports transmitted to shareholders with the Commission within 10 days of their transmission to shareholders. Our proposed amendment would require a registered management investment company to file a report with the Commission on new Form N–CSR (''certified shareholder report'') containing (i) a copy of any required shareholder report, (ii) additional information regarding disclosure controls and procedures, and (iii) the certification required by the Sarbanes-Oxley Act.[10] New Form N–CSR would require certified shareholder reports to contain the exact form of the certification prescribed by Section 302. The form of this certification would parallel the form of the certification we have prescribed for other Exchange Act forms, such as Form N–SAR and Forms 10–K and 10–Q. In addition to the signature required on the certification, the report would be required to be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers and its principal financial officer or officers.[11]

We are also proposing a new rule 30d–1 under the Investment Company Act to designate both reports on Form N–SAR filed by management investment companies and unit investment trusts, and the certified shareholder reports on Form N–CSR that management investment companies would be required to file under rule 30b2–1(a), as periodic reports filed with the Commission under Section 13(a) or 15(d) of the Exchange Act.[12] The proposed amendments would, if adopted, require a certification of each principal executive officer and financial officer of a management investment company to be included in both its certified shareholder reports, and in its reports on Form N–SAR. The proposed amendments would also apply the certification requirement to amendments of certified shareholder reports on Form N–CSR.[13]

We request comment on our proposal to require certified shareholder reports to be filed on Form N–CSR and to designate these reports as reports that are required under Sections 13(a) and 15(d) of the Exchange Act.

• Should we require both the filing of certified shareholder reports on Form N–CSR and the certification of Form N–SAR? Should Form N–SAR be designated as exclusively an Investment Company Act filing and the certification requirement removed from Form N–SAR? If we remove the certification requirement from Form N–SAR, unit investment trusts and small business investment companies will have no certification requirement. Is this result appropriate or should these types of investment companies continue to certify Form N–SAR? Should Form N–SAR continue to be an Exchange Act reporting form for unit investment trusts and small business investment companies, even if we determine that it should be an Investment Company Act-only form for other management investment companies?

• Instead of our proposal, should we require the certification required by Section 302 of the Sarbanes-Oxley Act to be included in Form N–SAR, but require additional information, such as the report to shareholders, or a portion of this report such as the financial statements, to be filed as an exhibit to the report on Form N–SAR?

Scope of Certification Requirement

In addition to financial statements, annual reports to shareholders of open-end management investment companies, or mutual funds, typically contain Management's Discussion of Fund Performance (''MDFP''), although they are not required to do so.[14] MDFP includes narrative disclosure of the factors that materially affected a fund's performance during the reporting period, a line graph comparing the fund's performance to that of an appropriate broad-based market index, and a table of average annual total returns for the fund.[15] In addition, the annual report to shareholders of a management investment company must contain other information, including certain basic information about the investment company's directors.[16] Our

[7] *See, e.g.*, S. Rep. No. 107–205, at 2 (2002) (''The bill also requires steps to enhance the direct responsibility of senior corporate management for financial reporting and for the quality of financial disclosures made by public companies.''); 148 Cong. Rec. S7355 (July 25, 2002) (statement of Sen. Enzi) (''With respect to section 302, the conference recognizes that results presented in financial statements often necessarily require accompanying disclosures in order to apprise investors of the company's true financial condition and results of operations. The supplemental information contained in these additional disclosures increases transparency for investors. Accordingly, the relevant officers must certify that the financial statements together with the disclosures contained in the periodic report, taken as a whole, are appropriate and fairly represent, in all material respects, the operations and financial condition of the issuer.''); 148 Cong. Rec. S6760 (July 15, 2002) (statement of Sen. Akaka) (''The legislation also requires additional corporate governance procedures to make Chief Executive Officers and Chief Financial Officers more directly responsible for the quality of financial reporting made to investors.'').

[8] Rule 30e–1 under the Investment Company Act [17 CFR 270.30e–1].

[9] 17 CFR 270.30b2–1.

[10] Proposed rule 30b2–1(a) under the Investment Company Act; proposed Form N–CSR. In addition, we are proposing to amend new rule 30a–2 to require both Forms N–CSR and N–SAR to include the certification required by Section 302 of the Sarbanes-Oxley Act. No certified shareholder report on Form N–CSR would be required with respect to a report to shareholders that is not required under rule 30e–1 under the Investment Company Act [17 CFR 270.30e–1], *e.g.*, voluntary quarterly reports. These reports to shareholders would continue to be filed with the Commission as they are presently. Proposed rule 30b2–1(b).

[11] *See* proposed General Instruction E to Form N–CSR.

[12] We are also proposing a technical conforming amendment that would delete the language in current rule 30a–1 [17 CFR 270.30a–1] stating that a registered management investment company required to file an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act and Section 30(a) of the Investment Company Act shall be deemed to have satisfied its requirement to file an annual report by the filing of semi-annual reports on Form N–SAR. The proposed amendments would rename rule 30a–1 in order to specify that it relates to annual reports by registered unit investment trusts, and would rename rule 30b1–1 [17 CFR 270.30b1–1] in order to specify that it relates to semi-annual reports of registered management investment companies.

Form N–SAR would continue to be the only form required to satisfy the reporting requirements of Sections 13(a) and 15(d) of the Exchange Act with respect to registered unit investment trusts and registered small business investment companies (''SBICs''). Unit investment trusts, which are unmanaged, fixed portfolios of securities that have no corporate management structure, generally are not required to transmit reports to shareholders containing their financial statements. Similarly, registered SBICs, which are management investment companies, are not required under rule 30e–1(a) [17 CFR 270.30e–1(a)] to transmit reports to shareholders containing their financial statements, because Form N–5 [17 CFR 239.24; 17 CFR 274.5], the registration form for SBICs, does not prescribe requirements for reports to shareholders by SBICs.

[13] Proposed rule 8b–15 under the Investment Company Act.

[14] Item 5 of Form N–1A. Management's Discussion of Fund Performance must be included in a fund's prospectus unless the fund is a money market fund or the information in the MDFP is included in the fund's annual report to shareholders under rule 30e–1 [17 CFR 270.30e–1]. A fund that includes MDFP in its annual report must disclose in its prospectus that its annual report contains additional performance information that will be made available upon request and without charge. Item 1(b)(1) of Form N–1A.

[15] Item 5 of Form N–1A.

[16] Item 22(b)(5) of Form N–1A; Instruction 4.e. to Item 23 of Form N–2; Instruction 4(v) to Item 27(a) of Form N–3.

proposed amendments would require this information and any other information contained in shareholder reports, whether required or included voluntarily, to be certified. This requirement is intended to fully implement the intent of Section 302, by enhancing the quality of all the information provided to investors in an investment company's reports to shareholders.

We request comment on the scope of the certification requirement.

• Should the certification requirement apply to part or all of the information contained within a shareholder report, including any information included on a voluntary basis and not required by statute or rule? For example, should Form N–CSR be required to contain only a portion of the shareholder report, such as the financial statements, with the remainder of the shareholder report filed with the Commission exclusively under the Investment Company Act?

Uniform Application of Certification Requirements

Our proposed amendments would also amend the instructions to Form N–SAR to uniformly apply to all registered investment companies the requirement to include the certification required by Section 302 of the Sarbanes-Oxley Act, regardless of whether they are subject to Section 13(a) or 15(d) of the Exchange Act.[17] Likewise, the requirement to file certified shareholder reports would apply regardless of whether an investment company is subject to Section 13(a) or 15(d) of the Exchange Act.[18] By contrast, registered investment companies that do not file reports under Section 13(a) or 15(d) of the Exchange Act are not required, by the instructions to Form N–SAR that we have adopted in our companion release, to comply with the certification requirement of Section 302 of the Sarbanes-Oxley Act.[19] This results from the fact that the rules we have adopted implement Section 302, which only directs the Commission to adopt rules that will apply to companies filing periodic reports under Section 13(a) or 15(d) of the Exchange Act. We believe, however, that it is important for the certification requirement, like our other reporting rules, to apply consistently to all registered investment companies, regardless of whether they fall within the periodic reporting requirements of the Exchange Act. [20]

We request comment on our proposal to amend the instructions to Form N–SAR to require all registered investment companies to include the certification required by Section 302 of the Sarbanes-Oxley Act, regardless of whether they are subject to Section 13(a) or 15(d) of the Exchange Act. We also request comment on our proposal to require management investment companies to file certified shareholder reports on Form N–CSR regardless of whether they are subject to Section 13(a) or 15(d) of the Exchange Act.

• Should the certification requirement apply uniformly to all registered investment companies, or should it apply only to registered investment companies subject to Section 13(a) or 15(d) of the Exchange Act?

Disclosure Controls and Procedures

We are also proposing new rule 30a–3, which would require all registered investment companies to maintain, and regularly evaluate the effectiveness of, controls and procedures designed to ensure that the information required in filings under the Securities Act of 1933 (''Securities Act''), Exchange Act, and Investment Company Act, including prospectuses and prospectus amendments, reports to shareholders, and Form N–SAR, is recorded, processed, summarized, and reported on a timely basis. We are also proposing a conforming amendment to rule 30a–2(c), to clarify that the definition of disclosure controls and procedures applies to all registration statements, reports, and other filings under these Acts.

Investment companies filing reports under Section 13(a) or 15(d) of the Exchange Act will be required to maintain disclosure controls and procedures under new Exchange Act rules 13a–15 and 15d–15 with respect to Exchange Act reports.[21] Proposed rule 30a–3 would apply this requirement uniformly to all registered investment companies and would extend it to filings under the Securities Act and the Investment Company Act. We believe that it is important that investment companies maintain effective disclosure controls and procedures with respect to the information required in filings under the Securities Act and the Investment Company Act as well as with respect to Exchange Act filings. Further, we believe that all registered investment companies should maintain effective disclosure controls and procedures, regardless of whether they fall within the periodic reporting requirements of the Exchange Act. Proposed rule 30a–3 would require an investment company, under the supervision and with the participation of the principal executive and financial officers, to conduct an evaluation of its disclosure controls and procedures within the 90-day period prior to the filing date of each report requiring certification under Investment Company Act rule 30a–2. We expect that this evaluation would be carried out in a manner that would form the basis for the certification required by Section 302 of the Sarbanes-Oxley Act regarding disclosure controls and procedures required by Investment Company Act rule 30a–2(b)(4).

We request comment on our proposal to require all registered investment companies to maintain disclosure controls and procedures with respect to all filings under the Securities Act, Exchange Act, and Investment Company Act.

• Should the disclosure controls and procedures requirements extend to filings made under all three Acts, and to all registered investment companies?

Compliance Date

If we adopt the proposed amendments, we intend to require compliance with the proposed amendments, including the requirement to file certified shareholder reports on Form N–CSR and the requirements with respect to disclosure controls and procedures, 30 days after their publication in the **Federal Register**.

We request comment on the anticipated compliance date.

• Is 30 days an appropriate transition period for compliance, or should this be shorter or longer? Should any of the proposed amendments have different compliance dates?

[17] Proposed Instruction to sub-item 77Q3 of Form N–SAR. *See supra* note 3 (describing scope of coverage of Sections 13(a) and 15(d) of the Exchange Act).

[18] Proposed rule 30b2–1(a).

[19] This exception applies principally to investment companies that do not file reports under Section 13(a) of the Exchange Act because they are not registered on a national securities exchange pursuant to Section 12 of the Exchange Act, and that do not file reports under Section 15(d) of the Exchange Act because they issue securities that are held of record by less than 300 persons, do not have a registration statement that has become effective in the current fiscal year, and are not required to update their registration statement in the current year pursuant to Section 10(a)(3) of the Securities Act. *See supra* note 3.

[20] *Cf.* General Instruction A to Form N–SAR (Form N–SAR is to be used for semi-annual and annual reports by all registered investment companies that have filed a registration statement that has become effective pursuant to the Securities Act, with the exception of face amount certificate companies).

[21] *See* Exchange Act Release No. 34–46427 (Aug. 28, 2002).

III. General Request for Comment

In addition to requesting comment on our proposal to require the filing of certified shareholder reports and to designate these reports as reports filed with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act and our other proposals, we request comment generally on whether any further changes to our rules and forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might have an effect on the proposals contained in this release.

IV. Paperwork Reduction Act

The new rules and rule and form amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[22] We are submitting the proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[23] The titles for the collection of information are ''Form N–CSR under the Investment Company Act of 1940 and Securities Exchange Act of 1934, Certified Shareholder Report,'' and ''Form N–SAR under the Investment Company Act of 1940 and Securities Exchange Act of 1934, Semi-Annual Report for Registered Investment Companies.''

Form N–SAR (OMB Control No. 3235–0330) under the Exchange Act and the Investment Company Act [17 CFR 249.330; 17 CFR 274.101] is used by registered investment companies to file periodic reports with the Commission. The Commission is proposing a new collection of information on proposed Form N–CSR under the Exchange Act and the Investment Company Act, to be used by registered management investment companies filing certified shareholder reports.

A. Summary of Proposed Rules

Proposed Form N–CSR, if adopted, would contain: (i) A copy of any report that is required to be transmitted to shareholders, (ii) additional information regarding disclosure controls and procedures, and (iii) the certification required by Section 302 of the Sarbanes-Oxley Act. The proposed amendment to rule 30b2–1, if adopted, would require a registered management investment company to file certified shareholder reports with the Commission on proposed Form N–CSR. Proposed rule 30d–1, if adopted, would designate both reports on Form N–SAR and certified shareholder reports on Form N–CSR as periodic reports under Section 13(a) or 15(d) of the Exchange Act.[24] The proposed amendments to rule 30a–2, if adopted, would require each certified shareholder report on Form N–CSR filed with the Commission under rule 30b2–1(a) to include the certification required by Section 302, by each principal executive and financial officer of a management investment company.[25] The proposed amendments to rule 8b–15, if adopted, would also apply the certification requirement to amendments of certified shareholder reports on Form N–CSR.[26] Proposed rule 30a–3, if adopted, would require all registered management investment companies to maintain, and regularly evaluate the effectiveness of, disclosure controls and procedures designed to ensure that the information required in filings under the Securities Act, Exchange Act, and Investment Company Act is recorded, processed, summarized, and reported on a timely basis. All of these proposed rules and rule amendments, if adopted, would become part of the collection of information of new Form N–CSR and Form N–SAR, because these forms would contain the requirement that each registered investment company filing reports on these forms would have to certify the contents of these reports.

Compliance with the proposed rules and rule and form amendments is mandatory and the information provided will not be kept confidential. Under our rules for retention of manual signatures, registered investment companies would have to maintain the certifications for five years.[27] The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

B. Reporting and Cost Burden Estimates

The compliance burden estimates for the proposed collection of information are based on several assumptions. The compliance burden for Form N–SAR and Form N–CSR would be the reporting burden associated with requiring the principal executive and financial officer to review and analyze each periodic report to be filed by an investment company in order to make the required certification. We estimate that the new certification requirement would result in an increase of five burden hours per respondent per filing in connection with the certification of annual and semi-annual reports on Form N-SAR and Form N–CSR. We request comment on this estimate.

We estimate that the proposed rules and rule and form amendments would affect 3,750 respondents.[28] Based on a burden hour estimate of five hours for each respondent per filing we estimate that, in the aggregate, all respondents will incur 37,500 burden hours[29] to comply with the proposed rules and rule and form amendments.

The total burden hours of complying with Form N–CSR is estimated to be 37,000 burden hours.[30] Each registered management investment company would be required to file annual and semi-annual reports on Form N–CSR. The contents of this report will consist of (i) a copy of any required shareholder report, (ii) additional information regarding disclosure controls and procedures, and (iii) the certification required by Section 302 of the Sarbanes-Oxley Act. We estimate that respondents will incur a burden of five hours in connection with the review, certification, and filing of each report on Form N–CSR.

The total burden hours for Form N–SAR, revised to include the burden hours expected from the proposed rules and rule and form amendments, is estimated to be 154,950 burden hours, an increase of 500 hours from the current annual burden of 154,450 hours.[31]

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[22] 44 U.S.C. 3501 *et seq.*

[23] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[24] We are also proposing technical conforming amendments that would rename rule 30a–1 in order to specify that it relates to annual reports by unit investment trusts, and would rename rule 3061–1 [17 CFR 270.30b1–1] in order to specify that it relates to semi-annual reports of registered management investment companies. These technical amendments do not constitute a collection of information because we are not altering the legal requirements of these rules.

[25] Proposed rule 30b2–1(a) under the Investment Company Act would not require the filing of a certified shareholder report with respect to a report to shareholders not required under rule 30e–1 under the Investment Company Act [17 CFR 270.30e–1], *e.g.,* voluntary quarterly reports.

[26] This would not be a collection of information because the requirement to file certified shareholder reports on Form N–CSR is a requirement under rule 30b2–1 and not under rule 8b–15.

[27] *See* Rule 302(b) of Regulation S–T [17 CFR 232.302(b)].

[28] 3,700 registered management investment companies filing certified shareholder reports on Form N–CSR + 50 additional registered management investment companies certifying Form N–SAR = 3,750 respondents.

[29] 3,750 respondents × 2 certifications per year × 5 hours per certification = 37,500 total hours.

[30] 3,700 registered management investment companies filing certified shareholder reports on Form N–CSR × 2 certifications per year × 5 hours per certification = 37,000 burden hours.

[31] This increase reflects an increase of 10 hours (5 hours × 2 N–SAR filings per year) for the 50 registered management investment companies that are not required to file the certification on Form N–SAR currently.

Proposed amendments to rule 30b2–1, if adopted, would require a registered management investment company to file certified shareholder reports on Form N–CSR with the Commission. This would not constitute an additional collection of information because the burden required by these amendments is part of the collection of information on new Form N–CSR.

Proposed rule 30d–1, if adopted, would require both reports on Form N-SAR with regard to management investment companies and unit investment trusts, and certified shareholder reports with regard to management investment companies to be deemed to be filed with the Commission under Section 13(a) or 15(d) of the Exchange Act. Proposed rule 30d-1 would not impose an additional collection of information on respondents because the burden required by this proposed rule is part of the information on Form N–SAR and Form N–CSR.

The proposed amendments to rule 30a–2, if adopted, would require each report filed with the Commission under rule 30b2–1(a) to include the certification required by Section 302 of the Sarbanes-Oxley Act. Furthermore, the proposed amendments to rule 30a–2 and amendments to Form N–SAR would uniformly apply the requirement to include the certification required by Section 302 of the Sarbanes-Oxley Act on Form N–SAR to all registered investment companies, regardless of whether they are subject to Section 13(a) or 15(d) of the Exchange Act. We estimate that there are approximately 50 registered investment companies that do not currently file reports under Section 13(a) or 15(d) of the Exchange Act. The amendments to rule 30a–2 would not be an additional collection of information because the burden required by these amendments is part of the current information collection of Form N–SAR.

Proposed rule 30a–3 would apply uniformly to all investment companies the requirement to maintain sufficient procedures to record, process, summarize, and report the information required in its filings under the Securities Act, Exchange Act, and Investment Company Act. This would not be an additional collection of information because this requirement to maintain and evaluate disclosure controls and procedures would become part of the collection of information required by Form N–SAR and Form N–CSR, because each principal executive and financial officer of a registered investment company would have to state in a required certification in Form N–SAR and Form N–CSR that he or she is responsible for maintaining disclosure controls and procedures, and has evaluated these controls and procedures.

C. Request for Comment

We request comment in order to: (a) Evaluate whether the proposed information collections and amendments to our existing information collections are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the proposed rules and rule and form amendments for registered investment companies; (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the proposals on those who respond, including through the use of automated collection techniques or other forms of information technology.[32]

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the proposed collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609, with reference to File No. S7–33–02. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–33–02 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW, Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

V. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. Our proposed rules and rule and form amendments would require a registered management investment company to file certified shareholder reports with the Commission on Form N–CSR containing (i) a copy of any required report to shareholders, (ii) additional information regarding disclosure controls and procedures, and (iii) the certification required by Section 302 of the Sarbanes-Oxley Act. These proposals also would designate both reports on Form N–SAR, filed by management investment companies and unit investment trusts, and certified shareholder reports on Form N–CSR, filed by management investment companies, as periodic reports filed with the Commission under the Exchange Act. Therefore, these proposals, if adopted, would require the certification of each management investment company's principal executive and financial officer to be included in both its reports on Form N-SAR and its certified shareholder reports on Form N–CSR. We also propose amending the instructions to Form N–SAR, the semi-annual reporting form for registered investment companies, to uniformly apply to all registered investment companies the certification requirement of Section 302 of the Sarbanes-Oxley Act, regardless of whether they are subject to Section 13(a) or 15(d) of the Exchange Act. Finally, the proposed rules would require all registered investment companies to maintain, and regularly evaluate the effectiveness of, disclosure controls and procedures designed to ensure that the information required in its filings with the Commission is recorded, processed, summarized, and reported on a timely basis.

A. Benefits

In proposing these rules and rule and form amendments, we intend to more fully implement the intent of Section 302 of the Sarbanes-Oxley Act, by improving the quality of the disclosure that an investment company provides about its financial condition in its periodic reports to investors. Section 302 of the Sarbanes-Oxley Act requires the principal executive and financial officers of an issuer to certify the information contained in the issuer's quarterly or annual reports filed under Section 13(a) or 15(d) of the Exchange Act. Requiring a registered investment company's principal executive and financial officers to file certified shareholder reports on Form N–CSR would require these officers to certify, in part, that the financial statements contained in the periodic report fairly present in all material respects the financial condition, results of operations, changes in net assets, and

[32] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

cash flows (if the financial statements are required to include a statement of cash flows) of the registered investment company.

In addition, the proposed rules should help to ensure that registered investment companies maintain sufficient disclosure controls and procedures to provide reasonable assurance that they can record, process, summarize, and report on a timely basis information that is required in reports to shareholders and other required disclosure documents.[33] To the extent that registered investment companies do not maintain adequate procedures, the proposed rules should lead to the development, or enhancement and modernization, of these procedures. Further, the certification requirement in our proposed rules would require an investment company under the supervision of its management to conduct an evaluation of these disclosure controls and procedures within the 90-day period prior to the filing date of each report requiring certification. This would help to ensure that registered investment companies devote adequate resources and attention to the maintenance of their reporting systems. Additionally, the required evaluation would help to ensure the continuous, orderly, and timely flow of information within the registered investment company and, ultimately, to investors.

By emphasizing the importance of the role of senior officers in the reporting process, the proposed rules and rule and form amendments would help to enhance investor confidence in the quality of the disclosure in registered investment companies' reports to shareholders. This, in turn, would help to encourage investor confidence in these investment companies. These benefits are difficult to quantify, but may be significant. We request comment on the nature and magnitude of these benefits.

B. Costs

While the proposed rules and rule and form amendments may lead to some additional costs for registered investment companies, we believe that these costs should be minimal. These proposals will require each registered management investment company's principal executive and financial officer to certify the information contained in both its certified shareholder reports on Form N–CSR and in its reports on Form N–SAR, if not already required to do so. In order to provide the required certification, each principal executive and financial officer will need to review these reports. We believe that these officers already review these reports, so there should be no additional burden imposed on these companies. To the extent that these officers would need to spend additional time critically reviewing the overall context of the disclosure provided in these reports, the company would incur costs. For purposes of the Paperwork Reduction Act,[34] we estimate that it would take approximately 37,500 hours to comply with the proposed rules and rule and form amendments to the extent that management investment companies are not already required to do so.[35]

The required certification of certified shareholder reports on Form N–CSR and Form N–SAR (to the extent not already required) by the principal executive and financial officers of investment companies would create a new legal obligation for these individuals. We believe that the potential, incremental cost of litigation arising from signing a certification is justified by the benefit to investors of knowing that the principal executive and financial officers have reviewed and analyzed the reports.

We believe that most registered investment companies already maintain some form of disclosure controls and procedures for identifying and processing the information needed to satisfy their disclosure obligations to their shareholders. The proposed amendments do not dictate that registered investment companies follow any particular procedure. Alternatively, we could have required specific controls and procedures for all investment companies. By proposing to allow investment companies to determine what procedures are necessary to meet the obligations of the proposed rules, the Commission will be mitigating the costs associated with compliance. Some registered investment companies may need to institute appropriate procedures while others may need to enhance existing informal or ad hoc procedures. These incremental costs are difficult to quantify. We do not have data to quantify the cost of implementing, or upgrading and strengthening existing, internal reporting procedures, and we seek comments and supporting data on these costs.

The requirement in the certification that disclosure controls and procedures be evaluated within 90 days of the filing of a report may result in costs for registered management investment companies. Many registered investment companies may already regularly monitor and evaluate their procedures. However, the size and scope of these internal systems are likely to vary among registered investment companies, and it is difficult to provide an accurate cost estimate. We request comment on the costs of these evaluation requirements.

We note that in a companion release to this proposing release, the Commission is implementing the certification requirement of Section 302 of the Sarbanes-Oxley Act with respect to registered investment companies that file periodic reports under Section 13(a) or 15(d) of the Exchange Act, *i.e.*, Form N–SAR. Therefore, the additional cost involved in establishing and evaluating disclosure controls and procedures in order to certify the contents of certified shareholder reports on Form N–CSR in addition to the contents of reports on Form N–SAR may be limited.

C. Request for Comments

We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed rules and rule and form amendments. In particular, we request comments on the costs and benefits to registered management investment companies and their shareholders of filing certified shareholder reports on Form N–CSR. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Consideration of Burden on Competition; Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) also prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[36] In addition, Section 2(c) of the Investment Company Act,[37] section 2(b) of the Securities Act[38] and Section 3(f) of the Exchange Act[39] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public

[33] *See* proposed rule 30a–3.

[34] *See* Section IV above.

[35] We calculated this result as follows: (3,700 registered management investment companies filing certified shareholder reports on Form N–CSR + 50 additional registered investment companies certifying Form N–SAR) x 2 filings per year = 7,500 filings of reports x five hours = 37,500 hours.

[36] 15 U.S.C. 78w(a)(2).

[37] 15 U.S.C. 77b(b).

[38] 15 U.S.C. 80a–2(c).

[39] 15 U.S.C. 78c(f).

interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed rules and rule and form amendments are intended to more fully implement the intent of Section 302 of the Sarbanes-Oxley Act that we adopt rules requiring the officers of investment companies to certify the accuracy of their periodic reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act. We believe that the proposals may benefit investors by providing them with greater confidence in the accuracy and completeness of the disclosure contained in the annual and semi-annual reports that they receive from management investment companies, including the financial statements. However, the magnitude of the effect of the proposals on efficiency, competition, and capital formation is difficult to quantify, particularly given that most investment companies will be required to comply with some certification requirements in other newly adopted rules.

We request comment on whether the proposed rules and rule and form amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''Analysis'') has been prepared in accordance with 5 U.S.C. 603, and relates to the Commission's proposed rules and rule and form amendments under the Exchange Act and the Investment Company Act that would require registered management investment companies to file certified shareholder reports on Form N–CSR with the Commission, and would designate these certified reports as reports that are required under Sections 13(a) and 15(d) of the Exchange Act. These proposed rules and rule and form amendments would require each registered management investment company's principal executive and financial officers to certify the information contained in these reports in the manner required by Section 302 of the Sarbanes-Oxley Act. In addition, these proposals would uniformly apply to all registered investment companies the requirement to include in Form N–SAR the certification required by Section 302 of the Sarbanes-Oxley Act. Finally, the proposals would require every registered investment company to maintain disclosure controls and procedures designed to ensure that the information required in its disclosure documents is recorded, processed, summarized, and reported on a timely basis.

A. Reasons for, and Objectives of, Proposed Amendments

The purpose of the proposed rules and rule and form amendments is to more fully implement the intent of Section 302 of the Sarbanes-Oxley Act that we adopt rules requiring the officers of investment companies to certify the accuracy of their periodic reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act. The proposals would require registered management investment companies to file with the Commission certified shareholder reports on Form N–CSR, and would designate these reports, in addition to reports on Form N–SAR, as filings which satisfy the reporting requirements of Sections 13(a) and 15(d) of the Exchange Act for management investment companies. We believe that by requiring the certification required by Section 302 of the Sarbanes-Oxley Act to be included in a management investment company's certified shareholder report on Form N–CSR, which contains financial statements, in addition to Form N–SAR, we are more fully implementing the intent of Section 302, which is to improve the quality of the disclosure that companies provide about their financial condition in their shareholder reports.

B. Legal Basis

The proposed rules and rule and form amendments contained in this release are being proposed pursuant to Sections 5, 6, 7, 17, and 19(a) of the Securities Act, Sections 10(b), 13, 15(d), and 23(a) of the Exchange Act, Sections 8, 24(a), 30, and 38 of the Investment Company Act, and Sections 3(a) and 302 of the Sarbanes-Oxley Act.

C. Small Entities Subject to the Rule

The proposed rules and rule and form amendments would affect registered investment companies that are small entities. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[40] We estimate that there are approximately 205 investment companies together with other investment companies in the same group of related investment companies that have net assets of $50 million or less as of the end of its most recent fiscal year.[41]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rules and rule and form amendments would require management investment companies to include a certification in their certified shareholder reports on Form N–CSR, in addition to reports on Form N–SAR. The form of the certification would parallel the form of the certification we have prescribed for Form N–SAR. The certification would require the management investment company's principal executive and financial officers to state, in part, that, based on their knowledge, the information in the certified shareholder report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made not misleading with respect to the period covered by the report, and that the financial statements, and other financial information included in the report, fairly present the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant. The certification also would require the signing officers to certify that they have established and maintained disclosure controls and procedures to ensure that material information relating to the registrant is made known to senior management, and also to certify that they have evaluated these procedures within 90 days of the filing date of the report. The proposals may increase the costs associated with compliance with investment companies' reporting obligations. However, this cost increase is expected to be limited, because most management investment companies are currently required to provide a similar certification with respect to their reports on Form N–SAR

E. Duplicative, Overlapping, or Conflicting Federal Rules

There are no rules that duplicate, overlap, or conflict with the proposed rules and rule and form amendments.

[40] 17 CFR 270.0–10.

[41] This estimate is based on figures compiled by the Commission staff regarding investment companies registered on Form N–1A, Form N–2, and Form N–3. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. Investment Company Act rule 0–10(b) [17 CFR 270.0–10(b)]. Currently, no insurance company separate account qualifies as a small entity.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small issuers. In connection with the proposed rules and rule and form amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; and (iii) an exemption from coverage of the proposed amendments, or any part thereof, for small entities. The proposals are intended to more fully implement the intent of Section 302 of the Sarbanes-Oxley Act, and should help ensure that information about an investment company's business and financial condition, specifically its financial statements, is adequately reviewed by an investment company's senior executives, thereby enhancing investor confidence in the quality of its disclosure.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The proposed designation of certified shareholder reports on Form N–CSR, in addition to reports on Form N–SAR, as reporting forms that must contain the certification required by Section 302 of the Sarbanes-Oxley Act would improve investor confidence in the quality of an investment company's disclosure to investors in its shareholder reports, particularly the financial statements contained in these reports. We believe it is important that the benefits resulting from the certification of shareholder reports that would be required by the proposed rules be provided to investors in all management investment companies, not just investors in management investment companies that are not considered small entities. The Commission also notes that Section 302 of the Sarbanes-Oxley Act does not distinguish between small entities and other investment companies.

G. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this Analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed rules and rule and form amendments and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed rules and rule and form amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. To help us process and review your comments more efficiently, comments should be sent by one method only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exhange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[42]

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA,'')[43] we must advise the OMB as to whether the proposed rules and rule and form amendments constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

Where a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed rules and rule and form amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IX. Statutory Authority

The rules and rule and form amendments contained in this release are being proposed pursuant to Sections 5, 6, 7, 17, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77q, and 77s(a)], Sections 10(b), 13, 15(d), and 23(a) of the Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), and 78w(a)], Sections 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–29, and 80a–37], and Sections 3(a) and 302 of the Sarbanes-Oxley Act of 2002 [Pub. L. 107–204, 116 Stat. 745].

List of Subjects

17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 249 is amended by adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

Section 249.330 is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

Section 249.331 is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

2. Section 249.331 is added to read as follows:

§ 249.331 Form N–CSR, certified shareholder report.

This form shall be used by registered management investment companies to file reports pursuant to § 270.30b2–1(a) of this chapter not later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under § 270.30e–1 of this chapter.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

3. The authority citation for Part 270 is amended by revising the general authority citation and by adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted;

* * * * *

[42] We do not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information that you wish to make publicly available.

[43] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

Section 270.30a–1 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 270.30a–3 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

Section 270.30b1–1 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

Section 270.30b2–1 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

Section 270.30d–1 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

* * * * *

4. Section 270.8b–15 is amended by adding a sentence at the end of the section to read as follows:

§ 270.8b–15 Amendments.

* * * An amendment to any report required to include the certification as specified in § 270.30a–2 must provide a new certification by each principal executive officer and principal financial officer of the registrant.

5. Section 270.30a–1 is revised to read as follows:

§ 270.30a–1 Annual reports for unit investment trusts.

Every registered unit investment trust shall file an annual report on Form N–SAR with respect to each calendar year not more than sixty calendar days after the close of each year. A registered unit investment trust that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

6. Section 270.30a–2 (added elsewhere in this issue of the **Federal Register**) is amended by:

a. Revising the section heading as set forth below; and

b. Revising paragraphs (a) and (c) to read as follows:

§ 270.30a–2 Certification of disclosure.

(a) Each report, including transition reports, filed on Form N–SAR (§§ 249.330 and 274.101 of this chapter) by a registered management investment company or unit investment trust, and each report filed on Form N–CSR (§§ 249.331 and 274.128 of this chapter) by a registered management investment company, must include a certification containing the information set forth in paragraph (b) of this section in the form specified in the report, except that a report of a unit investment trust or small business investment company on Form N–SAR may omit paragraph (b)(3) of this section. Each principal executive officer or officers and principal financial officer or officers of the investment company, or persons performing similar functions, at the time of filing of the report must sign the certification.

* * * * *

(c) For purposes of this section and § 270.30a–3, the term ''disclosure controls and procedures'' means controls and other procedures of an investment company that are designed to ensure that information required to be disclosed by the investment company in the reports, registration forms, and other filings that it files or submits under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Act is recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an investment company in the reports, registration forms, and other filings that it files or submits under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Act is accumulated and communicated to the investment company's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

* * * * *

7. Section 270.30a–3 is added to read as follows:

§ 270.30a–3 Disclosure controls and procedures related to preparation of required filings.

(a) Every registered investment company must maintain disclosure controls and procedures (as defined in § 270.30a–2(c)).

(b) Within the 90-day period prior to the filing date of each report requiring certification under § 270.30a–2, an evaluation must be carried out under the supervision, and with the participation of, the registered investment company's management, including the registered investment company's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness of the design and operation of the registered investment company's disclosure controls and procedures.

8. Section 270.30b1–1 is revised to read as follows:

§ 270.30b1–1 Semi-annual report for registered management investment companies.

Every registered management investment company shall file a semi-annual report on Form N–SAR (§§ 249.330 and 274.101 of this chapter) not more than sixty calendar days after the close of each fiscal year and fiscal second quarter. A registered management company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

9. Section 270.30b2–1 is revised to read as follows:

§ 270.30b2–1 Filing of reports to stockholders.

(a) Every registered management investment company shall file a report on Form N–CSR (§§ 249.331 and 274.128 of this chapter) not later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under § 270.30e–1.

(b) A registered investment company shall file with the Commission a copy of every periodic or interim report or similar communication containing financial statements that is transmitted by or on behalf of such registered investment company to any class of such company's security holders and that is not required to be filed with the Commission under paragraph (a) of this section. The filing shall be made not later than 10 days after the transmission to security holders.

10. Section 270.30d–1 is added to read as follows:

§ 270.30d–1 Designation of periodic reports under the Securities Exchange Act of 1934.

A registered management investment company required to file annual and quarterly reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall satisfy its requirement to file such reports by the filing, in accordance with the rules and procedures specified therefor, of semi-annual reports on Form N–SAR (§§ 249.330 and 274.101 of this chapter) and reports on Form N–CSR (§§ 249.331 and 274.128 of this chapter). A unit investment trust required to file

annual and quarterly reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 shall satisfy its requirement to file such reports by the filing, in accordance with the rules and procedures specified therefor, of annual reports on Form N–SAR.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

11. The authority citation for Part 274 is amended by adding the following citations to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

Section 274.101 is also issued under secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745.

Section 274.128 is also issued under secs. 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745.

12. Form N–SAR (referenced in §§ 249.330 and 274.101) is amended by revising the introductory text of instruction (a) to sub-item 77Q3 to read as follows:

Note: The text of Form N–SAR does not, and this amendment will not, appear in the *Code of Federal Regulations.*

Form N–SAR

* * * * *

Instructions to Specific Items

* * * * *

Sub-Item 77Q3:

* * * * *

(a) Include the following information:

* * * * *

13. Section 274.128 is added to read as follows:

§ 274.128 Form N–CSR, certified shareholder report.

This form shall be used by registered management investment companies to file reports pursuant to § 270.30b2–1(a) of this chapter not later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under § 270.30e–1 of this chapter.

14. Add Form N–CSR (referenced in §§ 249.331 and 274.128) to read as follows:

Note: The text of Form N–CSR does not, and this amendment will not, appear in the *Code of Federal Regulations.*

OMB Approval

OMB Number:

Expires:

Estimated average burden hours per response:

United States Securities and Exchange Commission, Washington, D.C. 20549

Form N–CSR

Certified Shareholder Report of Registered Management Investment Companies

Investment Company Act file number __

_____

(Exact name of registrant as specified in charter)

_____

(Address of principal executive offices) (Zip code)

_____

(Name and address of agent for service)

Registrant's telephone number, including area code: _____

Date of fiscal year end: _____

Date of reporting period: _____

Form N–CSR is to be used by management investment companies to file reports with the Commission not later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under Rule 30e–1 under the Investment Company Act of 1940 (17 CFR 270.30e–1). The Commission may use the information provided on Form N–CSR in its regulatory, disclosure review, inspection, and policymaking roles.

A registrant is required to disclose the information specified by Form N–CSR, and the Commission will make this information public. A registrant is not required to respond to the collection of information contained in Form N–CSR unless the Form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. § 3507.

General Instructions

A. Rule as to Use of Form N–CSR

Form N–CSR is a combined reporting form that is to be used for reports of registered management investment companies under Section 30(b)(2) of the Investment Company Act of 1940 and Section 13(a) or 15(d) of the Securities Exchange Act of 1934, filed pursuant to Rule 30b2–1(a) under the Investment Company Act of 1940 (17 CFR 270.30b2–1(a)). A report on this form shall be filed within 10 days after the transmission to stockholders of any annual or semi-annual report that is required to be transmitted to stockholders pursuant to Rule 30e–1 under the Investment Company Act of 1940 (17 CFR 270.30e–1).

B. Application of General Rules and Regulations

The General Rules and Regulations under the Investment Company Act of 1940 and the Securities Exchange Act of 1934 contain certain general requirements that are applicable to reporting on any form under those Acts. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Preparation of Report

1. This Form is not to be used as a blank form to be filled in, but only as a guide in preparing the report in accordance with Rules 8b–11 (17 CFR 270.8b–11) and 8b–12 (17 CFR 270.8b–12) under the Investment Company Act of 1940 and Rules 12b–11 (17 CFR 240.12b–11) and 12b–12 (17 CFR 240.12b–12) under the Securities Exchange Act of 1934. The Commission does not furnish blank copies of this form to be filled in for filing.

2. These general instructions are not to be filed with the report.

3. Attention is directed to Rule 12b–20 under the Securities Exchange Act of 1934 (17 CFR 240.12b–20), which states: ''In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.''

D. Incorporation by Reference

No items of the Form shall be answered by incorporating any information by reference.

E. Signature and Filing of Report

1. If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*)), eight complete copies of the report shall be filed with the Commission. At least one complete copy of the report shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such

copy filed with each exchange must be manually signed. Copies not manually signed must bear typed or printed signatures.

2.(a) The report must be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers (who also must provide the certification required by Rule 30a–2 under the Investment Company Act of 1940 (17 CFR 270.30a–2) exactly as specified in this form) and its principal financial officer or officers (who also must provide the certification required by Rule 30a–2 under the Investment Company Act of 1940 (17 CFR 270.30a–2) exactly as specified in this form).

(b) The name of each person who signs the report shall be typed or printed beneath his or her signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the report. Attention is directed to Rule 12b–11 under the Securities Exchange Act of 1934 (17 CFR 240.12b–11) and Rule 8b–11 under the Investment Company Act of 1940 (17 CFR 270.8b–11) concerning manual signatures and signatures pursuant to powers of attorney.

Item 1. Shareholder Reports

Include a copy of the report transmitted to stockholders pursuant to Rule 30e–1 under the Investment Company Act of 1940 (17 CFR 270.30e–1).

Item 2. Controls and Procedures

(a) Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures (as defined in Rule 30a–2(c) under the Investment Company Act of 1940 (17 CFR 270.30a–2(c)) based on their evaluation of these controls and procedures as of a date within 90 days of the filing date of the report that includes the disclosure required by this paragraph.

(b) Disclose whether or not there were significant changes in the registrant's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Signatures

[See General Instruction E]

Pursuant to the requirements of the Securities Exchange Act of 1934 and the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____
By (Signature and Title)* _____
Date _____

Pursuant to the requirements of the Securities Exchange Act of 1934 and the Investment Company Act of 1940, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title)* _____
Date _____
By (Signature and Title)* _____
Date _____

*Print the name and title of each signing officer under his or her signature.

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form N–CSR of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Rule 30a–2(c) under the Investment Company Act of 1940) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the ''Evaluation Date''); and

(c) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize, and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

_____
[Signature]
[Title]

*Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rule 30a–2 under the Investment Company Act of 1940 (17 CFR 270.30a–2). The required certification must be in the exact form set forth above.

By the Commission.

Dated: August 30, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22658 Filed 9–6–02; 8:45 am]

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Vol. 67, No. 174

Monday, September 9, 2002

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

56211–56474 3
56475–56744 4
56745–56894 5
56895–57122 6
57123–57308 9

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7586 56211
7587 56745
7588 56893
7589 57123
7590 57125

Administrative Orders:
Presidential Determinations:
No. 02–29 of August 30, 2002 57127

Executive Orders:
10173 (Amended by EO 13273) 56215
13273 56215

5 CFR

213 56475

7 CFR

354 5621
996 57129
997 57129
998 57129
999 57129
1219 56895

Proposed Rules:
1124 56936

10 CFR

Chap. 1 57084

Proposed Rules:
Chap. 1 57120
72 56876
430 56232

13 CFR

121 ..... 56905, 56928

Proposed Rules:
121 ..... 56944, 56966

14 CFR

39 ..... 56218, 56747, 56748, 56750, 57145, 57146
71 ..... 56475, 56476, 56477, 564778, 56929

Proposed Rules:
39 ..... 56503, 56506, 56768
71 57063
91 56740
93 56740
193 ..... 56770, 56774

17 CFR

200 56219
228 57276
229 57276
232 57276
240 ..... 56462, 57276
249 ..... 56462, 57276
270 57276
274 ..... 56462, 57276

Proposed Rules:
249 57298
270 57298
274 57298

18 CFR

401 56753

Proposed Rules:
35 57187

21 CFR

Proposed Rules:
1310 56776

24 CFR

982 56688

26 CFR

Proposed Rules:
1 ..... 56244, 56509

27 CFR

4 56479
9 56481

30 CFR

Proposed Rules:
924 56967

31 CFR

Proposed Rules:
538 56969
550 56969
560 56969

32 CFR

Proposed Rules:
861 56777

33 CFR

6 56215
100 ..... 56220, 56222
117 ..... 56222, 56754, 56929, 57147
165 ..... 56222, 56485, 56488, 56755

Proposed Rules:
110 56245
117 56247
165 56245

36 CFR

1191 56352

Proposed Rules:
7 56785
1190 56441
1191 56441

38 CFR

Proposed Rules:
4 56509

40 CFR

52.....57148, 57155
61.....57159
75.....57272
180.....56225, 56490
300.....56757

Proposed Rules:

52.....57187, 57188
81.....56249
86.....57188
90.....57188
152.....56970
158.....56970
194.....57189, 57190
271.....57191
300.....56794
1045.....57188
1051.....57188
1065.....57188
1068.....57188

41 CFR

Ch. 301.....57169
102–42.....56495

42 CFR

51d.....56930
403.....56618

44 CFR

65.....57173, 57174
67.....57177

Proposed Rules:

67.....57193, 57196

45 CFR

Proposed Rules:

5b.....56252

47 CFR

43.....56496
63.....56496
68.....57181
76.....56880

Proposed Rules:

76.....56882
73.....57203

49 CFR

1511.....56496

Proposed Rules:

195.....56970
571.....56976
580.....56976
581.....56976
582.....56976
583.....56976
584.....56976
585.....56976
586.....56976
587.....56976
588.....56976

50 CFR

223.....56931
635.....56934
648.....56229, 56765
660.....56497, 56500
679 .....56230, 56231, 56766, 56934, 57183, 57184, 57185

Proposed Rules:

17.....56254, 56257
223.....57204
224.....57204
622.....56516
648.....56525, 57207
679.....56692
697.....56800

REMINDERS

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.

RULES GOING INTO EFFECT SEPTEMBER 9, 2002

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Hass avocado promotion, research, and information order; published 9-6-02

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Georgia; published 7-11-02

Air quality planning purposes; designation of areas:

Michigan; published 7-10-02

Minnesota; published 7-10-02

Superfund program:

CERCLA hazardous substances list; additions and removals—

Typographical errors correction and removal of obsolete language; published 7-9-02

FEDERAL COMMUNICATIONS COMMISSION

Practice and procedure:

Regulatory fees (2002 FY); assessment and collection; published 7-12-02

Radio frequency devices:

Licensed radio services operating below 30 MHz; conducted emission limits; published 7-10-02

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Single family mortgage insurance—

Section 203(k) consultant placement and removal procedures; published 8-9-02

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:

American Petroleum Institute Recommended Practice 14C; incorporation by reference; published 8-9-02

STATE DEPARTMENT

Visas; immigrant documentation:

Diversity Visa Program; implementation; published 8-9-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Kiwifruit grown in—

California; comments due by 9-16-02; published 8-15-02 [FR 02-20688]

Onions (sweet) grown in—

Washington and Oregon; comments due by 9-20-02; published 7-22-02 [FR 02-18256]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Bovine spongiform encephalopathy; disease status change—

Israel; comments due by 9-16-02; published 7-18-02 [FR 02-18160]

Plant pests:

Redelivery of cargo for inspection; comments due by 9-16-02; published 8-27-02 [FR 02-21738]

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:

Cuba; agricultural commodities; licensing procedures effectiveness; comments due by 9-20-02; published 8-21-02 [FR 02-21161]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf of Mexico, and South Atlantic fisheries—

Gulf of Mexico shrimp; comments due by 9-18-02; published 8-19-02 [FR 02-21023]

Red snapper; comments due by 9-18-02; published 8-19-02 [FR 02-21024]

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 9-19-02; published 9-4-02 [FR 02-22523]

DEFENSE DEPARTMENT

Air Force Department

DOD Commercial Air Transportation Quality and Safety Review Program; comments due by 9-20-02; published 9-5-02 [FR 02-22307]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Brick and structural clay products manufacturing and clay ceramics manufacturing; comments due by 9-20-02; published 7-22-02 [FR 02-15869]

Air programs:

Outer Continental Shelf regulations—

California; consistency update; comments due by 9-16-02; published 8-16-02 [FR 02-20867]

Air quality implementation plans; approval and promulgation; various States:

Alabama; comments due by 9-20-02; published 8-21-02 [FR 02-21286]

Florida; comments due by 9-16-02; published 8-15-02 [FR 02-20744]

Kentucky; comments due by 9-16-02; published 8-15-02 [FR 02-20746]

Montana; comments due by 9-18-02; published 8-19-02 [FR 02-20988]

Hazardous waste program authorizations:

Florida; comments due by 9-19-02; published 8-20-02 [FR 02-21193]

Hazardous waste:

Identification and listing—

Exclusions; comments due by 9-16-02; published 7-31-02 [FR 02-19325]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

2,4-D, etc.

Correction; comments due by 9-17-02; published 8-16-02 [FR 02-20748]

Radiation protection standards:

Transuranic radioactive waste for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability—

Argonne National Laboratory-East Site; comments due by 9-16-02; published 8-15-02 [FR 02-20864]

Los Alamos National Laboratory; comments due by 9-16-02; published 8-15-02 [FR 02-20865]

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 9-16-02; published 8-15-02 [FR 02-20446]

National priorities list update; comments due by 9-16-02; published 8-15-02 [FR 02-20447]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Unapproved new investigational drug products; export requirements; comments due by 9-17-02; published 6-19-02 [FR 02-15358]

Correction; comments due by 9-17-02; published 7-5-02 [FR C2-15358]

Medical devices:

Dental devices—

Encapsulated amalgam alloy and dental mercury; classification and special controls; comments due by 9-16-02; published 7-17-02 [FR 02-17960]

General hospital and personal use devices—

Needle-bearing devices; comments due by 9-18-02; published 6-20-02 [FR 02-15493]

HEALTH AND HUMAN SERVICES DEPARTMENT

Quarantine, inspection, and licensing:

Biological agents and toxins posing severe threat to public health and safety; list; comments due by 9-17-02; published 8-23-02 [FR 02-21512]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Debarment and suspension (nonprocurement) and drug-free workplace (grants):

Governmentwide requirements; comments due by 9-20-02; published 7-22-02 [FR 02-18309]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Preble's meadow jumping mouse; comments due by 9-16-02; published 7-17-02 [FR 02-17716]

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:

Geological and geophysical explorations; proprietary terms and data disclosure; comments due by 9-16-02; published 7-17-02 [FR 02-17880]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Kentucky; comments due by 9-16-02; published 8-16-02 [FR 02-20820]

West Virginia; comments due by 9-16-02; published 8-16-02 [FR 02-20821]

JUSTICE DEPARTMENT

Drug Enforcement Administration

Records, reports, and exports of listed chemicals:

Gamma-butyrolactone; exemption; comments due by 9-17-02; published 7-19-02 [FR 02-17903]

LABOR DEPARTMENT

Occupational Safety and Health Administration

Construction safety and health standards:

Cranes and Derricks Negotiated Rulemaking Advisory Committee; intent to establish; comments due by 9-16-02; published 7-16-02 [FR 02-17768]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Official seals; comments due by 9-16-02; published 7-17-02 [FR 02-17962]

TRANSPORTATION DEPARTMENT

Coast Guard

Deepwater ports:

Regulations, revision; comments due by 9-18-02; published 8-19-02 [FR 02-20952]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 9-16-02; published 8-16-02 [FR 02-20712]

Boeing; comments due by 9-16-02; published 7-16-02 [FR 02-17548]

British Aerospace; comments due by 9-17-02; published 8-9-02 [FR 02-20137]

Eurocopter France; comments due by 9-17-02; published 7-19-02 [FR 02-18196]

McDonnell Douglas; comments due by 9-16-02; published 7-18-02 [FR 02-18024]

MORAVAN a.s.; comments due by 9-20-02; published 8-14-02 [FR 02-20516]

Pilatus Aircraft Ltd.; comments due by 9-20-02; published 8-9-02 [FR 02-20136]

Raytheon; comments due by 9-16-02; published 7-17-02 [FR 02-17885]

Turbomeca S.A.; comments due by 9-20-02; published 7-22-02 [FR 02-18203]

Airworthiness standards:

Special conditions—

Dassault Aviation Mystere Falcon 50 airplanes; comments due by 9-16-02; published 8-16-02 [FR 02-20883]

Class E5 airspace; comments due by 9-16-02; published 8-16-02 [FR 02-20891]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Statewide transportation planning; metropolitan transportation planning; comments due by 9-19-02; published 8-15-02 [FR 02-20626]

TRANSPORTATION DEPARTMENT

Federal Transit Administration

Statewide transportation planning; metropolitan transportation planning; comments due by 9-19-02; published 8-15-02 [FR 02-20626]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Small business entities; economic impact; comments due by 9-20-02; published 9-6-02 [FR 02-22703]

TREASURY DEPARTMENT

Customs Service

Customs drawback centers; consolidation; comments due by 9-20-02; published 8-21-02 [FR 02-21111]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Cancellation of indebtedness; guidance; comments due by 9-17-02; published 6-13-02 [FR 02-14825]

Tax shelter rules; modification; cross-reference; comments due by 9-16-02; published 6-18-02 [FR 02-15322]

Widely held fixed investment trusts; reporting requirements; comments due by 9-18-02; published 6-20-02 [FR 02-15352]

TREASURY DEPARTMENT

Government Securities Act regulations:

Large position rules; reporting requirements; comments due by 9-16-02; published 7-31-02 [FR 02-19238]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 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)

Last List August 12, 2002

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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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
5 Parts:			
1–699	(869–048–00004–6)	57.00	Jan. 1, 2002
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
7 Parts:			
1–26	(869–048–00001–1)	41.00	Jan. 1, 2002
27–52	(869–048–00008–9)	47.00	Jan. 1, 2002
53–209	(869–048–00009–7)	36.00	Jan. 1, 2002
210–299	(869–048–00010–1)	59.00	Jan. 1, 2002
300–399	(869–048–00011–9)	42.00	Jan. 1, 2002
400–699	(869–048–00012–7)	57.00	Jan. 1, 2002
700–899	(869–048–00013–5)	54.00	Jan. 1, 2002
900–999	(869–048–00014–3)	58.00	Jan. 1, 2002
1000–1199	(869–048–00015–1)	25.00	Jan. 1, 2002
1200–1599	(869–048–00016–0)	58.00	Jan. 1, 2002
1600–1899	(869–048–00017–8)	61.00	Jan. 1, 2002
1900–1939	(869–048–00018–6)	29.00	Jan. 1, 2002
1940–1949	(869–048–00019–4)	53.00	Jan. 1, 2002
1950–1999	(869–048–00020–8)	47.00	Jan. 1, 2002
2000–End	(869–048–00021–6)	46.00	Jan. 1, 2002
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
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:			
§§ 1.0-1–1.60	(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
200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0-42	(869–044–00098–9)	55.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001
29 Parts:			
0–99	(869–044–00100–4)	45.00	July 1, 2001
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–044–00102–1)	47.00	[6]July 1, 2001
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–044–00104–7)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869–044–00105–5)	42.00	July 1, 2001
1911–1925	(869–044–00106–3)	20.00	[6]July 1, 2001
1926	(869–044–00107–1)	45.00	July 1, 2001
1927–End	(869–044–00108–0)	55.00	July 1, 2001
30 Parts:			
1–199	(869–044–00109–8)	52.00	July 1, 2001
200–699	(869–044–00110–1)	45.00	July 1, 2001
700–End	(869–044–00111–7)	53.00	July 1, 2001
31 Parts:			
0–199	(869–044–00112–8)	32.00	July 1, 2001
200–End	(869–044–00113–6)	56.00	July 1, 2001
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–044–00114–4)	51.00	[6]July 1, 2001
191–399	(869–044–00115–2)	57.00	July 1, 2001
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–044–00117–9)	34.00	July 1, 2001
700–799	(869–044–00118–7)	42.00	July 1, 2001
800–End	(869–044–00119–5)	44.00	July 1, 2001
33 Parts:			
1–124	(869–044–00120–9)	45.00	July 1, 2001
125–199	(869–044–00121–7)	55.00	July 1, 2001
200–End	(869–044–00122–5)	45.00	July 1, 2001
34 Parts:			
1–299	(869–044–00123–3)	43.00	July 1, 2001
300–399	(869–044–00124–1)	40.00	July 1, 2001
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[6]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–044–00128–4)	33.00	July 1, 2001
300–End	(869–044–00129–2)	55.00	July 1, 2001
37	(869–044–00130–6)	45.00	July 1, 2001
38 Parts:			
0–17	(869–044–00131–4)	53.00	July 1, 2001
18–End	(869–044–00132–2)	55.00	July 1, 2001
39	(869–044–00133–1)	40.00	July 1, 2002
40 Parts:			
1–49	(869–044–00134–9)	54.00	July 1, 2001
50–51	(869–044–00135–7)	38.00	July 1, 2001
52 (52.01–52.1018)	(869–044–00136–5)	50.00	July 1, 2001
52 (52.1019–End)	(869–044–00137–3)	55.00	July 1, 2001
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–044–00139–0)	53.00	July 1, 2001
60 (Apps)	(869–044–00140–3)	51.00	July 1, 2001
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–044–00142–0)	53.00	July 1, 2001
63 (63.600–63.1199)	(869–044–00143–8)	44.00	July 1, 2001
63 (63.1200-End)	(869–044–00144–6)	56.00	July 1, 2001
64–71	(869–044–00145–4)	26.00	July 1, 2001
72–80	(869–044–00146–2)	55.00	July 1, 2001
81–85	(869–044–00147–1)	45.00	July 1, 2001
86 (86.1–86.599–99)	(869–044–00148–9)	52.00	July 1, 2001
86 (86.600–1–End)	(869–044–00149–7)	45.00	July 1, 2001
87–99	(869–044–00150–1)	54.00	July 1, 2001
100–135	(869–044–00151–9)	38.00	July 1, 2001
136–149	(869–044–00152–7)	55.00	July 1, 2001
150–189	(869–044–00153–5)	52.00	July 1, 2001
190–259	(869–044–00154–3)	34.00	July 1, 2001
260–265	(869–044–00155–1)	45.00	July 1, 2001
266–299	(869–044–00156–0)	45.00	July 1, 2001
300–399	(869–044–00157–8)	41.00	July 1, 2001
400–424	(869–044–00158–6)	51.00	July 1, 2001
425–699	(869–044–00159–4)	55.00	July 1, 2001
700–789	(869–044–00160–8)	55.00	July 1, 2001
790–End	(869–044–00161–6)	44.00	July 1, 2001
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–044–00162–4)	22.00	July 1, 2001
101	(869–044–00163–2)	45.00	July 1, 2001
102–200	(869–044–00164–1)	33.00	July 1, 2001
201–End	(869–044–00165–9)	24.00	July 1, 2001
42 Parts:			
1–399	(869–044–00166–7)	51.00	Oct. 1, 2001
400–429	(869–044–00167–5)	59.00	Oct. 1, 2001
430–End	(869–044–00168–3)	58.00	Oct. 1, 2001
43 Parts:			
1–999	(869–044–00169–1)	45.00	Oct. 1, 2001
1000–end	(869–044–00170–5)	56.00	Oct. 1, 2001
44	(869–044–00171–3)	45.00	Oct. 1, 2001
45 Parts:			
1–199	(869–044–00172–1)	53.00	Oct. 1, 2001
200–499	(869–044–00173–0)	31.00	Oct. 1, 2001
500–1199	(869–044–00174–8)	45.00	Oct. 1, 2001
1200–End	(869–044–00175–6)	55.00	Oct. 1, 2001
46 Parts:			
1–40	(869–044–00176–4)	43.00	Oct. 1, 2001
41–69	(869–044–00177–2)	35.00	Oct. 1, 2001
70–89	(869–044–00178–1)	13.00	Oct. 1, 2001
90–139	(869–044–00179–9)	41.00	Oct. 1, 2001
140–155	(869–044–00180–2)	24.00	Oct. 1, 2001
156–165	(869–044–00181–1)	31.00	Oct. 1, 2001
166–199	(869–044–00182–9)	42.00	Oct. 1, 2001
200–499	(869–044–00183–7)	36.00	Oct. 1, 2001
500–End	(869–044–00184–5)	23.00	Oct. 1, 2001
47 Parts:			
0–19	(869–044–00185–3)	55.00	Oct. 1, 2001
20–39	(869–044–00186–1)	43.00	Oct. 1, 2001
40–69	(869–044–00187–0)	36.00	Oct. 1, 2001
70–79	(869–044–00188–8)	58.00	Oct. 1, 2001
80–End	(869–044–00189–6)	55.00	Oct. 1, 2001
48 Chapters:			
1 (Parts 1–51)	(869–044–00190–0)	60.00	Oct. 1, 2001
1 (Parts 52–99)	(869–044–00191–8)	45.00	Oct. 1, 2001
2 (Parts 201–299)	(869–044–00192–6)	53.00	Oct. 1, 2001
3–6	(869–044–00193–4)	31.00	Oct. 1, 2001
7–14	(869–044–00194–2)	51.00	Oct. 1, 2001
15–28	(869–044–00195–1)	53.00	Oct. 1, 2001
29–End	(869–044–00196–9)	38.00	Oct. 1, 2001
49 Parts:			
1–99	(869–044–00197–7)	55.00	Oct. 1, 2001
100–185	(869–044–00198–5)	60.00	Oct. 1, 2001
186–199	(869–044–00199–3)	18.00	Oct. 1, 2001
200–399	(869–044–00200–1)	60.00	Oct. 1, 2001
400–999	(869–044–00201–9)	58.00	Oct. 1, 2001
1000–1199	(869–044–00202–7)	26.00	Oct. 1, 2001

Title	Stock Number	Price	Revision Date
1200–End	(869–044–00203–5)	21.00	Oct. 1, 2001
50 Parts:			
1–199	(869–044–00204–3)	63.00	Oct. 1, 2001
200–599	(869–044–00205–1)	36.00	Oct. 1, 2001
600–End	(869–044–00206–0)	55.00	Oct. 1, 2001
CFR Index and Findings Aids	(869–044–00047–0)	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.