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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–02–14]

RIN 0581–AC11

Flue-Cured Tobacco Advisory Committee; Amendment of Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The U.S. Department of Agriculture (USDA) is amending the regulations for the Flue-Cured Tobacco Advisory Committee (FCTAC) by removing the sections which specify composition of the committee. This will allow greater flexibility in responding to changing marketing conditions.

DATES: Effective October 2, 2002. Comments are due before December 2, 2002.

ADDRESSES: Send comments to John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280. Comments will be available for public inspection at this location during regular business hours between 8 am and 4:30 pm, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: Since 1935, upon enactment of the Tobacco Inspection Act, the USDA has provided mandatory inspection services at designated tobacco auction markets. In 2002, based on results of referenda conducted among producers eligible for price support, regulations were amended to provide mandatory inspection at places other than designated tobacco auction markets. The USDA has always sought the input of the industry in implementing legislative authority concerning marketing due to the large geographic areas involved and the different procedure in individual types of tobacco such as size and weight of packages used to display the product, the number of designated markets, the number of sets of buyers present, the number of sales days, and other matters that directly impact on the operation of the auction markets and, therefore, the Federal presence necessary to provide the level of service desired by producers and industry.

In 1974, at the request of the industry, the USDA established the Flue-Cured Tobacco Advisory Committee (FCTAC) to provide a mechanism for consultation with flue-cured producers, warehouse representatives, and buying interests on the problems peculiar to that type of tobacco with particular emphasis on the grower designation program. The composition of the committee was specified in regulations although it was not necessary and is not customary. At a recent meeting, the FCTAC recommended that the regulations referencing its composition and representation be removed. Removal of these regulations will not alter the FCTAC's purpose nor direction for an orderly marketing of tobacco but will allow the USDA more flexibility in making structural changes in its composition as a result of new marketing changes. Historically, almost all flue-cured tobacco was sold at auction. In recent years, most flue-cured tobacco has been sold under contract.

The USDA intends to decrease the FCTAC from 39 members, each with an alternate, to 21 members, each with an alternate. The entities currently represented on the FCTAC will not change. The Flue-Cured Stabilization Cooperation will be added with one member. The rest of the apportionment will change as follows: Georgia, South Carolina, and Virginia Farm Bureaus will decrease from two members each to one member each; North Carolina Farm Bureau will decrease from eight members to four members; North Carolina State Grange will decrease from four members to two members; Tobacco Association of United States will decrease from five members to four members; Bright Belt Warehouse Association will decrease from 10 members to one member; Florida Farm Bureau, South Carolina State Grange, Tobacco Growers Association of North Carolina, Philip Morris USA, R. J. Reynolds Tobacco Company, and Lorillard Tobacco Company will all remain unchanged with one member each.

There are currently regulations at 7 CFR subpart G, §§ 29.9401–29.9407 covering the FCTAC. Section 29.9403 (b), (c), (d), and (e) would be removed.

Executive Order 12866 and 12988

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

This rule has been reviewed under Executive order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The rule will not exempt any State of 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.

Regulatory Flexibility Act

In conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of ''small business: which are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. There are approximately 190 tobacco warehouses and approximately 450,000 tobacco producers and most warehouses and producers may be classified as small entities. The AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This interim final rule would not substantially affect the normal movement of the commodity into the marketplace. Compliance with this

interim final rule would not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and would not alter the market share of competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace. This rule merely removes section of the regulations that specify composition of the FCTAC.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary and customary to the public interest to give preliminary notice prior to putting this rule in effect, and that good cause exists for not postponing the effective date of this rule until 60 days after publication in the **Federal Register** so that USDA can utilize the advice of a committee which reflects the current makeup of the tobacco industry during the current marketing season. This interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to the finalization of this rule.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, the regulations at 7 CFR part 29 are amended as follows:

PART 29—TOBACCO INSPECTION

Subpart G—Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets

1. The authority citation for part 29, subpart G continues to read as follows:

Authority: Tobacco Inspection Act, 49 Stat. 731 (7 U.S.C. *et seq.*); Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended (15 U.S.C. 714 *et seq.*); sec. 213, Pub. L. 98–180, 97 Stat. 1149 (7 U.S.C. 1421; 49 Stat. 731 (7 U.S.C. 511 *et seq.*), unless otherwise noted.

§ 29.9403 [Amended]

2. In § 29.9403, paragraphs (b), (c), (d), (e) and paragraph designation ''(a)'' are removed.

Dated: September 25, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–24905 Filed 9–30–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1400

RIN 0560–AG77

Payment Limits

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements provisions of the Farm Security and Rural Investment Act of 2002 regarding per person payment limitations on certain programs. This rule will limit the amount of payments that may be received by one person for direct and counter-cyclical payments, marketing loan and loan deficiency payments, and conservation and environmental programs.

EFFECTIVE DATE: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Dan McGlynn, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave. SW., Washington, DC 20250–0517. Telephone: (202) 720–3463. Electronic mail: *Dan_McGlynn@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) requires that the regulations needed to implement Title I of the 2002 Act, including those involved here, are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or 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. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment was completed and is summarized after the background section explaining the rule.

Federal Assistance Programs

This rule has a potential impact on all programs listed in the Catalog of Federal Domestic Assistance in the Agency Program Index under the Department of Agriculture, Farm Service Agency and Natural Resources Conservation Service. Other assistance programs are also impacted.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this final rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. It has been concluded that the rule will have no significant impacts upon the human environment as documented by an environmental evaluation. A copy of the environmental evaluation is available for inspection and review upon request. Therefore, the agency has determined that this rule is a categorical exclusion and no further environmental review is required.

Executive Order 12778

The final rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with it, however, this rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking about this rule. Also, this rule contains no mandates as defined in sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act should be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. These regulations affect the planting and marketing decisions of a large number of agricultural producers. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the **Federal Register.**

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be done without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities need to administer the program authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Background

The 2002 Act authorized new programs and benefits, including direct payments and counter-cyclical payments. In section 1603 of that Act, by amendment to Section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308), Congress limited the amount of such payments that could be received by one person. The per person payment limits are for direct payments, counter-cyclical payments, marketing loan gains, and loan deficiency payments of $40,000, $65,000, and $75,000 respectively for the ''covered commodities'' of corn, grain sorghum, barley, oats, wheat, soybeans, minor oilseeds, cotton and rice. Separate limits for comparable peanut payments are set; however, the $75,000 limits for marketing loan gain and loan deficiency payments includes payments for wool, mohair and honey.

Summary of Cost Benefit Analysis

The 2002 Act carries over from previous legislation an ''actively engaged in farming requirement'' and ''person'' rules for a producer to be eligible to receive program benefits. The definition of ''person'' includes individuals and also encompasses certain partnerships, corporations and other types of organizations. The 2002 Act establishes per ''person'' payment limitations for direct payments, counter-cyclical payments, marketing loan gains, and loan deficiency payments for the covered commodities. There are also per ''person'' payment limitations for the various conservation and environmental programs. Some diversified producers may be able to pool several payment limits from the same program, such as peanuts, which have a limit of $75,000, and corn and soybeans, which have separate payment limits, to earn an additional $75,000 in loan deficiency payments. Plus, this producer could receive $40,000 and $65,000 in direct and counter-cyclical payments from the corn, soybeans and peanuts.

Payment limits are further relaxed by the availability of commodity certificates for marketing assistance repayment. Commodity certificates are available to producers with outstanding recourse marketing assistance loans and may be used by producers or their agents to acquire commodities pledged as collateral for those loans. The producer may purchase a commodity certificate, exchange the certificate for the loan collateral, the loan is considered liquidated, and the producer has no more obligation for that portion of the collateral. Moreover, the payment limit does not apply to any indirect benefit the producer may realize from such a transaction because there is no marketing gain. An eligible producer, however, must have an outstanding commodity loan that has not matured.

In May 2002, the Congressional Budget Office (CBO) estimated that the 2002 Act would change expenditures compared to the previous legislation. They compared two sets of policies using the same commodity prices and macroeconomic variables. CBO found that in fiscal year 2002 through 2006 the new set of payment limits would save $92 million more than the payment limits for programs in previous legislation. This amount does not establish that limits in the 2002 Act are more effective since the available programs have changed. Part of the available savings may be credited to the effects of the limits on the counter-cyclical payments which did not exist under the previous legislation. Contact the information contact list in the address section of this rule for additional questions on the expected impacts.

List of Subjects in 7 CFR Part 1400

Agriculture, Grant programs—agriculture, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 7 CFR part 1400 is amended as follows:

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

1. The authority citation for part 1400 is revised to read as follows:

Authority: 7 U.S.C. 1308 *et seq.*

2. Section 1400.1 is revised to read as follows:

§ 1400.1 Applicability.

(a) Together with any additional coverage as may apply with respect to Subpart G of this part or other subpart of this part as provided in such subpart, this part is applicable to the following programs (together with any other programs which adopt this part by reference):

(1) The program governed by part 1413 of this chapter;

(2) All programs governed by parts 1421 and 1427 of this chapter under which a producer realizes a gain from repaying a marketing assistance loan at a lower rate than the commodity's original loan rate, and any program that authorizes a loan deficiency payment for a commodity;

(3) The Conservation Reserve Program (CRP) as governed by part 1410 of this chapter.

(b) This part does not apply to:

(1) CRP rental payments if they are made to a State, including a political subdivision or agency thereof, under a special conservation reserve enhancement program the Secretary approves.

(2) CRP rental payments made to an individual heir who succeeded to a contract on inherited land, if the land was subject to the CRP contract at the time it was inherited.

(c) This part applies to the programs specified in paragraph (a)(1) and (2) of this section on a crop year basis, and those in paragraph (a)(3) of this section based on each fiscal year.

(d) This part is used to determine whether individuals and entities are to be treated as one person or as separate persons regarding the application of statutory provisions that limit the amount of payments a specific person may receive.

(e) Where more than one provision of this part may apply, the provision most restrictive on the program participant shall apply.

(f) Payments made to the following are not subject to payment limitations under this part:

(1) Public schools for land a public school district owns; and

(2) A State for land a State owns that is used to maintain a public school.

(g) Unless otherwise noted, the following amounts are the payment limitations per person per applicable period for each payment or benefit:

Payment or benefit	Limitation per person, per crop, program year or fiscal year
1. Direct Payments for covered commodities	$40,000
2. Direct Payment for peanuts	40,000
3. Counter-Cyclical Payments for covered commodities	65,000
4. Counter-Cyclical Payment for peanuts	65,000
5. Loan Deficiency Payments and Marketing Loan Gains for loan commodities	75,000
6. Total Loan Deficiency Payments and Marketing Loan Gains for peanuts, wool, mohair and honey	75,000
7. Conservation Reserve Program	50,000
8. Non-Insured Crop Disaster Assistance Program (NAP) payments	100,000
9. Environmental Quality Incentives Program (EQIP) payments	[1] 450,000
10. Agricultural Management Assistance Program	50,000
11. Conservation Security Program (CSP):	
Tier 1	[2] 20,000
Tier 2	[2] 35,000
Tier 3	[2] 45,000

[1] This statutory limit is applied on a ''direct attribution'' method with respect to the individual or entity.

[2] This limitation is attributed to an individual or entity covered by a Conservation Security Program contract.

3. Section 1400.3(b) is amended to add a new definition for ''Loan commodity'' in alphabetical order, to revise the definition for ''Payment'', and to remove the definition for ''Payment, loan or benefit'', to read as follows:

§ 1400.3 Definitions.

* * * * *

(b) * * *

* * * * *

Loan commodity means wheat, corn, grain sorghum, barley, oats, upland cotton, extra long staple cotton, rice, soybeans, other oilseeds, dry peas, lentil, small chickpeas, wool, mohair, peanuts and honey.

* * * * *

Payment means:

(1) Payments made in accordance with part 1412 of this chapter;

(2) Loan gains and loan deficiency payments made in accordance with parts 1421 and 1427 of this chapter;

(3) CRP annual rental payments made in accordance with part 1410 of this chapter;

(4) Non-Insured Crop Disaster Assistance Program (NAP) payments made in accordance with part 1437 of this chapter; and

(5) For other programs, any payments designated in individual program regulations or elsewhere in this part.

* * * * *

§ 1400.5 [Amended]

4. Section 1400.5(b) is amended to revise ''1985 Act'' to read ''Food Security Act of 1985, as amended (7 U.S.C. 1281 note)''.

Signed in Washington, DC, on September 12, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–24817 Filed 9–27–02; 11:20 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AG71

Peanut Quota Buyout Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides regulations for a peanut quota buyout program as required by Title I of the Farm Security and Rural Investment Act of 2002 (the 2002 Act). Other provisions of the 2002 Act will be implemented under separate rules. This rule will provide eligible peanut quota holders compensation for the lost value of their quota.

EFFECTIVE DATE: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Lynn Tjeerdsma, Production, Emergencies and Compliance Division, Farm Service Agency, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave, SW., Washington, DC 20250–0517. Phone: (202) 720–6602. E-mail: lynn_tjeerdsma@wdc.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act requires that the regulations to implement Title I of the 2002 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or 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. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment was completed and is summarized after the background section explaining the rule.

Federal Assistance Programs

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity loans and loan deficiency payments, 10.051.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Review

The environmental impacts of this rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An Environmental Evaluation was completed and it was determined that the proposed action does not have the potential to significantly impact the quality of the human environment and, therefore, the rule is categorically excluded from further review under NEPA. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This final rule preempts State laws that

are inconsistent with its provisions, but the rule is not retroactive. Before any judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, the rule imposes no mandates as defined in UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act requires that these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act. This means that the information to be collected from the public to implement these programs and the burden, in time and money, the collection of the information would have on the public does not have to be approved by the Office of Management and Budget or be subject to the normal requirement for a 60-day public comment period.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and the FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Because of the date that the regulations for this program are required to be published, the forms and other information collection activities required by participation in the Peanut Quota Buyout Program (QBOP) are not yet fully implemented in a way that would allow the public to conduct business with FSA electronically. Accordingly, applications for this program may be submitted at the FSA county offices by mail or FAX.

Background

Section 1309 of the 2002 Act repeals the marketing quota program for peanuts authorized by title III of the Agricultural Adjustment Act of 1938 (the 1938 Act). The regulations used to administer that program for the 1996 through 2002 crop years were codified at 7 CFR part 729. Other provisions of the 2002 Act set forth payment and marketing assistance loan programs for the 2002 through 2007 crops of peanuts that are similar to other major CCC commodity programs. Section 1309 also provides for CCC to pay eligible peanut quota holders as part of the transition from the repealed marketing quota program to the new programs.

Generally, this rule provides for payments to be made to each eligible peanut quota holder based on the amount of the peanut quota that was available to such holder for the 2001 crop year as provided by 7 CFR part 729 as it was codified on January 1, 2002. An eligible peanut quota holder is, generally, a person who, as of May 13, 2002, owned a farm that was otherwise eligible for a permanent peanut quota under section 358–1(b) of the 1938 Act. Temporary quota leases, transfers of peanut quotas for seed, and peanut quotas established for experimental purposes are not eligible peanut quotas for the buyout program established by this rule.

Eligible quota holders may elect to receive payment under this program in five equal installments in each of the 2002 through 2006 fiscal years, or as a single lump sum payment in any of these years. To the extent practical, CCC intends to make the 2003 through 2006 fiscal year payments between January 2 and January 31 of the applicable year. For those who choose the five-payment option, each QBOP payment will be determined by multiplying the $0.11 per pound rate provided in the law times the pounds of peanut quota for which such holder has been determined eligible for a payment. Persons who opt for the single lump payment will have their payment calculated in the same manner, except the payment rate will be $0.55 per pound.

FSA has highly accurate records of peanut quota holders and the amount of peanut quota assigned to each quota holder's farm because of the extensive record keeping and reporting requirements of 7 CFR part 729 used to monitor production of peanuts and related information necessary to establish each years' peanut quota. Additionally, in July of 2002, FSA sent each quota holder of record for the 2001 peanut crop the pounds of peanut quota assigned to each tract of land on every farm (as constituted for FSA purposes) in every county, and the total peanut quota assigned to that quota holder. This letter also notified the peanut quota holders that enrollment for this program would begin September 3, 2002, and end November 22, 2002. This notification was completed prior to the enrollment period for this program to ensure that each eligible peanut quota holder had sufficient time to validate the accuracy of the FSA records to be used to calculate the QBOP payment.

The 2002 Act provides that the date of enactment of that act is to be used to determine who is an eligible peanut quota holder, or who owned a farm that was eligible for a peanut quota under section 358–1(b) of the 1938 Act. The 2002 Act provisions also address the situation where peanut quota transfers were initiated prior to May 13, 2002, but not completed as of that date. For example, if there was a written contract for the purchase of all of a portion a farm that was eligible to have a peanut quota assigned to it in existence as of May 13, 2002, and the parties to the contract cannot agree on the manner in which such quota would be assigned to the different portions of the farm, payments are to be made in a fair and equitable manner taking into account any incomplete permanent transfer of such quota. Accordingly, CCC has determined that, in the case of the incomplete transfer of an entire farm, the eligible peanut quota holder will be considered the person contractually bound to purchase the entire farm. Where there was a partial sale of the farm not yet completed by such date, CCC will, if the parties cannot agree on the division of the peanut quota, assign the disputed quota taking into account the ratio of cropland on the unsold portion of the farm to the cropland on the portion of the farm subject to the purchase contract. Similarly, the 2002

Act provides that where there was in existence on May 13, 2002, an agreement for the permanent transfer of the peanut quota, but the transfer was not completed by that date, the holder will be the owner of the farm to which the peanut quota was to be transferred.

Consistent with the 2002 Act, if a written agreement was in effect before May 13,2002, for the purchase of all or portion of a farm and the parties had a written agreement specifying the distribution of the peanut quota, the buyout payment will be disbursed as specified in the agreement, so long as the resulting distribution is consistent with the 2002 Act. Also, if a farm is determined eligible for a permanent peanut quota on or before May 13, 2002, and the farm is sold in whole or in part after May 13, 2002, the peanut quota attributed to the owner of the farm as of such date cannot be transferred for purposes of determining a quota buyout payment. In addition, consistent with the manner in which CCC administers other commodity programs, a person who holds a life estate interest in a farm with a peanut quota will be considered the owner in determining who is an eligible peanut quota holder. A person with a remainder interest in such farm will not be considered to be an owner for such purposes.

The 2002 Act also provides that, notwithstanding any other provision of that Act, a person can be determined to be the eligible peanut quota holder if it is determined that such action is necessary for the fair and equitable administration of the program.

The 2002 Act provides that once a person's eligibility for the QBOP has been determined, such status is maintained whether or not there is a transfer of ownership of the farm. Accordingly, once it is determined that a person is eligible and CCC has executed a buyout contract with such person, the person may sell all or a portion of their farm and still receive the payment. CCC will not execute a quota buyout contract with a person who was the buyer of the farm in a transaction that took place after May 13, 2002. If such a person believes that the private sales transaction did not take into account these statutory and regulatory provisions, a private resolution of such a dispute must be undertaken by the parties to the contract; neither FSA nor CCC will participate in the resolution of such matter.

CCC has attempted to provide actual notice to all persons who are eligible to participate in this program, based upon the information required by FSA from peanut quota holders in the past. Still, there may have been transfers of farms that were not reported to FSA or incomplete transfers of peanut quotas and farms as of May 13, 2002. It is not possible for CCC to independently verify all of the many transactions that may have occurred with respect to farms and peanut quotas since the transfer of peanut quotas in 2001 until May 13, 2002. Accordingly, in order to ensure that only persons who meet the requirements of the 2002 Act receive a QBOP payment and to reduce debt collection efforts with respect to persons who improperly represented their eligibility status to CCC, CCC will require program participants to make certain representations regarding whether the peanut quota or their farm had been transferred to another person. Also, this rule provides that a claim of: (1) Ownership in a farm or peanut quota; or (2) transfer of a farm or peanut quota that should have been reported to FSA under 7 CFR part 729, but was not, may be disregarded in administration of QBOP in order to complete the transition as quickly as possible from the marketing quota program to the new programs.

Similarly, in contemplation that there will be disputes concerning who is the owner of a farm or peanut quota for purposes of determining the QBOP payment, this rule provides that if: (1) A payment is made to a peanut quota holder, as identified on FSA records, for a farm; and (2) a person who is not the peanut quota holder, as identified on FSA records, for a farm submits a quota buyout contract or other written claim to CCC more than 10 days after the date of publication of this rule, no further payments will be made with respect to such farm until CCC has determined the eligibility status of each claimant and any other person who may be eligible to receive the payment and the occurrence of the earlier of: (1) Repayment of the payment initially made to the peanut quota holder identified on FSA records; or (2) an administrative claim has been established for repayment of such payment under CCC's debt collection regulations at 7 CFR part 1403. If a contract or other written claim is provided to CCC within 10 days of the date of this rule by two or more persons for the same peanut quota used to calculate a buyout payment, no payment will be issued until CCC determines the eligibility status of each claimant. This procedure will allow payments to be made by CCC prior to the end of the program's enrollment period on November 22, 2002, while helping to ensure that erroneous payments are not made by CCC.

In summary, this rule contains two important time periods: (1) The program enrollment period of September 3, 2002 through November 22, 2002; and (2) the 10-day period beginning on October 1, 2002, and ending on October 11, 2002, which is the time in which persons not identified in FSA records as a peanut quota holder on a specific farm may submit a written claim to fully protect their interests under the QBOP.

Cost/Benefit Assessment

Eligible peanut quota holders will receive about $1.3 billion in compensation for the lost value of their quota. Payments shall be issued under the contracts during fiscal years 2002 through 2006. In selection of the two options to receive payments, five equal installments, or the entire payment as a lump sum, eligible quota holders are expected to elect to receive about 90 percent of the payments, or $ 1.17 billion, in the first payment.

List of Subjects in 7 CFR Part 1412

Feed grains, Marketing quotas, Peanuts, Price support programs, Oilseeds, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 1412 is amended as set forth below.

1. Revise the heading of part 1412 to read as set forth above.

2. The authority citation for part 1412 is revised to read as follows:

Authority: 7 U.S.C. 7201 *et seq.*, 7959; 15 U.S.C. 714b, 714c.

PART 1412—PEANUT QUOTA BUYOUT PROGRAM AND PRODUCTION FLEXIBILITY CONTRACT PROGRAM

3. In part 1412, redesignate subparts A through E as subparts B through F, respectively, and add a new subpart A to read as follows:

Subpart A—Peanut Quota Buyout Program

Sec.

1412.1 Applicability.
1412.2 Administration.
1412.3 Definitions.
1412.4 Appeals.
1412.5 Enrollment; special filing and payment provisions for persons who are not the peanut quota holder of record.
1412.6 Eligible peanut quota holder.
1412.7 Contract provisions.
1412.8 Contract liability.
1412.9 Misrepresentation and scheme or device.
1412.10 Offsets and assignments.
1412.11 Other regulations.

Subpart A—Peanut Quota Buyout Program

§ 1412.1 Applicability.

The regulations in this subpart govern the Peanut Quota Buyout Program of the Commodity Credit Corporation (CCC). Generally, CCC will enter into contracts with eligible peanut quota holders that provide for payments to such holders based upon the amount of the 2001 crop peanut quota assigned to farms owned by such holders as of May 13, 2002.

§ 1412.2 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, CCC, and shall be carried out by the Farm Service Agency (FSA) State and county committees (State and county committees).

(b) State and county committees, their representatives and employees, have no authority to modify or waive provisions of this subpart, except as provided in paragraph (e) of this section.

(c) The State committee shall take any action required by the regulations of this part that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines, except statutory deadlines, and other non-statutory requirements in cases where lateness or failure to meet such other requirements does not adversely affect operation of the program.

(f) A representative of CCC may execute a contract for a quota buyout only under the terms and conditions of this part, and as determined and announced by the Executive Vice President, CCC. Any contract that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, is null and void and shall not be considered to be a contract between CCC and any person executing the contract.

§ 1412.3 Definitions.

The definitions in this section shall apply for all purposes of administering the Peanut Quota Buyout. The terms defined in part 718 of this title and part 1400 of this chapter shall also be applicable, except where those definitions conflict with the following definitions in this section:

Contract means a Peanut Quota Buyout Program Contract, and its Appendix for the Peanut Quota Buyout Program to be executed on a form and in a manner as prescribed by CCC.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or a designee.

Eligible Quota means the amount of peanut quota owned by an eligible peanut quota holder as of May 13, 2002, based on the 2001 quota for the purposes of determining Peanut Quota Buyout Program payments. Eligible quota does not include peanut quota established for seed or experimental purposes and quotas subject to a temporary lease or transfer.

§ 1412.4 Appeals.

A person may obtain reconsideration and review of any adverse determination made under this part in accordance with the appeal regulations found at parts 11 and 780 of this title.

§ 1412.5 Enrollment; special filing and payment provisions for persons who are not the peanut quota holder of record.

(a) Enrollment for the Peanut Quota Buyout Program begins September 3, 2002, and ends November 22, 2002. Application for payment must be made by signing the contract. Payments will be made by CCC to eligible peanut quota holders as soon as practicable beginning October 11, 2002.

(b)(1) If contracts or other written claims are provided to CCC by October 11, 2002, by two or more persons with respect to the same peanut quota used to calculate a Peanut Quota Buyout Program payment, CCC will not issue such payment until CCC has determined the eligibility status of each claimant.

(2) If CCC has made a payment to a peanut quota holder, as identified on FSA records, for a farm and after October 11, 2002, a person who is not a peanut quota holder, as identified on FSA records, for such farm submits a contract or other written claim with CCC for the same quota used to issue the initial payment, CCC will issue no further payments for such farm until CCC has determined the eligibility status of each person who has filed a contract or other written claim for such farm and the occurrence of the earlier of:

(i) Repayment of the initial payment made by CCC; or

(ii) The establishment, in accordance with part 1403 of this chapter, by CCC of a claim for repayment of the initial payment.

(c) Payments to a person who CCC has determined to be an eligible peanut quota holder with respect to a farm but who, as of September 3, 2002, were not the peanut quota holder, as identified on FSA records as of May 13, 2002, for such farm will be made by CCC after November 22, 2002, unless prior to November 22, 2002, CCC has received an acknowledgment from the peanut quota holders, as identified on FSA records as of May 13, 2002, that they:

(1) Will not file a contract for such peanut quota; and

(2) Transferred the peanut quota to such other party prior to May 13, 2002.

§ 1412.6 Eligible peanut quota holder.

(a) A person shall be eligible for a payment under this part only if CCC has determined the person to be an ''eligible peanut quota holder'' for purposes of this part. To be an eligible peanut quota holder, a person must, as of May 13, 2002:

(1) Have owned a farm, or had a life estate interest in a farm, to which paragraphs (a)(2) and (b) of this section do not apply, that was eligible for a permanent peanut quota under part 729 of this title, as in effect on January 1, 2002, without regard to quotas established for seed or experimental purposes or quotas subject to temporary leases or temporary transfers;

(2) Be a party to a written contract for the purchase of all or a portion of the farm identified in paragraph (a)(1) of this section that was in effect on or before May 13, 2002. If the parties to the contract are unable to agree to the division of the applicable peanut quota on the land subject to the written contract, the Deputy Administrator, taking into account any incomplete or permanent transfer of the peanut quota that has otherwise been agreed to, shall provide for the equitable division of the payments made under this part by determining the eligible peanut quota holders and allocating the disputed amount of the peanut quota to such holders. This allocation will take into account the ratio of cropland on the unsold portion of the farm and the cropland on the portion of the farm subject to the purchase contract;

(3) Be a party to a written contract that was in effect on or before May 13, 2002, for the permanent transfer of a peanut quota to such party's farm but was not completed by that date. In such a case, the eligible peanut quota holder

is the owner of the farm, as of May 13, 2002, to which the peanut quota was to be transferred; or

(4) Have owned a farm with a peanut quota which is protected under a Conservation Reserve Program contract in accordance with part 1410 of this chapter;

(b) Notwithstanding any provision of paragraph (a) of this section, CCC may determine that a person is an eligible peanut quota holder with respect to an amount of peanut quota for the purposes of this section, to the exclusion of all other persons in order to provide for the fair and equitable administration of this part so long as the total amount of eligible quota pounds for all program participants does not exceed the quantity of peanut quota that was available to all quota holders in the 2001 crop year.

(c) Sales and transfers of farms and peanut quotas may be disregarded by CCC when:

(1) Such sales and transfers were required to be reported to FSA under part 729 of this title; or

(2) It is otherwise determined by CCC that it would be unfair and inequitable in the overall administration of the program to make or modify an eligibility determination based on claims of transfers or sales that preceded January 1, 2002.

§ 1412.7 Contract provisions.

(a)(1) CCC will, on a per-farm basis, offer to enter into a contract with each eligible peanut quota holder on such farm under which CCC will provide a payment in five equal installments in each of the 2002 though 2006 fiscal years or in one lump sum payment in any such fiscal year as selected by such holder.

(2) Eligible peanut quota holders who elect to receive five equal installments payments will receive the fiscal year 2002 payment no later than December 31, 2002 and, as determined by CCC, between January 2 and January 31 in each of the years 2003 through 2006.

(3) Eligible peanut quota holders who elect to receive one lump sum payment may specify the fiscal year in which they wish to receive a payment. CCC will determine the day in such fiscal year that the payment will be made by CCC.

(b) The amount of each payment made under paragraph (a)(2) of this section shall be the product determined by multiplying:

(1) $0.11 per pound; times

(2) The amount of eligible quota pounds of the eligible peanut quota holder.

(c) The amount of each payment made under paragraph (a)(3) of this section shall be the product determined by multiplying the product determined under paragraph (b) of this section times five.

(d) After a payment option has been selected under paragraph (a) of this section and a payment has been made by CCC, no change in the payment option will be allowed except as authorized by the Executive Vice President, CCC.

§ 1412.8 Contract liability.

All signatories to a contract are jointly and severally liable for contract violations and resulting repayments and liquidated damages.

§ 1421.9 Misrepresentation and scheme or device.

A person who is determined to have:

(a) Erroneously represented any fact affecting a program determination made in accordance with this subpart;

(b) Adopted any scheme or device that tends to defeat the purpose of the program; or

(c) Made any fraudulent representation affecting a program determination made in accordance with this subpart, must refund all payments received on all contracts entered into under this subpart, plus interest as determined in accordance with part 1403 of this chapter, and pay to CCC liquidated damages as specified in the contract.

§ 1412.10 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof made to any person under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the peanut quota or the farm for which a peanut quota had been established under part 729 of this title by any creditor or any other person.

(b) Any person eligible to receive a payment made under this subpart may assign the payment in accordance with part 1404 of this chapter.

§ 1412.11 Other regulations.

(a) The provisions of part 12 of this title, the controlled substance provisions of part 718 of this title, and the payment limitation provisions of part 1400 of this chapter shall not be applicable to payments made under this subpart.

(b) The provisions of part 707 of this title relating to the making of payments in the event of the death of a program participant and in the event of other special circumstances shall apply to payments made under this subpart.

Signed in Washington, DC, on September 25, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–24816 Filed 9–27–02; 11:20 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 214

[INS No. 1946–98; AG Order No. 2617–2002]

RIN 1115–AF29

Delegating the Secretary of Labor the Authority To Adjudicate Certain Temporary Agricultural Worker (H–2A) Petitions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Withdrawal of final rule.

SUMMARY: On July 13, 2000, the Immigration and Naturalization Service (Service) published a final rule in the **Federal Register**, delegating the adjudication of certain petitions for agricultural workers (H–2A) to the United States Department of Labor (DOL). Subsequently, the effective date for that final rule was delayed until October 1, 2002. On November 8 and 16, 2001, the DOL held public briefings concerning the delegations. Based on the public response at these briefings the DOL has determined that the delegation of authority for adjudicating H–2A petitions would not benefit the public as initially contemplated. In consideration of DOL's actions and subsequent events, the delegation of authority does not appear to be appropriate at this time. Accordingly the Attorney General is withdrawing the July 13, 2000, final rule delegating authority to the DOL.

DATES: The final rule amending 8 CFR parts 103 and 214 published in the **Federal Register** at 65 FR 43528 (July 13, 2000) and deferred at 65 FR 67616 (November 13, 2000) and 66 FR 49514 (September 28, 2001) is withdrawn as of October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mari F. Johnson, Adjudications Officer, Business and Trade Services Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION:

Purpose of Delegating Adjudication of Certain H–2A Petitions to the DOL

In an attempt to streamline the processing of petitions filed for agricultural workers, the Department of Justice in consultation with the DOL, decided that the Attorney General's authority to adjudicate certain H–2A petitions should be delegated to the DOL. It was estimated that the delegation of authority would shorten the processing time of H–2A petitions by as much as 10 days.

Regulations Delegating H–2A Authority to DOL and Extensions of the Effective Date

On July 13, 2000, the Attorney General published a final rule in the **Federal Register** at 65 FR 43528–43534 delegating the authority to adjudicate certain H–2A petitions for the temporary employment of nonimmigrant aliens in agriculture in the United States to the DOL. The final rule, which amended 8 CFR parts 103 and 214, was to take effect on November 13, 2000.

Also on July 13, 2000, the DOL published a final rule at 65 FR 43538 with an effective date of November 13, 2000, implementing the above-mentioned delegation of authority from the Service to the DOL.

On November 13, 2000, the Service published a final rule at 65 FR 67616, and DOL published an interim final rule at 65 FR 67628, each delaying the effective date of their respective July 13, 2000, H–2A rules until October 1, 2001.

On September 28, 2001, the Service at 66 FR 49514 published a subsequent final rule, and on September 27, 2001, DOL at 66 FR 49275 published another interim final rule with requests for comments, further delaying the effective date of the H–2A final rule until October 1, 2002. DOL also published a proposed rule at 66 FR 49329 on September 27, 2001 in conjunction with its interim rule of the same date announcing that it was holding two public briefings in order to obtain additional comments concerning the delegation of authority.

Proposed Regulations Regarding Procedures for Processing H–2A Petitions

On July 13, 2000, and concurrently with the H–2A final delegation of authority rule, the Service at 65 FR 43535 published a companion notice of proposed rulemaking (NPRM) for public comment, proposing among other things that all petition requests, extensions of stay, and change of status petitions would be filed with DOL and that the current Service petition fee would be collected by DOL as part of the combined fee.

Concurrently with publication of the Service's proposed rule, the DOL published at 65 FR 43545 a companion NPRM setting forth implementation measures necessary for the successful implementation of the delegation of authority to adjudicate petitions.

On August 17, 2000, at 65 FR 50166, the Service reopened and extended the comment period for the proposed rule. Also on August 17, 2000, at 65 FR 50170, the DOL reopened and extended the comment period on its NPRM. This action was taken in order to obtain additional information from the public relating to the delegation such as the consolidation of forms and the appropriate fees as well as other issues.

Events Necessitating the Withdrawal of the Final Rule

The DOL held two public briefings to obtain additional information regarding the delegation of authority. The briefings were held at Washington, DC on November 8, 2001, and in Monterrey, California on November 16, 2001. After considering the comments received from the public at these two briefings, the DOL determined that the delegation of authority would not be a benefit to the public as initially contemplated. The attendees at these two briefings overwhelmingly disapproved of the transfer of authority between the two agencies, arguing that it would complicate the labor certification process rather than streamline it. Further, the attendees at the briefings expressed reservations about DOL's plans to consolidate the Service's Form I–129, Petition for Nonimmigrant Worker, with DOL's Form ETA–750A, Application for Alien Labor Certification.

In addition, subsequent to the initial proposal to delegate authority to DOL, the Service has changed its procedures and now requires that security checks be performed prior to the adjudication of any type of application and petition. The Service is more suited to perform these checks rather than the DOL.

Finally, the Administration has proposed that the nation's immigration function be reorganized within the newly established Department of Homeland Security. As a result, it does not appear that the delegation is appropriate at this time.

In consideration of these factors, the final rule published on July 13, 2000, at 65 FR 43528–45534 is being withdrawn in this final rule. In addition, in a document published elsewhere in this issue of the **Federal Register**, the Service is withdrawing the proposed rule that was published in the **Federal Register** on July 13, 2000, at 65 FR 43535.

The final rule published on July 13, 2000, can be withdrawn without further notice and comment because the delegation of authority to adjudicate petitions from the Attorney General to the Secretary of Labor constitutes a rule of agency practice or procedure within the meaning of section 5 U.S.C. 533(b)(A), and accordingly is exempt from the Administrative Procedure Act's notice and comment procedures. These procedural rules would not have made a substantive change in the rules, but instead would have transferred an existing procedural function from the one agency to another permitting employers to omit one step in the process of importing foreign agricultural workers. This rule nullifies that planned transfer, maintaining the status quo.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is administrative in nature and merely withdraws a final rule published in the **Federal Register**.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely effect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based companies to compete with foreign based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, to be a

''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

Accordingly, the final rule amending 8 CFR parts 103 and 214 published in the **Federal Register** at 65 FR 43528 (July 13, 2000) is withdrawn.

Dated: September 27, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–25031 Filed 9–27–02; 1:00 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–22–AD; Amendment 39–12892; AD 2002–19–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200B, –300, –400, –400D, and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200B, –300, –400, –400D, and –400F series airplanes; that currently requires repetitive inspections to detect cracking of fire extinguisher discharge tubes in certain engine struts, and corrective action, if necessary. For certain airplanes, that AD also provides for an optional modification of the fire extinguisher discharge tubes, which constitutes terminating action for the repetitive inspections. This amendment makes the previously optional modification of the fire extinguisher discharge tubes mandatory for all affected airplanes and adds one airplane to the applicability. This amendment is prompted by a report that the check tee valve at the top of an engine strut can be damaged such that no extinguishing agent can get to the engine. The actions specified by this AD are intended to prevent blockage of the check tee valve and cracks in the fire extinguisher discharge tubes in the engine struts, preventing the fire extinguishing agent from being delivered to the engine or reducing the amount delivered to the engine, which could permit a fire to spread from the engine to the wing of the airplane.

DATES: Effective November 5, 2002.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of November 5, 2002.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 25, 2000 (65 FR 18881, April 10, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: judy.golder@faa.gov. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–07–10, amendment 39–11664 (65 FR 18881, April 10, 2000); which is applicable to certain Boeing Model 747–200B, –300, –400, –400D, and –400F series airplanes; was published in the **Federal Register** on April 3, 2002 (67 FR 15755). The action proposed to continue to require repetitive inspections to detect cracking of fire extinguisher discharge tubes in certain engine struts, and corrective action, if necessary. The action proposed to require a modification of the fire extinguisher discharge tubes, which would constitute terminating action for the repetitive inspections, and also proposed to add one additional airplane to the applicability.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Give Credit for Modification Per Original Issue of Service Bulletin

Several commenters, including the Air Transport Association of America (on behalf of its members), request that the FAA revise the proposed AD to give credit for modifications accomplished in accordance with the original issue of Boeing Service Bulletin 747–26–2233, dated May 11, 1995. (Paragraph (b) of the proposed AD refers to Boeing Alert Service Bulletin 747–26A2233, Revision 1, dated November 16, 2000, as the

appropriate source of service information for modification of the routing of the fire extinguishing tubes on Boeing Model 747–400 and 747–400F series airplanes equipped with Pratt & Whitney PW4000 engines.) The commenters note that there are no differences between the work instructions of the original issue and Revision 1 of that service bulletin.

The FAA concurs with the commenters' request. We note that paragraph (b) of AD 2000–07–10 refers to the original issue of Boeing Service Bulletin 747–26–2233 as the appropriate source of service information for accomplishment of the optional terminating action in that AD. This provision should have been included in the proposed AD. Accordingly, we have revised paragraph (b) of this AD to allow modification in accordance with either the original issue or Revision 1 of Boeing Service Bulletin 747–26–2233. Such modification will constitute terminating action for Boeing Model 747–400 and 747–400F series airplanes equipped with Pratt & Whitney PW4000 engines.

Explanation of Change Made to Proposal

The FAA has changed all references to a ''detailed visual inspection'' in the proposed AD to ''detailed inspection'' in this final rule.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 268 airplanes of the affected design in the worldwide fleet. We estimate that 47 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 2000–07–10, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $2,820, or $60 per airplane, per inspection cycle.

The new modification required by this AD will take approximately 32 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $5,488 per airplane. Based on these figures, the cost impact of this new requirement on U.S. operators is estimated to be $348,176, or $7,408 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 39–11664 (65 FR 18881, April 10, 2000), and by adding a new airworthiness directive (AD), amendment 39–12892, to read as follows:

2002–19–12 Boeing: Amendment 39–12892. Docket 2001–NM–22–AD. Supersedes AD 2000–07–10, Amendment 39–11664.

Applicability: Model 747–200B, –300, –400, –400D, and –400F series airplanes equipped with General Electric CF6–80C2 series engines, line number 679 through 1060 inclusive; and Model 747–400 and 747–400F series airplanes equipped with Pratt & Whitney PW4000 engines, line numbers 696 through 1062 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent blockage of the check tee valve and cracks in the fire extinguisher discharge tubes in the engine struts, preventing the fire extinguishing agent from being delivered to the engine or reducing the amount delivered to the engine, which could permit a fire to spread from the engine to the wing of the airplane, accomplish the following:

Restatement of Requirements of AD 2000–07–10:

Repetitive Inspections and Corrective Actions

(a) For Model 747–200B, –300, –400, –400D, and –400F series airplanes equipped with General Electric CF6–80C2 series engines, line number 679 through 1060 inclusive; and Model 747–400 and 747–400F series airplanes equipped with Pratt & Whitney PW4000 engines, line numbers 696 through 1061 inclusive: Within 30 days after April 25, 2000 (the effective date of AD 2000–07–10, amendment 39–11664), perform a detailed inspection to detect cracking of the fire extinguisher discharge tubes in the number 2 and number 3 engine struts, in accordance with Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good

lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 18 months.

(2) If any cracking is detected, prior to further flight, replace the cracked tube with a new or serviceable part, in accordance with Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000. Repeat the inspection required by paragraph (a) of this AD within 18 months after the replacement and thereafter at intervals not to exceed 18 months.

New Requirements of This AD

Modification—Airplanes With Pratt & Whitney PW4000 Engines

(b) For Model 747–400 and 747–400F series airplanes equipped with Pratt & Whitney PW4000 engines: Within 24 months after the effective date of this AD, modify the routing of the fire extinguishing tubes between the inboard fire bottles and the inboard engines in accordance with Boeing Service Bulletin 747–26–2233, dated May 11, 1995; or Boeing Alert Service Bulletin 747–26A2233, Revision 1, dated November 16, 2000. Accomplishment of the requirements of this paragraph constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD for Model 747–400 and 747–400F series airplanes equipped with Pratt & Whitney PW4000 engines.

Modification—Airplanes With General Electric CF6–80C2 Series Engines

(c) For 747–200B, –300, –400, –400D, and –400F series airplanes equipped with General Electric CF6–80C2 series engines: Within 24 months after the effective date of this AD, modify the routing of the fire extinguishing tubes between the inboard fire bottles and the inboard engines in accordance with Boeing Alert Service Bulletin 747–26A2267, dated December 20, 2000. Accomplishment of the requirements of this paragraph constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD for Model 747–200B, –300, –400, –400D, and –400F series airplanes equipped with General Electric CF6–80C2 engines.

Alternative Methods of Compliance

(d) 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, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000; Boeing Service Bulletin 747–26–2233, dated May 11, 1995, or Boeing Alert Service Bulletin 747–26A2233, Revision 1, dated November 16, 2000; and Boeing Alert Service Bulletin 747–26A2267, dated December 20, 2000; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin 747–26A2233, Revision 1, dated November 16, 2000; and Boeing Alert Service Bulletin 747–26A2267, dated December 20, 2000; is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000; and Boeing Service Bulletin 747–26–2233, dated May 11, 1995; was approved previously by the Director of the Federal Register as of April 25, 2000 (65 FR 18881, April 10, 2000).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on November 5, 2002.

Issued in Renton, Washington, on September 19, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–24406 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–268–AD; Amendment 39–12891; AD 2002–19–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes Powered by Pratt & Whitney JT9D Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767–200 and –300 series airplanes powered by Pratt & Whitney JT9D series engines, that requires replacement of the existing deactivation pin, aft cascade pin bushing, and pin insert on each thrust reverser half, with new, improved components. This action is necessary to prevent failure of the thrust reverser deactivation pins, which could result in deployment of the thrust reverser in flight and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective November 5, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 5, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1024; fax (425) 227–1181.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: judy.golder@faa.gov. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767–200 and –300 series airplanes powered by Pratt & Whitney (P&W) JT9D series engines was published in the **Federal Register** on November 19, 2001 (66 FR 57904). That action proposed to require replacement of the existing deactivation pin, aft cascade pin bushing, and pin insert on each thrust reverser half, with new, improved components.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

One commenter supports the proposed AD, and notes that the design of the thrust reverser system on Model 767 series airplanes powered by P&W JT9D series engines is similar to that on Model 767 series airplanes equipped with P&W PW4000 series engines.

Disagreement With Proposed AD/ Request for Withdrawal

Two commenters disagree with the proposed AD, and one of these commenters requests that the FAA withdraw the proposal.

Both commenters note that the proposed AD is prompted by partial deployment of the thrust reversers on airplanes equipped with P&W PW4000 series airplanes, and no similar incidents have occurred on airplanes equipped with P&W JT9D series engines. The commenters emphasize that there are significant differences in design and function between the thrust reverser systems on these two engine models. Both commenters point out that, while the thrust reverser system on Model 767 P&W PW4000 series engines incorporates two hydraulic isolation valves—a motorized hydraulic isolation valve for deployment and a hydraulic stow valve for stowage, the thrust reverser system on Model 767 P&W JT9D series engines has only a hydraulic isolation valve, and no motorized isolation valve. The commenters maintain that the differences between the thrust reverser systems on the two engine models make the identified unsafe condition unique to P&W PW4000 series engines.

As further evidence of this, the commenters emphasize that the previous incidents occurred due to improper deactivation of the motorized isolation valve in the thrust reverser system by maintenance personnel who were not properly trained or did not follow procedures for proper deactivation of the thrust reverser system. Finally, both commenters point out that all previous incidents have occurred after landing during a commanded thrust reverser deployment, and they assert that this is not a safety-of-flight concern, but an economic concern (*i.e.*, potential significant damage to the thrust reverser sleeves).

We do not concur with the request to withdraw the proposed AD. Although we recognize that there are differences between the two thrust reverser systems, we find that the similarities between the two thrust reverser systems make airplanes powered by JT9D series engines potentially subject to the identified unsafe condition. We note that the airplane manufacturer also considers these similarities sufficient to create the risk of an in-flight deployment of a thrust reverser.

Also, while we acknowledge that all previous incidents on Model 767 series airplanes powered by P&W PW4000 series engines occurred after landing, the airplane manufacturer has reported an incident of a partial in-flight deployment on a Model 747–400 series airplane powered by P&W PW4000 series engines. That incident has been attributed to improper deactivation of the thrust reverser. When deactivated, the thrust reverser is restrained by locking the hydraulic valve, locking and deactivating the sync lock, and inserting the deactivation pin. However, maintenance crews occasionally will improperly deactivate the hydraulic valve or sync lock, leaving only the structural integrity of the deactivation pin as protection from in-flight deployment. Considering the criticality of a deployment of a thrust reverser in mid-flight, we consider this a safety-of-flight issue.

Further, we acknowledge the commenters' remarks on training and supervision deficiencies. While increased training and proper supervision can alleviate the noted problems, current levels of training and supervision have not reduced the incidents of improper maintenance to an acceptable level.

For the reasons stated previously, we find that no change to the final rule is necessary in this regard.

Acknowledge Errors in the Work Instructions in Service Bulletin

The commenter that urges us to withdraw the proposed AD (as described in the previous section) states that the Work Instructions in Boeing Alert Service Bulletin 767–78A0089, dated July 19, 2001, cannot be accomplished on the thrust reverser system on Model 767 P&W JT9D series engines. The commenter points out that certain steps in the work instructions refer to components that do not exist on Model 767 P&W JT9D series engines. As noted previously, while the thrust reverser system on Model 767 P&W PW4000 series engines has two hydraulic isolation valves—a motorized hydraulic isolation valve for deployment and a hydraulic stow valve for stowage, the thrust reverser system on Model 767 P&W JT9D series engines has only a hydraulic isolation valve, no motorized isolation valve. Therefore, for example, the instruction in paragraph 3.B.4. of Boeing Alert Service Bulletin 767–78A0089 to ''Deactivate the Motorized Isolation Valve and the Stow Valve * * *'' cannot be done because there are not two valves to deactivate on the thrust reverser system on Model 767 P&W JT9D series engines.

These observations were part of the commenter's request for us to withdraw the proposed AD. We do not concur with this request. However, we acknowledge that the wording of the instructions in paragraphs 3.B.4. and 3.L.1. of Boeing Alert Service Bulletin 767–78A0089 is somewhat confusing.

Since we issued the notice of proposed rulemaking (NPRM), Boeing has issued Alert Service Bulletin 767–78A0089, Revision 1, dated May 30, 2002. Among other changes, Revision 1 of the service bulletin corrects the errors in the work instructions of the original issue of the service bulletin to which the commenter refers. Therefore, for clarification, we find it appropriate to revise paragraph (a) of this final rule to refer to Revision 1 of the service bulletin as the appropriate source of service information for the actions required by that paragraph. Also, we have added a new paragraph (b) to this final rule to state that replacements accomplished before the effective date of this AD according to the original issue of the service bulletin are acceptable for compliance with this AD.

Allow Modification During In-Shop Maintenance

One commenter requests that we revise the instructions of the referenced service bulletin to allow accomplishment of the replacement during maintenance, while the engine nacelle is off the wing, rather than with the engine nacelle mounted on the wing of the airplane. The commenter states that the service bulletin does not provide appropriate procedures for doing this. Specifically, the commenter requests that we revise the instructions in the service bulletin to provide for accomplishment of paragraphs 3.C. to 3.K. of the Work Instructions of the referenced service bulletin in the shop.

We agree that the service bulletin instructions need to be revised. As stated previously, since the issuance of the NPRM, Boeing has issued Revision 1 of the service bulletin. In addition to the changes explained previously, Revision 1 of the service bulletin adds a new Work Package III, which provides the instructions for modification of a spare thrust reverser that the commenter

requests. We previously explained that we have revised paragraph (a) of this final rule to refer to Revision 1 of the service bulletin as the appropriate source of service information for the actions required by that paragraph, and we have added paragraph (b) to this final rule to give credit for replacements accomplished before the effective date of this AD according to the original issue of the service bulletin. Therefore, no further change to this final rule is necessary.

Limit Number of Tests

The same commenter requests that we reduce the number of post-replacement test cycles (extension and retraction of the thrust reverser to make sure it operates correctly), from three times, as specified in the service bulletin, to one time. The commenter states that, if the replacement is done with the engine nacelle in the shop rather than mounted on the wing, three test cycles are not necessary.

We do not concur. The commenter provides no data to justify its request, and we see no advantage to reducing the number of test cycles from three to one. However, if an operator considers that such a reduction in the number of test cycles will provide an acceptable level of safety, the operator may request approval of an alternative method of compliance with this testing requirement, as provided by paragraph (c) of this AD. No change to the final rule is necessary in this regard.

Reduce Compliance Time

One commenter is concerned that the compliance time of 24 months allowed by the proposed AD may be too long. The commenter states, however, that it assumes that the FAA has carried out an appropriate risk assessment to justify the proposed compliance time.

We infer that the commenter is requesting that we reduce the proposed compliance time for the actions required by this AD. We do not concur. The commenter provides no data to justify its statement that the proposed compliance time may be too long. As stated in the proposed AD, in developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the replacement. In light of these factors, we find that 24 months is an appropriate interval to allow affected airplanes to continue to operate without compromising safety. No change to the final rule is necessary in this regard.

Extend Compliance Time

One commenter requests that we extend the compliance time for the proposed requirements from 24 months to 30 months. The commenter states that it would like to do the proposed replacement during a scheduled maintenance visit, but sufficient parts may not be available to allow for this.

We do not concur with the request to extend the compliance time for the actions required by this AD. Based on the latest information provided to us by the airplane manufacturer, an ample supply of required parts will be available within the 24-month compliance period. As stated previously, we find that 24 months is an appropriate interval for affected airplanes to continue to operate without compromising safety. No change to the final rule is necessary in this regard.

Explanation of Additional Change to Proposed AD

For clarification, we have made minor revisions to the wording of Note 2 of this final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 90 Model 767–200 and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 26 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours (6 work hours per engine) per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $12,108 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $333,528, or $12,828 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 adding the following new airworthiness directive:

2002–19–11 Boeing: Amendment 39–12891. Docket 2001–NM–268–AD.

Applicability: Model 767–200 and –300 series airplanes powered by Pratt & Whitney JT9D series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the thrust reverser deactivation pins, which could result in deployment of the thrust reverser in flight and consequent reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 24 months after the effective date of this AD, replace the existing deactivation pin, pin bushing in the aft cascade mounting ring, and pin insert on each thrust reverser half, with new, improved components, according to Boeing Alert Service Bulletin 767–78A0089, Revision 1, dated May 30, 2002.

Note 2: The new, improved insert flange and pin bushing does not physically preclude use of a deactivation pin having P/N 315T1604–2 or –5. However, use of deactivation pins having P/N 315T1604–2 or –5 may not prevent the thrust reversers from deploying in the event of a full powered deployment. Therefore, thrust reversers modified per this AD are required to be installed with the new, longer deactivation pins having P/N 315T1604–6, as specified in the service bulletin.

Credit for Actions Accomplished According to Previous Service Bulletin Issue

(b) Replacements accomplished before the effective date of this AD according to Boeing Alert Service Bulletin 767–78A0089, dated July 19, 2001, are acceptable for compliance with the corresponding action required by this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–78A0089, Revision 1, dated May 30, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on November 5, 2002.

Issued in Renton, Washington, on September 19, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–24405 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–03–AD; Amendment 39–12890; AD 2002–19–10]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–402, AT–402A, AT–402B, AT–602, AT–802, and AT–802A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Air Tractor, Inc. (Air Tractor) Models AT–402, AT–402A, AT–402B, AT–602, AT–802, and AT–802A airplanes. This AD requires you to repetitively inspect the upper longeron and upper diagonal tube on the left hand side of the aft fuselage structure for cracks and contact the manufacturer for a repair scheme if cracks are found. This AD is the result of reports of excessive movement in the empennage due to the loss of fuselage torsional rigidity. The actions specified by this proposed AD are intended to prevent failure of the fuselage caused by cracks. Such failure could result in loss of control of the airplane.

DATES: This AD becomes effective on November 15, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 15, 2002.

ADDRESSES: You may get the service information referenced in this AD from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE–03-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew D. McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA received reports of three occurrences of cracks found on the left hand upper longeron and upper diagonal support tubes where they intersect on the left hand side of the fuselage frame just forward of the vertical fin front spar attachment point on Air Tractor Model AT–602 airplanes. The crack starts at the forward edge of the weld where the tubes come together. We initially determined that the cracks resulted from high vertical tail loads during repeated hard turns. The cracks were found by the pilot and/or ground crew when they noticed excessive movement in the empennage due to the loss of torsional rigidity.

Air Tractor started installing extended reinforcement gussets on AT–402 and AT–802 series airplanes at the factory to alleviate the crack condition from occurring. The extended reinforcement gussets were intended to transfer the

loads away from the joint. However, further cracking has been reported on 3 more AT–602 airplanes, as well as 1 AT–402 series, and 3 AT–802 series airplanes. One of the AT–802 airplanes had the extended reinforcement gusset installed during factory production. Air Tractor discovered that the factory installed extended reinforcement gusset, which runs further forward than the original gusset, is also cracking at the forward end of the extended gusset.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could cause the fuselage to fail. Such failure could result in loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor Model AT–402, AT–402A, AT–402B, AT–602, AT–802, and AT–802A airplanes. This proposal was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on June 28, 2002 (67 FR 43568). The supplemental NPRM proposed to require you to repetitively inspect the upper longeron and upper diagonal tube on the left hand side of the aft fuselage structure for cracks and contact the manufacturer for a repair scheme if cracks are found.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

Is There a Modification I Can Incorporate Instead of Repetitively Inspecting the Left Hand Upper Longeron and Upper Diagonal Tube of the Fuselage Frame for Cracks?

The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by repetitive inspections or other special procedures. With this in mind, FAA will continue to work with Air Tractor in performing further tests to determine the cause of the cracking and to provide a corrective action, terminating the need for repetitive inspections.

Why Are Air Tractor AT–500 Series Airplanes Not Included in This AD?

The Air Tractor AT–500 series airplanes have a similar design in the upper longeron in the aft fuselage structure. However, we have not received any reports of damage in this area on those airplanes. The only reports of damage are those previously referenced on the AT–402 series airplanes, Model AT–602 airplanes, and AT–802 series airplanes.

Air Tractor is currently researching this subject on the AT–500 series airplanes. Based on this research and if justified, we may propose additional rulemaking on this subject for these other airplanes.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 248 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection(s):

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	No parts required	$60.	$60 X 248 = $14,880.

We have no method of determining the number of repairs or replacements each owner/operator would incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under 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. FAA amends § 39.13 by adding a new AD to read as follows:

2002–19–10 Air Tractor, Inc.: Amendment 39–12890; Docket No. 2002–CE–03–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category.

Model	Serial No.
AT–402	All serial numbers beginning with 402–0694.
AT–402A	All serial numbers beginning with 402A–0738.
AT–402B	All serial numbers beginning with 402B–0966.
AT–602	All serial numbers.
AT–802	All serial numbers.
AT–802A	All serial numbers.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the empennage caused by cracks. Such failure could result in loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the upper longeron and upper diagonal tube on the left hand side of the fuselage frame, just forward of the vertical fin front spar attachment, for cracks.	Initially inspect within the next 100 hours time-in-service (TIS) after November 15, 2002 (the effective date of this AD) and thereafter at intervals not to exceed 100 hours TIS.	In accordance with Snow Engineering Co. Service Letter #195, dated February 4, 2000, and the applicable maintenance manual.
(2) If cracks are found during any inspection required in paragraph (d)(1) of this AD, accomplish the following: (i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragrpah (f) of this AD; and (ii) Incorporate this repair scheme.	Obtain and incorporate the repair scheme prior to further flight after inspection in which the cracks are found. Continue to inspect as specified in paragraph (d)(1) of this AD.	In accordance the with the repair scheme obtained from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Fort Worth Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Andrew D. McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Snow Engineering Co. Service Letter #195, dated February 4, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on November 15, 2002.

Issued in Kansas City, Missouri, on September 18, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–24404 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 990

[Docket No. 990608154–2213–02]

RIN 0648–AM80

Natural Resource Damage Assessments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: On January 5, 1996, the National Oceanic and Atmospheric Administration (NOAA) promulgated final regulations for the assessment of natural resource damages pursuant to section 1006(e)(1) of the Oil Pollution Act of 1990 (OPA). The final regulations were challenged, pursuant to section 1017(a) of OPA. On November 18, 1997, the United States Court of Appeals for the District of Columbia Circuit issued a ruling on the final regulations (*General Electric Co., et al.*, v. *Commerce*, 128 F.3d 767 (D.C. Cir. 1997)). On July 31, 2001, NOAA published proposed amendments to the final regulations to address the remanded issues and to propose some clarifying and technical amendments in other parts of the regulation. This final rule addresses the remanded issues and comments received.

EFFECTIVE DATE: October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Eli Reinharz, 301–713–3038, ext. 193 (FAX: 301–713–4387; e-mail: *Eli.Reinharz@noaa.gov*) or Linda Burlington, 301–713–1332 (FAX: 301–713–1229; e-mail: *Linda.B.Burlington@noaa.gov*).

SUPPLEMENTARY INFORMATION: In the event of a discharge or substantial threat of a discharge of oil (incident), the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides that Federal, State, Indian tribal, and/or foreign natural resource trustees (trustees) assess natural resource damages and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources and their services. Congress directed the National Oceanic and Atmospheric Administration (NOAA) to promulgate regulations for the assessment of natural

resource damages resulting from an incident (OPA section 1006(e)(1)). NOAA promulgated final regulations on January 5, 1996 (*see* 61 FR 440), codified at 15 CFR part 990.

Under these OPA regulations, trustees conduct natural resource damage assessments in the open, with responsible parties and the public involved in the planning process to achieve restoration more quickly, decrease transaction costs, and avoid litigation. These restoration plans form the basis of claims for natural resource damages. Under the natural resource damage assessment regulation, trustees then present a demand comprised of the final restoration plan to responsible parties for funding or implementation, plus assessment costs. These final regulations were challenged pursuant to section 1017(a) of OPA. On November 18, 1997, the United States Court of Appeals for the District of Columbia Circuit issued a ruling on the final regulations (*General Electric Co., et al.*, v. *Commerce*, 128 F.3d 767 (D.C. Cir 1997)). The Court remanded to NOAA for further agency decisionmaking: (1) authorization for the removal of residual oil, and (2) the scope of authorization for recovery of legal costs. NOAA also proposed clarifying and technical amendments in other parts of the regulations.

Discussion

I. Court's Mandate to Clarify Removal Language

A. Discussion

In *General Electric Co., et al.*, v. *Commerce*, the Court asked NOAA to explain the change in language regarding the removal of residual oil between the Final Regulation and its preamble for natural resource damage assessments and the previous Proposed Rule. The Court also raised a series of questions on the relationship and coordination between response and restoration authorities.

The Court ruled that the Proposed Rule did not authorize trustees to actually ''remove'' oil and that the provision in the Final Regulation, which did authorize such ''removal,'' could not be upheld because NOAA failed to explain this change in language.

NOAA did not intend any substantive change by the edits in language between the proposed and final regulations. NOAA did not intend to propose shared ''removal authority,'' as defined by OPA. Removal authority is exclusively provided to the U.S. Environmental Protection Agency (EPA) and the U.S. Coast Guard (Coast Guard) under the Clean Water Act, 33 U.S.C. 1321 (CWA), Executive Order 12777 (56 FR 54757, Oct. 22, 1991), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300 (1994) (NCP). Removal of oil will be conducted under the authority of the On-Scene Coordinator (OSC). The OSC's authority will be carried out in accordance with the NCP.

However, NOAA has always intended that the regulations authorize trustees to eliminate or reduce exposure of natural resources to oil resulting from an incident, but only if such action is selected in accordance with standards and procedures for restoration set forth in the Final Regulation. NOAA acknowledges that the Proposed Rule may not have expressed this intent clearly. As a result, NOAA maintains that trustees must have the authority to eliminate or reduce the impediments to restoration, including residual oil, to bring about effective restoration, rather than be limited to merely considering such impediments, as erroneously suggested by the Proposed Rule (*see, e.g.,* 61 FR 452).

The Court expressed concern that giving trustees the authority to remove residual oil would be inconsistent with OPA because it would allow trustees to second guess and encroach upon response agencies that have exclusive removal authority. NOAA did not intend to grant shared removal authority between response and trustee agencies. Further, recognition of the trustees' authority to address residual oil through selection of a restoration action would not be granting trustees the authority to second guess response agencies because selection of restoration actions is based upon different information and criteria than are used by the response agencies in making removal decisions.

''Removal'' is a term of art under the applicable statutes and regulations. ''Removal'' is defined as:

> * * * containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

CWA, 33 U.S.C. 1321(a)(8), *see also* OPA section 1001(30) (33 U.S.C. 2701(30)), the NCP, 40 CFR Part 300 at 300.5.

While ''removal'' involves taking whatever actions are needed to prevent or reduce damage caused by a threat of or actual spill, natural resource damage assessment and restoration involve an investigation and planning process that is aimed at returning the environment to baseline conditions, *i.e.,* the state it would have been in had the incident not occurred, by implementing restoration approaches as provided under OPA. Although not defined under OPA, restoration is defined in the Final Regulation to encompass ''any action that returns injured natural resources and services to baseline'' and ''any action taken to compensate for interim losses of natural resources and services that occur from the date of the incident until recovery.'' 15 CFR 990.30. Restoration actions may only be taken in accordance with the provisions in the Final Regulation governing their identification, evaluation, selection, and documentation. For example, trustees evaluate restoration alternatives using factors provided in the Final Regulation including the: Cost to carry out the alternative; extent to which each alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses; likelihood of success of each alternative; extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative; extent to which each alternative benefits more than one natural resource and/or service; and effect of each alternative on public health and safety (15 CFR 990.54(a)). Nothing in the statute or its legislative history suggests that trustees are prohibited from undertaking restoration actions that involve eliminating or reducing exposure of natural resources to oil.

Another area causing potential confusion with removal actions is the Final Regulation provisions on emergency restoration in § 990.26. Section 990.26 of the Final Regulation currently states that trustees may conduct emergency restoration when: ''(1) The action is needed to minimize continuing or prevent additional injury; (2) The action is feasible and likely to minimize continuing or prevent additional injury; and (3) The costs of the action are not unreasonable.'' Since that language may tend to confuse restoration and removal, NOAA proposed amendments to § 990.26 to clarify that the purpose is not to undertake any additional ''removal'' action, but that the intent of the emergency restoration provisions is to comport with the statutory language of section 1012(j) of OPA, which exempts emergency restoration from public notice and comment when it is needed ''to avoid irreversible loss of natural resources, or to prevent or reduce any continuing danger to natural resources

or similar need for emergency action,'' and to mitigate the ultimate natural resource damages resulting from the incident that would result from delaying the emergency restoration action. This provision was consistent both with the language and purposes of OPA and with the tort law concept that persons who are seeking damages for an injury may take reasonable steps to mitigate damages, even before the claim has been asserted or adjudicated, by repairing some or all of the injury. Therefore, NOAA proposed to amend § 990.26(a) to read:

(a) Trustees may undertake emergency restoration before completing the process established in this part provided that:

(1) The action is needed to avoid irreversible loss of natural resources, or to prevent or reduce any continuing danger to natural resources or similar need for emergency action;

(2) The action will not be undertaken by the lead response agency;

(3) The action is feasible and likely to succeed;

(4) Delay of the action to complete the restoration planning process established in this part likely would result in increased natural resource damages; and

(5) The costs of the action are not unreasonable.

NOAA also proposed to amend § 990.26(b) to provide that, if response actions are still underway, trustees must coordinate with the OSC before implementing any emergency restoration action. The amendments provided that trustees may take such action only if that action will not interfere with or duplicate the ongoing response action. Finally, the amendments also provided that emergency restoration addressing residual oil can proceed only if the response action is complete or if the OSC has determined that the residual oil identified by the trustee as part of a proposed emergency restoration action does not merit further response. This coordination shall take place through the procedures specified in the NCP.

Given the fact that the parenthetical language of § 990.53(b)(3) of the Final Regulation caused confusion on this issue, NOAA proposed that subsection be amended to delete the parenthetical language, ''*e.g.,* residual sources of contamination.'' For the same reason, NOAA replaced the term ''remove'' with the term ''address'' in § 990.53(b)(3).

B. The Court's Specific Questions on the Interrelationship of Response and Restoration Authority Concerning Removal of Residual Oil

In its opinion in *General Electric Co., et al.,* v. *Commerce*, the Court posed a number of specific questions for NOAA to address. The preamble to the proposed amendments published on July 31, 2001, at 66 FR 39466–39467, answered these questions upon consultation with the Coast Guard and EPA. Although the questions were addressed in the preamble, NOAA believes that the language bears repeating. Therefore, the questions from the Court and their answers are given here to clarify the relationship between response and restoration.

1. What Is the Interrelationship Between Trustees' Residual Removal Authority and the Primary Removal Authority of EPA and the Coast Guard?

As previously stated, NOAA did not intend to confer upon trustees shared ''residual removal authority'' by this rulemaking. Rather, NOAA and the lead federal response agencies maintain that trustees may implement an action to eliminate or reduce exposure to oil in the environment if that action comprises an appropriate part of a restoration plan developed in accordance with the Final Regulation. Thus, it is inappropriate to characterize the trustees' action as an exercise of ''residual removal authority.''

OPA section 1006(c) directs trustees to assess natural resource damages, and to develop and implement a plan for restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under their trusteeship, after providing for public review and comment on such plans (33 U.S.C. 2706(c)(1)). OPA does not define ''restoration,'' but the Final Regulation describes this authority as encompassing ''any action ... that returns injured natural resources and services to baseline'' and ''any action taken to compensate for interim losses of natural resources and services that occur from the date of the incident until recovery.'' 15 CFR 990.30, 61 FR 505.

In contrast, removal as defined under the CWA, OPA, and the NCP addresses actions taken by the lead response agency necessary to ''prevent, minimize or mitigate'' damage to the public health or welfare, including the environment. The Final Regulation acknowledges that removal actions may reduce or eliminate the need for subsequent natural resource damage assessment and restoration activities (*see, e.g.*, 61 FR 443, col. 2: ''Coordination among trustees and response agencies can result in reducing or eliminating natural resource or service injuries residual to the cleanup;'' 61 FR 444, col. 3: ''This rule provides procedures by which trustees may determine appropriate restoration of injured natural resources and services, where such injuries are not fully addressed by response actions;'' 61 FR 461, col. 2: ''NOAA agrees that restoration actions by trustees are intended to supplement the initial response and cleanup activities of response agencies.''). The Final Regulation also acknowledges that response actions may be limited in scope and may not alleviate restoration concerns (61 FR 449, col. 1).

Thus, NOAA and the federal response agencies interpret OPA as granting complementary authority to response agencies and trustees. Response and restoration authorities are respectively distinguished primarily by the need for action to prevent, minimize or mitigate harm versus action to restore injured natural resources and services to baseline conditions.

2. Under What Circumstances Will Trustees Exercise Their Authority To Remove Oil?

The trustees have no authority to undertake a ''removal'' action per se, but may select a restoration alternative that involves reducing or eliminating exposure to residual oil. The Final Regulation authorizes trustees to eliminate or reduce exposure to residual oil when such action has been selected in accordance with the restoration planning process in the OPA regulation. That is, the trustees could eliminate or reduce exposure to residual oil when they have developed a reasonable range of restoration alternatives that might include removal of residual oil, among other options, evaluate those restoration alternatives using the selection criteria in the OPA regulation, and select an alternative that includes removal of residual oil as the most appropriate restoration alternative for the injuries resulting from the incident. In cases where trustees do consider a restoration alternative involving the reduction or elimination of exposure to residual oil, the reasonable range of alternatives should include not only a natural recovery alternative, but also an alternative in which the residual oil is left but human intervention occurs, such as off-site acquisition or enhancement of substitute habitat, to address the injured resources.

3. How Does the Standard Governing the Lead Agency's Removal Authority Differ From the Standard Governing Trustee Removal of Oil?

The lead response agency's removal authority under the CWA may include actual removal or containment of oil, or other actions ''necessary to prevent, minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines and beaches.'' 33 U.S.C. 1321(a)(8),(c),(e). As discussed above, the lead response agency's goals include preventing or reducing harm to the public health or welfare, including the environment that would result from exposure to oil. The objective of the lead response agency is to remove as much oil as is needed to prevent, minimize or mitigate harm. In contrast, the trustee's authority to eliminate or reduce exposure to residual oil is derived exclusively from restoration authority under OPA. As such, the trustee's authority is limited to those instances where residual oil would prevent or limit the effectiveness of restoration, as stated in § 990.53(b)(3) of the Final Regulation.

4. What Precisely Is a Trustee's Role in Primary Removal, and What Is the Role of EPA and the Coast Guard, If Any, With Respect to a Trustee's Residual Authority?

The trustee's role in a removal action is defined in section 1011 of OPA, which provides that: ''The President shall consult with the affected trustees designated under section 2706 of this title on the appropriate removal action to be taken in connection with any discharge of oil.'' 33 U.S.C. 2711. During this consultation, the trustee may advise the lead response agency on removal actions that could be taken to prevent, reduce, or eliminate impacts to natural resources. Removal decisions made by the lead response agency are intended to minimize or mitigate harm to the environment. Although these decisions may affect the nature and extent of trustee restoration actions, the decisions are not based upon the trustee goals of restoring the environment to baseline conditions and compensating for the loss of natural resources.

Generally, response agencies do not have a role in restoration actions by trustees. However, the Final Regulation does allow ''emergency restoration,'' under § 990.26. Under § 990.26 (a), emergency restoration is allowed where: ''(1) The action is needed to minimize continuing or prevent additional injury; (2) The action is feasible and likely to minimize continuing or prevent additional injury; and (3) The costs of the action are not unreasonable.'' NOAA is amending the provisions of § 990.26(a) to clarify that the purpose of trustees conducting emergency restoration is to reduce the ultimate damages resulting from the incident. If emergency restoration is considered while response actions are still underway, § 990.26(b) requires that the trustee coordinate with the lead response agency's OSC before taking any emergency restoration action and demonstrate that the emergency restoration action will not duplicate or interfere with any on-going response actions.

5. May Trustees Remove Residual Oil Even if EPA or the Coast Guard Has Considered and Rejected a Trustee's Position During the Consultation Process? What Happens if a Trustee Originally Agrees With the Extent of Primary Removal, But Later Changes its Mind?

NOAA believes that the lead response agency's rejection of a trustee's request for removing oil under the consultation provisions of section 1011 of OPA should neither bar nor precipitate such actions as part of a restoration plan developed in accordance with the Final Regulation. The response agency's refusal of a trustee's request in no way constitutes a conclusion regarding whether such an undertaking is appropriate as natural resource restoration. The response agency may make a determination, based upon available information, that removal is not necessary to prevent further impact to human health, welfare, or the environment. Subsequently the trustees, based upon information and analysis developed during the damage assessment process, may select a restoration alternative that involves elimination or reduction of residual oil. These determinations are not in conflict, and both are proper.

The trustee's concurrence with the response agency's decision to leave oil in the environment during the response phase does not preclude the trustee's consideration of removal of residual oil if such action is deemed appropriate based upon information gained during the damage assessment process to reinstate baseline conditions or compensate for lost services.

6. Do Coast Guard and EPA Agree That Trustees May Conduct Removal of Oil? Do the Lead Response Agencies Concur as to How They Will Coordinate Removal Activities on a Case-by-Case Basis?

The Court indicated that such agreement is most likely needed by a reviewing court.

The Federal response agencies agree that actions to eliminate or reduce exposure to oil need not occur solely under their response authorities, and can legitimately be conducted as a restoration action under OPA, consistent with the Final Regulation. The Federal response agencies also agree that coordination of removal activities in all cases will occur as specified within the NCP.

C. Response to Comments

1. On February 11, 1998, NOAA published a request for public comments concerning the authorization for the removal of residual oil by trustees as part of a natural resource restoration action. 63 FR 6846. Specifically, NOAA invited commenters to submit information on both case-specific and other consultation experiences with the Coast Guard, EPA, or State response agencies relating to removal actions taken either during or following the response phase of an incident. NOAA also requested reports of any standards, circumstances, and outcomes of incidents where trustees considered additional removal actions beyond those proposed by the lead response agency. Twelve separate parties responded to the request for comments. Comments were received from five industry representatives, four from state trustee representatives, one from EPA, and two from individual members of the public. Comments received are summarized and addressed below.

Comment: One commenter, a private cleanup contractor, described a ''unique design'' of skimmer used by his company as an environmentally friendly approach to removal of residual oil.

The second individual commenter advocated that trustees not be allowed to ask for more cleanup than that performed by the response agency, in order to avoid needless work and the potential to cause more environmental harm than that avoided by the additional work.

Response: NOAA takes note of the cleanup approach suggested by the first commenter. NOAA does not agree with the second commenter that addressing residual oil is needless work. NOAA also points out that one of the

considerations trustees must address in selecting a restoration project is whether that project will inflict additional harm upon the environment.

Comment: One trustee representative relayed experiences from a unique situation involving residual oil, in which oily sand was piled up into ''tar dunes'' in front of vegetated zones of beaches by response personnel. The decision was characterized as a joint decision among response and trustee personnel, based in part on the desire to minimize removal of sand from the beaches, and on uncertainty whether the dunes would cause any additional injury to natural resources. The trustee stated that in hindsight the agency would always recommend that oily sand be removed from beaches and replaced with clean sand from an appropriate source. In addition, this trustee was of the opinion that the agency would have the authority to request responsible parties to conduct this type of residual removal as part of a restoration plan. A second trustee representative commented on a specific case example involving residual oil in which trustees were heavily involved in the response planning and decisionmaking. The decision to leave residual oil in the environment in this instance was made with the agreement of the trustees, because additional removal would have killed individuals of an endangered species. Another trustee commenter reported on an experience in which removal of residual oil long after an incident was paid for out of restoration funds paid by a responsible party and held by trustees in a trust account.

Response: NOAA takes note of these comments.

Comment: Another trustee representative stated its agreement with NOAA's proposed amendments that trustees have legal authority to remove residual oil as part of a restoration plan. The commenter suggested that Congress obviously intended a degree of overlap between removal and restoration. The commenter stated that removal of residual oil is often necessary and even unavoidable as a restoration action, citing an example where oil unaccounted for by response efforts was discovered later in sediments of a protected natural area. Finally, this commenter urged NOAA to respond in the amended Final Regulation to all of the D.C. Circuit's questions posed in remanding this issue.

Response: NOAA agrees with the commenter that addressing residual oil is sometimes necessary and unavoidable as a restoration action. NOAA also points to the responses to the Court's questions above in section I.B. of this preamble.

Comment: EPA commented that it agrees that trustees have authority to remove residual oil as part of implementation of a publicly-reviewed restoration plan. EPA also noted, however, that Federal response agencies and trustees must consult and coordinate during an incident to ensure protection and restoration of potentially injured natural resources due to an oil spill. EPA suggested that incidents supporting the need for removal of residual oil should be few if the coordination and consultation process works.

Response: NOAA takes note of this comment and agrees with EPA on this issue.

Comment: One group of industry representatives stated that trustees should not be authorized to undertake response actions, including removal of residual oil beyond that directed by the lead response agency in consultation with trustees. The commenters stated that NOAA should answer all of the D.C. Circuit's questions concerning the interrelationship of response and restoration authority. These commenters suggested drawing strong and clear distinctions between response and trustee authorities, roles, and responsibilities. Citing to numerous sections of the NCP and EPA's July 31, 1997, OSWER Directive No. 9200.4–22A, the commenters characterized the proper role of resource restoration as supplemental to, and consistent with, response actions and criteria selected by the lead response agency.

Response: NOAA notes that trustees acting pursuant to the Final Regulation will not attempt to usurp the role of the lead response agency. NOAA also refers the commenter to the response to the Court's questions given above in section I.B. of this preamble.

Comment: A second group of industry commenters also concluded that EPA and the Coast Guard have exclusive authority to determine when removal is complete, and that trustees' interests are protected by, and limited to, consultation with the lead response agency pursuant to section 1011 of OPA. These commenters suggested that the OPA, CWA, and NCP all draw clear lines between removal and restoration, citing as support the different liability provisions and different statutes of limitations for removal costs and for natural resource damages in OPA. These commenters also suggested that the remanded regulation provision on the removal of residual oil, which could be used solely by state or tribal trustees, undermines Congress' intent that removal under OPA always be conducted under the supervision of federal authorities. These commenters urged NOAA to remove § 990.53(b)(3)(i) from the regulation.

Response: NOAA agrees with the commenter that the response agencies have exclusive authority to determine when removal is complete. However, NOAA does not agree that the trustees' interests are limited to consultation with the lead response agency. NOAA notes that, in consultation with the Coast Guard and EPA, it has responded to the Court's questions above in Section I.B. of this preamble. NOAA points out that § 990.53(b)(3)(i) does not and should not address which trustees may use these provisions nor does it undermine Congressional intent.

Comment: A third group of commenters representing industry concerns noted that oil spill cleanup is critically important, in part, because it may also achieve restoration and eliminate the need for further compensation to the public. These commenters stressed that ''too many cooks'' can hamper the effectiveness of response actions in achieving this and other goals, and suggested that this was one reason why Congress limited trustees' role during response to a consultative one. However, these commenters stated that they would support removal of residual oil by trustees in instances where it is necessary to assist natural recovery of injured resources, so long as such action is the most cost-effective restoration action, and that the claim for the costs of such action is developed in accordance with established damage assessment and restoration planning procedures.

Response: NOAA notes and appreciates the offer of support from these commenters. In response to the comment on cost-effectiveness, for emergency restoration actions, § 990.26(a)(5) specifically requires that the costs of the action not be unreasonable. For non-emergency restoration conducted pursuant to a publicly-reviewed restoration plan, § 990.54(a) provides standards for evaluating a range of restoration alternatives and § 990.54(b) includes a cost-effectiveness requirement.

Comment: A fourth commenter representing an industry association also stated that the Final Regulation should reflect the clear legal distinction drawn by Congress in OPA between removal of oil and restoration of natural resources. This commenter stated that NOAA should not attempt to authorize any removal authority for trustees. However, this commenter also

recognized that removal of oil can comprise an effective restoration action, and that in reality there is no existence of a time certain at which removal stops and restoration begins. Citing the purpose of OPA's requirement that response agencies consult with trustees, this commenter advocated that natural resource damage assessment activities proceed apace with response in such a fashion that the removal completion decision can take into account the need to remove more oil in order to achieve effective restoration.

Response: Again, NOAA notes that it is not attempting to create removal authority for trustees. NOAA does agree that trustees should work where possible through the consultation process with the lead response agency to address removal of oil that might impede restoration. However, NOAA points out that § 990.53(b)(3)(i) is necessary to allow restoration to succeed where residual oil not subject to the removal process will impede restoration.

Comment: The fifth group of industry commenters also stated that they would support trustee authority to remove residual oil if it is the most cost-effective restoration alternative, in certain circumstances. Specifically, these commenters urged NOAA to revise the regulation such that an injury to a natural resource for which trustees could seek restoration, including by removal of residual oil, be defined as a loss of a service that the resource provided to the public. Appropriate restoration would be limited to reinstatement of these services and could include elimination of oil from the environment if this action achieved reinstatement of services. The commenters argued that OPA's grant of authority to response agencies to abate threats to the environment overlaps with authorities NOAA granted to trustees under the amendments to restore lost ecological functions or services. These commenters urged that NOAA revise the Final Regulation to eliminate the potential for any overlap between response and restoration authorities and actions. These commenters also urged that trustees work closely with removal agencies to identify in a timely manner whether additional removal is likely to be proposed as a restoration alternative, so that all removal can be carried out simultaneously.

Response: NOAA notes and appreciates the support of these commenters. In response to the comment on cost-effectiveness, as noted earlier, for emergency restoration actions, § 990.26(a)(5) specifically requires that the costs of the action not be unreasonable. For non-emergency restoration conducted pursuant to a publicly-reviewed restoration plan, § 990.54(a) provides standards for evaluating a range of restoration alternatives and § 990.54(b) includes a cost-effectiveness requirement. NOAA does not believe that the physical removal of residual oil by trustees constitutes a type of restoration that must be evaluated any differently from the other types of restoration actions, except for the safeguards that the Final Regulation puts in place for emergency restoration actions that address residual oil. Nor did the commenters provide a basis for treating this type of restoration action differently from all others and subjecting it to a special and determinative cost-effectiveness criteria. However, NOAA would not attempt to limit or restrict trustee actions by only addressing threats to restoration success in situations involving ''loss of services'' to the public, since the Final Regulation currently provides the flexibility to the trustees in making restoration decisions. NOAA agrees that trustees should coordinate closely with the lead response agency to try to address the removal of all oil deemed necessary.

2. On July 31, 2001, NOAA published proposed amendments to the Final Regulation to address the remanded issues, including the issue of residual oil. 66 FR 39464. Only four comments were received on the proposed amendments regarding the issue of addressing residual oil: three comments from industry representatives and one comment from a coalition of State officials. The comments from industry representatives are similar and are therefore summarized and addressed as one set of comments.

Comment: One major area of concern from industry representatives is that trustees do not have the authority to ''remove'' residual oil. The commenters maintain that the removal authority under OPA and the NCP, in particular, is clear and sufficiently broad to address any impediments to restoration resulting from residual oil. In support of preserving the statutory status quo, the commenters cite to Congressional and statutory language that unambiguously distinguish removal and restorations authority in terms of goals, scope, and provisions regarding liability and claims. (See, definition of ''removal'' authority at OPA section 1001(30), CWA sections 311(c) & (d), and NCP § 300.5.; on Congressional intent at H. Conf. Rep. No. 653, 101st Cong., 2d Sess. (1990), at 146; on liability provision at OPA sections 1002(b)(1) & (b)(2)(A); on claims at OPA sections 1017(f)(1)(b) & (f)(2) and the Oil Spill Liability Trust Fund claims procedures.) The commenters further cite the distinct roles and responsibilities between the response agencies and trustees as evidence of statutory intent to maintain removal of residual oil under the direction of the OSC, not the trustees. (See the President's responsibility at CWA section 311(c)(1), as amended by OPA section 4201; President's has delegated responsibilities to EPA at Executive Order 12777, 56 FR 54757 (Oct. 22,1991); and duties of lead response agencies at 40 CFR Part 300.) One commenter suggested that cleanup resources may be unavailable to the OSC if trustees are using these resources for removal of ''residual oil.''

The commenters state that NOAA's proposed amendments to the Final Regulation are an attempt to provide removal authority to trustees under the guise of restoration. The commenters claim that NOAA does not have the authority to grant itself such authority, that the granting of residual oil removal authority to trustees would be inconsistent with the statutory language under OPA and the NCP. The commenters further argue that NOAA has not adequately explained the standards and protections for its ''new-found'' removal authority, and how this claimed authority would relate to the authority granted to the OSC under the statute. The commenters also noted that there is no requirement that the additional removal of oil by trustees be cost-effective or demonstrate a net environmental benefit.

A second substantive issue of the commenters is that, if trustees are granted residual oil removal authority, the regulations will disrupt the decisionmaking process and operational scheme defined under the NCP to remove residual oil (NCP Subparts B-D). Under NOAA's proposed amendments, the commenters indicate that trustees might be able to take removal actions contrary to OSC decisions and prior trustee positions respecting removal actions while the OSC would have no say in trustee residual oil removal actions. The commenters note that the principal difference in NOAA's proposed amendments is the identity of the decisionmaker, not the decision. The commenters indicate that the current procedural safeguards under the NCP work. Changing the NCP would compromise removal decisions and serve as a disincentive to industry to cooperate and coordinate with response agencies. The commenters also stated that there should be no time line imposed upon the OSC's decision regarding oil removal. The commenters

cited the Tampa Bay case as one example of the trustees second-guessing the OSC. One commenter stated that allowing trustees to conduct additional oil removal may increase the liability of the responsible party. If this additional oil removal is not part of the established response process, then these costs may not be reimbursable to the responsible party if the liability limit is exceeded.

The commenters argue that the U.S. Court of Appeals for the District of Columbia Circuit should dismiss NOAA's arguments that trustees have the right to conduct removal of residual oil under the ''guise of restoration.'' The commenters argument is based upon their belief that NOAA did not adequately respond to the Court's questions, that NOAA failed to address the commenters' concerns in a prior **Federal Register** notice, and that NOAA is unclear regarding the position of the Federal lead response agencies (the Coast Guard and EPA) regarding NOAA's proposed amendments. The commenters recommend that the proposed amendments to NOAA's Final Regulation be revised in such a way that would not allow trustees to have the authority to address residual oil during emergency restoration or other resource restoration activities.

Response: The proposed amendments did not grant authority to trustees to conduct removal under the ''guise of restoration.'' NOAA has clearly stated in the proposed amendments that it does not intend, nor was it intended in the Final Regulation, to grant ''removal authority'' to trustees as provided to the response agencies under OPA and the NCP (66 FR 39465 and 39471, thus, for instance, the change in terminology from ''removal'' to ''address'' § 990.53(b)(3)(i)). However, NOAA firmly believes that Congress did not intend to limit the ability for trustees to conduct restoration in an efficient or effective manner. As a result, the regulations authorize trustees to address residual oil if such action clears the way to cost-effective restoration. As mentioned earlier, § 990.54(b) includes a cost-effectiveness requirement.

Limiting the ability of trustees to initiate restoration as suggested by the commenters, could result either in more and costlier restoration, or in the inability of trustees to exercise any options to address residual oil that may serve as an impediment to restoration. NOAA believes that such alternative actions do not serve any member of the public and that trustees should have authority to evaluate a broad range of restoration alternatives.

The proposed amendments maintained the opportunity for trustees ''to eliminate or reduce exposure to oil resulting from an incident'' (66 FR at 39464, col. 3), if such action represents a preferred restoration alternative under the provisions of the regulations. Trustees have the authority to take limited ''emergency'' restoration actions consistent with that granted under OPA section 1012(j) and tort law. (66 FR at 39465, col 2.) While the commenters may perceive such restoration actions as ''removal'' actions that may be taken arbitrarily or in conflict with OSC decisions, they are not, nor would the trustee actions monopolize response resources. NOAA stated in its proposed amendments that restoration actions, including emergency actions as defined by OPA section 1012(j), must be consistent with the standards and procedures set forth under OPA (OPA section 1006), the Final Regulation (*e.g.*, 15 CFR 990.54(a)), and the proposed amendments to the Final Regulation. Emergency restoration actions must also abide by the consultative requirements of the NCP and the determination of the OSC to reconsider or re-open a removal action or otherwise defer such action for restoration under trustee rules. (NCP Subpart D.) The trustee authorities described in the regulations are limited to restoration decisions made using restoration criteria, not the distinctly different decision framework used by the OSC to prevent, minimize or mitigate damage to human health, welfare, and the environment. Contrary to the arguments of the commenters, the decision truly is different, not just a function of the decision maker.

As to the argument that the costs of addressing residual oil will not be recoverable if the responsible party exceeds liability limits, NOAA points out that such costs would be recoverable to the responsible party as restoration costs.

The commenters cite the Tampa Bay example as a case where the trustees are alleged to have second-guessed the OSC. The commenters assertions misrepresent the facts of this case. In the Tampa Bay case, emergency restoration actions were taken only after extensive consultation with the OSC and the potentially responsible parties. Emergency restoration actions were determined necessary by the trustees upon the discovery of conditions that would have potentially resulted in the need for more and costlier restoration if no action were taken. This discovery was made possible through monitoring after the completion of removal actions. Given the circumstances at hand, the OSC determined it was best to defer further action to the trustees. (*See,* in particular, Sections 4.7 and Appendix D of the Tampa Bay Damage Assessment and Restoration Plan/Environmental Assessment for the August 10, 1993, Tampa Bay oil spill, Volume 1—Ecological Injuries, Final, June 1997 in the Tampa Bay Administrative Record; and the paper on Tampa Bay in the NRDA Lessons Learned Workshop, May 11–12, 2000, New Orleans, LA. Both documents are available at *http://www.darp.noaa.gov/publica.htm.)*

Under the safeguards highlighted in the proposed amendments and as demonstrated in the Tampa Bay example, NOAA does not envision that the decisionmaking framework and procedural guidelines in the NCP will be undermined. Like EPA, NOAA believes that circumstances where trustees will wish to address residual oil will be few in number (see EPA Letter to NOAA, March 30, 1998, re: Reconsideration of Final Rule—Assessment of Natural Resource Damages (15 CFR Part 990); Request for Comments (63 FR 6846–6847, Feb. 11, 1998)), and that adequate controls are in place to ensure trustee coordination with the OSC.

NOAA believes it has answered the Court's concerns. Further, NOAA believes it has provided ample opportunity for all commenters to provide input on the Court's questions. Finally, NOAA believes it has adequately addressed the commenters' concerns.

On the issue of whether the lead Federal response agencies (the Coast Guard and EPA) concurred with NOAA's position in the proposed amendments, the Court asked that such concurrence be obtained in the event that NOAA was claiming ''removal residual authority'' per se (*see* discussion on *Removal Authority* in the United States Court of Appeals for the District of Columbia Circuit, November 18, 1997). Since NOAA is not claiming such authority, it could be argued that no such concurrence is necessary. However, NOAA agrees that ''emergency'' restoration actions do require close coordination with the response agencies.

In sum, NOAA believes that the language provided in the proposed amendments is adequate. NOAA believes that the proposed language on restoration under §§ 990.26 and 990.53(b)(3)(i) affords the scope and protections needed to conduct actions consistent with removal and restoration authorities.

Comment: The one set of comments representing trustee interests found the proposed amendments constructive and sound, and recommended that these amendments be retained in the in the

Final Regulation. The commenters note that the proposed amendments adequately and accurately address the Court's questions. The commenters support NOAA's position that effective restoration may require the trustees to eliminate or reduce exposure to oil.

The commenters specifically support NOAA's proposed amendments at § 990.26(a) and (b) regarding emergency restoration. However, the commenters felt that NOAA should address the ''timeliness'' in the implementation of emergency restoration actions in the proposed amendments. (NOAA asked for input on adding an explicit element, ''at this time,'' to § 990.26(b)(2) regarding the OSC's determination that residual oil does not merit further response, 66 FR 39465.) The commenters indicate that the OSC may be distracted on other more critical response issues (*e.g.*, human health and safety) to make timely conclusions respecting the completion of a removal action. Such delays may require additional, costlier restoration. Thus, the commenters support the inclusion of the phrase ''at that time'' in NOAA's amendments as a reasonable solution.

Response: NOAA concurs with the commenters' observation that the proposed amendments to § 990.26(a) and (b) will facilitate the coordination of emergency restoration and removal actions. However, adding the phrase ''at that time'' to § 990.26(b)(2) might appear to undermine the OSC's authority. Modifying the NCP language respecting the OSC's responsibilities for removal actions is left to EPA (in consultation with other members of the National Response Team) as provided under section 1 of Executive Order 12777, 58 FR 54757. Removal of discharges is delegated to EPA and the Coast Guard under section 3 of the same Executive Order. Therefore, NOAA is declining to add such a time element relative to removal actions.

D. Conclusion

NOAA believes that the amendments sufficiently address the issue of residual oil remanded from the Court. This language was carefully crafted through extensive consultation with the Coast Guard and EPA. Therefore, NOAA is not persuaded that changes are needed. The amendments are incorporated in the Final Regulation.

II. Trustee Legal Costs

A. Discussion

The Court's decision on recovery of attorneys' costs as assessment costs discussed three issues. First, the Court noted that NOAA agreed that attorneys' costs incurred in pursuing litigation of a natural resource damages claim are not recoverable as assessment costs. In response to this point, NOAA proposed to amend to the definition of ''Reasonable assessment costs'' in § 990.30 by removing the word ''enforcement'' from the definition. (*General Electric Co., et al.*, v. *Commerce,* at 776.)

Second, the Court noted that the parties in the case agreed that ''trustees may recover assessment costs attributable to tasks that lawyers happen to perform but which others, such as engineers or private investigators, could have performed.'' (*Id.*) No amendment to the Final Regulation is necessary to address this point.

Finally, the Court declined to resolve the question of ''whether trustees may recover costs stemming from legal work not directly in furtherance of litigation (*e.g.*, pre-litigation legal opinions, title searches) that only lawyers could have performed.'' (*Id.*) Instead, the Court directed NOAA ''to draw the precise line between recoverable and non-recoverable legal costs.'' (*Id.*) In response to this direction from the Court, NOAA proposed amendments to § 990.30 to add a definition of ''legal costs'' that provides criteria for determining the scope of attorney activities that may be included in a trustee's claim for assessment costs.

The proposed amendments of July 31, 2001, focused on the explicit actions that trustees are authorized to perform under the Final Regulation or under OPA. When determining whether the costs of actions, performed for the purpose of assessment or development of a restoration plan, that could only be performed by attorneys, constitute reasonable assessment costs, the proposed amendment provided that trustees must consider the following criteria:

- Whether the action comprised all or part of an action specified either in this part or in OPA section 1006(c);
- Whether the action was performed prior to, or in the absence of, the filing of litigation by or on behalf of the trustee in question to recover damages; and
- Whether the action was performed by an attorney who was working for or on behalf of the trustee agency, as opposed to a prosecutorial agency.

The first criterion demonstrates that the action was directly in furtherance of natural resource damage assessment and restoration. The second and third criteria demonstrate that the action was not primarily in furtherance of litigation. If all of the above criteria are met, the costs associated with attorneys' actions are deemed assessment costs. If the criteria are not met, the trustee must explain why the action is an assessment action rather than an action performed for the primary purpose of furthering litigation.

The preamble to the amendments proposed on July 31, 2001, provided examples of common or routine assessment actions that may be most appropriately performed by trustee attorneys including, but not limited to:

- Providing written and oral advice on the requirements of OPA, these regulations, and other applicable laws;
- Preparing public notices, including the Notice of Intent to Conduct Restoration Planning issued to responsible parties and the Notice of Availability of Draft Restoration Plans;
- Developing and managing administrative records;
- Preparing binding agreements with potentially responsible parties in the context of the assessment, including study agreements, funding agreements, and restoration agreements;
- Preparing co-trustee cooperative agreements;
- Preparing formal trustee determinations required under the regulation;
- Determining requirements for compliance with other applicable laws; and
- Procuring title searches, title insurance, and/or conservation easements when property agreements are part of restoration packages.

Response to Comments

On July 31, 2001, NOAA published proposed amendments to the Final Regulation to address the remanded issues, including the issue of trustee legal costs. 66 FR 39464. Only four comments were received on the proposed amendments: one comment from a coalition of State officials and three comments from industry representatives. These comments are summarized and addressed below. No comments were received on the issue of trustee legal costs in response to the February 11, 1998, request for public comments since that notice only dealt with the issue of residual oil (63 FR 6846).

Comment: The State officials and one industry commenter suggested that NOAA clarify the examples of trustee attorney actions given in the amendments proposed on July 31, 2001, and include these examples in the text of the Final Regulation.

Response: NOAA has provided more clarity to the examples and has included that language in the Final Regulation. Readers should note, however, that

these examples are included simply as some of the various activities trustee agency attorneys might perform during the assessment and should not be taken as an exhaustive list of those activities that are authorized.

Comment: One industry commenter stated that the criteria in the proposed amendments are insufficiently detailed to exclude the recovery of attorney costs that would not appropriately be considered assessment costs. The commenter noted that NOAA did not draw a sufficiently bright line to exclude litigation nor other attorney costs that are incurred for essentially legal functions rather than damage assessment functions. The commenter also suggested that actions such as preparing binding agreements with potentially responsible parties or other agencies, such as study or funding agreements, are not essential to the performance of an assessment and are therefore not recoverable. The commenter stated that such agreements are substitutes for litigation and should be excluded from the definition of recoverable legal costs.

Response: NOAA believes that the criteria in the proposed amendments do provide clear guidance to define which attorney actions may be included as assessment activities. NOAA points out that such actions as preparing study and funding agreements are, in fact, essential to successful assessment work, particularly in the case of cooperative assessments where the parties want clear guidance on the bounds of the assessment. Instead of seeing such work as a substitute for litigation, NOAA believes such activities are essential to a successful assessment.

Comment: This same commenter noted that an attorney may review assessment documents solely for the purpose of preparing the documents to be used in litigation. The commenter stated that this review cannot be performed adequately by a non-attorney and is directly related to litigation preparation. The commenter requested that NOAA should add a criterion to exclude all litigation preparation costs.

Response: Review of an assessment document by an attorney during the course of an assessment may not be conducted for the sole purpose of preparing for litigation. If the assessment does not result in litigation at some future date it would likely be impossible to determine the ''motives'' of reviewers of documents. In addition, if litigation is avoided, the commenters' concern disappears. NOAA believes the current regulatory language gives clear guidance on how to define attorney actions performed for the purpose of assessment or development of a restoration plan so that a determination can be made as to which legal costs may be recoverable as reasonable assessment costs.

Comment: This same commenter also suggested that NOAA add the word ''costs'' after the word ''legal'' in the definition of ''reasonable assessment costs'' in § 990.30 of the final regulation.

Response: NOAA has added the word ''costs'' after both the word ''administrative'' and ''legal'' in § 990.30.

Comment: Finally, some commenters pointed out that a trustee potentially could recover attorney costs that fail the criteria, so long as the trustee explains why the attorney work ''was not performed for the primary purpose of litigation.'' The commenters stated that this language would allow recovery of costs if the secondary purpose of the action were to further litigation. These commenters suggested that NOAA should clarify the definition of ''legal costs'' to provide that any costs of attorney work that are intended in any manner to prepare for or assist in litigation or similar activities are not recoverable. One commenter suggested that NOAA should clarify that attorney costs, to be recoverable, must be for actions specified under section 1006(c) of OPA. Another commenter suggested that the language of § 990.30 definition of legal costs be revised by replacing subparagraph (2) with language requiring that costs must meet the criteria in subparagraph (1), thereby not allowing any costs that do not meet the three criteria.

Response: NOAA does not believe it is necessary to revise the final regulation to provide more clarity. The language allowing legal costs for actions ''not performed for the primary purpose of litigation'' was the phrase used by the Court and is included in the final regulation to avoid rigid adherence to the criteria in situations where assessment actions might not fit clearly within the three criteria listed, yet would still qualify as reasonable assessment costs. Responsible parties will still have the opportunity to challenge any costs they believe are not appropriate legal costs to include in reasonable assessment costs. NOAA points out that § 990.30 definition of ''legal costs,'' in subparagraph (1)(i), already requires that actions be conducted pursuant to section 1006(c) of OPA.

Conclusion

After considering the comments received on the July 31, 2001, proposed rule, NOAA has made the following changes to the regulatory language on attorneys' costs:

(1) Section 990.30 definition of legal costs has been revised in this final rule by adding a new subparagraph (3), which includes a non-exhaustive list of examples of attorney actions performed for the purpose of assessment or developing a restoration plan, in accordance with this rule.

(2) Section 990.30 definition of ''reasonable assessment costs'' has been revised in this final rule to insert the word ''costs'' after the words ''administrative'' and ''legal.''

III. Other Technical Clarifications

The amendments proposed on July 31, 2001, included technical and clarifying amendments to the Final Regulation. NOAA stated that it was not opening up the entirety of 15 CFR 990, but only those specific sections or subsections proposed. No comments were received on the technical and clarifying amendments. Therefore, the final regulation incorporates the following revisions:

A. Unsatisfied Demands for Damages, § 990.64(a)

Section 990.64(a) of the Final Regulation provides that where trustees' demands to implement or pay for restoration were denied by responsible parties, trustees could elect to file a judicial action for damages or seek an appropriation from the Oil Spill Liability Trust Fund (Trust Fund). On September 25, 1997, the Office of Legal Counsel for the U.S. Department of Justice (DOJ) determined that OPA does not require trustees to seek appropriations for uncompensated claims for damages. Instead, the U.S. DOJ found that damage claims could be presented to and paid by the Trust Fund without further appropriations. Thus, NOAA is amending the Final Regulation to reflect this legal determination. Therefore, under the final regulation, trustees have the option to seek recovery from the Trust Fund for uncompensated damages without further appropriations under section 1012(a)(4) of OPA, or seek an appropriation from the Trust Fund under section 1012(a)(2) of OPA.

B. Indirect Costs, § 990.30

Subsequent to publication of the Final Regulation, the D.C. Circuit Court of Appeals upheld provisions in the U.S. Department of the Interior's (DOI) regulations for natural resource damage assessments under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that authorize recovery of indirect costs associated with

restoration plans. *Kennecott Utah Copper Corp.* v. *U.S. Dept. of the Interior,* 88 F.3d 1191 (D.C. Cir. 1996). The Court found that DOI's provision met CERCLA's damages causation requirement because indirect costs were limited to those that were ''necessary'' to ''support'' implementation of a selected restoration option. *Kennecott* at 1224. The Court upheld recoverability of indirect costs of restoration in part due to the existence of procedural safeguards in DOI's regulation that help ensure the accuracy of such costs. These safeguards include describing selection of cost estimation methods in a publicly reviewable administrative record and restoration plan, and demonstrating that the method avoids double counting, and is feasible, reliable, cost-effective, and can be conducted at a reasonable cost. Finally, the Court held that requirements provided in DOI's regulation for calculation and application of an indirect cost rate sufficiently restrained trustee discretion, in that the regulation limits use of an indirect cost rate to situations where the costs of estimating indirect costs outweigh the benefits, and where the assumptions used in calculating the indirect cost rate have been documented.

The preamble to NOAA's Final Regulation indicated that indirect costs were recoverable assessment costs, but the Final Regulation did not include specific guidelines for determining indirect costs for either assessment or restoration costs. Based upon the ruling in Kennecott, NOAA is making technical clarifications to the Final Regulation to define the scope of indirect costs that are recoverable as ''reasonable assessment costs'' and as ''restoration costs.'' The Final Regulation incorporates the definition of indirect costs provided by the Office of Management and Budget (*see,* ''Managerial Cost Accounting Concepts and Standards for the Federal Government,'' Statement of Federal Financial Accounting Standards No. 4 (SFFAS 4), Executive Office of the President, Office of Management and Budget, July 1, 1995). The Final Regulation contains similar procedural safeguards that apply to selecting a methodology to determine indirect costs as those in the DOI regulation. Section 990.27 of the Final Regulation lists standards for all methods that might be used in an assessment, including methods that might be used to calculate indirect costs, *i.e.*, cost calculation methods that are demonstrated to be reliable, valid, and cost-effective. Also, § 990.45 provides that relevant data on methods used should be included in the administrative record for the assessment. When using an indirect cost rate in lieu of calculating indirect costs on a case-specific bases, the basis of the indirect cost rate also should be documented in the administrative record.

C. Cost Accounting Procedures, § 990.62(f)

Although various sections of the Final Regulation require selection of reliable and valid methods and require trustees to avoid double counting, NOAA believes that these requirements should be explicitly stated for purposes of cost accounting, providing added assurances that costs are accurate and appropriate. Therefore, NOAA is adding a new subsection (f) to § 990.62 of the Final Regulation to require that, when determining assessment and restoration costs incurred by trustees, trustees must use methods consistent with generally accepted accounting principles and with the requirements of § 990.27 of the Final Regulation.

D. Cost Estimating Procedures, § 990.62(g)

NOAA is also providing that trustees must use methods consistent with generally accepted cost estimating practices and the requirements of § 990.27 of this part when estimating costs to implement a restoration plan. Therefore, NOAA is adding a new subsection (g) to § 990.62 of the Final Regulation to require that, when estimating costs to implement a restoration plan, trustees must use methods consistent with generally accepted cost estimating principles and with the requirements of § 990.27 of the Final Regulation.

IV. National Environmental Policy Act, Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

The National Oceanic and Atmospheric Administration has determined that the amendments to the Final Regulation do not constitute a major federal action significantly affecting the quality of the human environment. Therefore, no further analysis pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) has been prepared. The Assistant General Counsel for Legislation and Regulation, in accordance with the Regulatory Flexibility Act, certifies to the Chief Counsel for Advocacy, Small Business Administration, that the amendments to the Final Regulation will not have a significant economic effect on a substantial number of small entities. The amendments to the Final Regulation are intended to make more specific, and easier to apply, the standards set out in OPA for assessing damages for injury to natural resources as a result of actual or threatened discharges of oil. The amendments to the Final Regulation are not intended to change the balance of legal benefits and responsibilities among any parties or groups, large or small. To the extent any are affected by the amendments, it is anticipated that all will benefit by increased ease of application of law in this area.

It has been determined that this document is not significant under Executive Order 12866. The amendments to the Final Regulation provide optional procedures for the assessment of damages to natural resources. It does not directly impose any additional cost.

It has been determined that this Rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 15 CFR Part 990

Coastal zone, Environmental protection, Natural resources, Oil pollution, Restoration, Water pollution control, Waterways.

Dated: September 9, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Under the authority of the Oil Pollution Act of 1990, 33 U.S.C. 2706(a), and for the reasons set out in this preamble, title 15 of the Code of Federal Regulations, chapter IX, subchapter E, is amended as set forth below.

SUBCHAPTER E—OIL POLLUTION ACT REGULATIONS

PART 990—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. The authority citation for part 990 continues to read as follows:

Authority: 33 U.S.C. 2701 *et seq.*

2. In § 990.26, revise paragraphs (a) and (b) to read as follows:

§ 990.26 Emergency restoration.

(a) Trustees may take emergency restoration action before completing the process established under this part, provided that:

(1) The action is needed to avoid irreversible loss of natural resources, or to prevent or reduce any continuing danger to natural resources or similar need for emergency action;

(2) The action will not be undertaken by the lead response agency;

(3) The action is feasible and likely to succeed;

(4) Delay of the action to complete the restoration planning process established in this part likely would result in increased natural resource damages; and

(5) The costs of the action are not unreasonable.

(b) If response actions are still underway, trustees must coordinate with the On-Scene Coordinator (OSC), consistent with the NCP, to ensure that emergency restoration actions will not interfere with or duplicate ongoing response actions. Emergency restoration may not address residual oil unless:

(1) The OSC's response is complete; or

(2) The OSC has determined that the residual oil identified by the trustee as part of a proposed emergency restoration action does not merit further response.

* * * * *

3. In § 990.30, add new definitions in alphabetical order and revise the definition of ''Reasonable assessment costs'' to read as follows:

§ 990.30 Definitions.

* * * * *

Indirect costs means expenses that are jointly or commonly incurred to produce two or more products or services. In contrast to direct costs, indirect costs are not specifically identifiable with any of the products or services, but are necessary for the organization to function and produce the products or services. An indirect cost rate, developed in accordance with generally accepted accounting principles, may be used to allocate indirect costs to specific assessment and restoration activities. Both direct and indirect costs contribute to the full cost of the assessment and restoration, as provided in this part.

* * * * *

Legal costs means the costs of attorney actions performed for the purpose of assessment or developing a restoration plan, in accordance with this part.

(1) When making a determination of the nature of attorneys' actions for purposes of this definition, trustees must consider whether:

(i) The action comprised all or part of an action specified either in this part or in OPA section 1006(c);

(ii) The action was performed prior to, or in the absence of, the filing of ligation by or on behalf of the trustee in question to recover damages; and

(iii) The action was performed by an attorney who was working for or on behalf of the trustee agency, as opposed to a prosecutorial agency.

(2) If all of the criteria in paragraph (1) of this definition are met, the costs associated with attorney's actions are deemed assessment costs. If the criteria are not met, the trustee must explain why the action was not performed for the primary purpose of furthering litigation in order to support a characterization of the action as an assessment action.

(3) Examples of common or routine assessment actions that may be most appropriately performed by trustee attorneys, in accordance with this part, include, but are not limited to:

(i) Providing written and oral advice on the requirements of OPA, this part, and other applicable laws;

(ii) Preparing public notices, including the Notice of Intent to Conduct Restoration Planning issued to responsible parties and the Notice of Availability of Draft Restoration Plans;

(iii) Developing and managing administrative records;

(iv) Preparing binding agreements with potentially responsible parties in the context of the assessment, including study agreements, funding agreements, and restoration agreements;

(v) Preparing co-trustee cooperative agreements;

(vi) Preparing formal trustee determinations required under this part; and

(vii) Procuring title searches, title insurance, and/or conservation easements when property agreements are part of restoration packages.

* * * * *

Reasonable assessment costs means, for assessments conducted under this part, assessment costs that are incurred by trustees in accordance with this part. In cases where assessment costs are incurred but trustees do not pursue restoration, trustees may recover their reasonable assessment costs provided they have determined that assessment actions undertaken were premised on the likelihood of injury and need for restoration. Reasonable assessment costs also include: administrative costs, legal costs, and other costs necessary to carry out this part; monitoring and oversight costs; costs associated with public participation; and indirect costs that are necessary to carry out this part.

* * * * *

4. In § 990.53, revise paragraph (b)(3)(i) to read as follows:

§ 990.53 Restoration selection-developing restoration alternatives.

* * * * *

(b) * * *

(3) * * *

(i) Address conditions that would prevent or limit the effectiveness of any restoration action;

* * * * *

5. In § 990.62, revise paragraph (b)(2) and add new paragraphs (f) and (g) to read as follows:

§ 990.62 Presenting a demand.

* * * * *

(b) * * *

(2) Advance to the trustees a specified sum representing all trustee direct and indirect costs of assessment and restoration, discounted as provided in § 990.63(a) of this part.

* * * * *

(f) *Cost accounting procedures.* Trustees must use methods consistent with generally accepted accounting principles and the requirements of § 990.27 of this part in determining past assessment and restoration costs incurred by trustees. When cost accounting for these costs, trustees must compound these costs using the guidance in § 990.63(b) of this part.

(g) *Cost estimating procedures.* Trustees must use methods consistent with generally accepted cost estimating principles and meet the standards of § 990.27 of this part in estimating future costs that will be incurred to implement a restoration plan. Trustees also must apply discounting methodologies in estimating costs using the guidance in § 990.63(a) of this part.

6. In § 990.64, revise paragraph (a) to read as follows:

§ 990.64 Unsatisfied demands.

(a) If the responsible parties do not agree to the demand within ninety (90) calendar days after trustees present the demand, the trustees may either file a judicial action for damages or present the uncompensated claim for damages to the Oil Spill Liability Trust Fund, as provided in section 1012(a)(4) of OPA (33 U.S.C. 2712(a)(4)) or seek an appropriation from the Oil Spill Liability Trust Fund as provided in section 1012(a)(2) of OPA (33 U.S.C. 2712(a)(2)).

* * * * *

[FR Doc. 02–24918 Filed 9–27–02; 12:15 pm]

BILLING CODE 3510–JE–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–01–071]

RIN 2115–AA97

Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change of effective period; request for comments.

SUMMARY: The Coast Guard is revising the effective period and requesting comments for a temporary security zone in the waters of the Chesapeake Bay near the Calvert Cliffs Nuclear Power Plant in Calvert County, Maryland. This security zone is necessary to help ensure public safety and security. The security zone will prohibit vessels from entering a well-defined area around Calvert Cliffs nuclear power plant.

DATES: The amendment to § 165.T05–071 (d) in this rule is effective at 5 p.m. on September 30, 2002. Section 165.T05–071, added at 67 FR 9205, February 28, 2002, effective January 9, 2002, to 5 p.m. June 15, 2002, and amended at 67 FR 41177, June 17, 2002, extending the effective period from June 17, 2002 to 5 p.m. September 30, 2002, as amended in this rule, is extended in effect to 5 p.m. on March 31, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–01–071 and are available for inspection or copying at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Building 70, Baltimore, Maryland 21226–1791, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Dulani Woods, Port Safety and Security, Activities Baltimore, at (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. When we promulgated the rule we intended to either allow it to expire on June 15, 2002, or to cancel it if we made permanent changes before that date. We requested comments from the public and to date have not received any. In 67 FR 41177, June 17, 2002, we extended the effective period to September 30, 2002, to ensure the security of this facility and the safety of the public while determining whether a permanent rule is warranted. We have not determined whether a permanent rule is necessary; however, if we determine that a permanent rule is warranted, we will follow normal notice and comment rulemaking procedures, and a final rule should be published before March 31, 2003. Continuing the temporary rule in effect while considering promulgation of a permanent rule will help to ensure the security of this facility and the safety of the public during that period.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It is not practicable to publish an NPRM because the security of the facility and the safety of the public needs to continue.

Request for Comments

Although the Coast Guard has good cause to implement this regulation without engaging in the notice of proposed rulemaking process, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size, scope and duration of the Regulated Navigation Areas, safety zones and security zones in order to minimize unnecessary burdens on waterway users. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD05–01–071], indicate the specific section of this document to which each comment applies, and give the reason for each comment.

Please submit all comments and related material in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary rule in view of them.

Background and Purpose

Due to the terrorist attacks on New York City, New York, and Washington DC, on September 11, 2001 and continued warnings from national security and intelligence officials that future terrorist attacks are possible, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to Calvert Cliffs Nuclear Power Plant. On October 3, 2001, Constellation Nuclear-Calvert Cliffs Nuclear Power Plant requested a limited access area to reduce the potential threat that may be posed by vessels that approach the power plant.

On February 28, 2002, the Coast Guard published a temporary final rule entitled ''Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD,'' in the **Federal Register** (67 FR 9203). The temporary rule established a security zone around the Calvert Cliffs Nuclear Power Plant.

There is a continuing need for the protection of the plant. The initial extension of the temporary security zone surrounding the plant was only effective to 5 p.m. on September 30, 2002. As a result, the Coast Guard is further extending the effective date of the rule to 5 p.m. on March 31, 2003. There is no indication that the present rule has been burdensome on the maritime public; users of the areas surrounding the plant are able to pass safely outside the zone.

Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Vessels may transit around the security zone and may be permitted within the security zone with the approval of the Captain of the Port or his or her designated representative.

Small Entities

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

This rule was not preceded by a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities. This rule will affect the

following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor near the Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, Maryland.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the office listed under **ADDRESSES.** In your comment, explain why you think it qualified and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. In temporary § 165.T05–071, revise paragraph (d) to read as follows:

§ 165.T05–071 Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD.

* * * * *

(d) *Effective period.* This section is effective from 5 p.m. on September 30, 2002 to 5 p.m. on March 31, 2003.

* * * * *

Dated: September 17, 2002.

R. B. Peoples,

Captain, Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 02–24940 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

42 CFR Part 413

Principles of Reasonable Cost Reimbursement; Payment for End-Stage Renal Disease Services; Prospectively Determined Payment Rates for Skilled Nursing Facilities

CFR Correction

In Title 42 of the Code of Federal Regulations, Parts 400 to 429, revised as of October 1, 2001, § 413.86 is corrected, on page 525, by revising the designation (e)(4)(ii)(C)(*2*)(iii) to read (e)(4)(ii)(C)(*2*)(*iii*) and by adding (e)(4)(ii)(C)(*2*) introductory text, (*i*), and (*ii*) to read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(e)* * *

(4)* * *

(ii)* * *

(C)* * *

(*2*) *Ceiling.* If the hospital's per resident amount is greater than 140 percent of the locality-adjusted national average per resident amount, the per resident amount is adjusted as follows for FY 2001 through FY 2005:

(*i*) *FY 2001.* For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2001, if the hospital's FY 2000 per resident amount exceeds 140 percent of the FY 2001 locality-adjusted national average per resident amount (as calculated under paragraph (e)(4)(ii)(B) of this section), then, subject to the provision stated in paragraph (e)(4)(ii)(C)(*2*)(*iv*) of this section, the hospital's per resident amount is frozen at the FY 2000 per resident amount and is not updated for FY 2001 by the CPI–U factor.

(*ii*) *FY 2002.* For cost reporting periods beginning on or after October 1, 2001 and on or before September 30, 2002, if the hospital's FY 2001 per resident amount exceeds 140 percent of the FY 2002 locality-adjusted national average per resident amount, then, subject to the provision stated in paragraph (e)(4)(ii)(C)(*2*)(*iv*) of this section, the hospital's per resident amount is frozen at the FY 2001 per resident amount and is not updated for FY 2002 by the CPI–U factor.

* * * * *

[FR Doc. 02–55519 Filed 9–30–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 460

[CMS–1201–IFC]

RIN 0938–AL59

Medicare and Medicaid Programs; Programs of All-inclusive Care for the Elderly (PACE); Program Revisions

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This rule revises the interim final rule with comment period that established requirements for Program of All-inclusive Care for the Elderly (PACE) under the Medicare and Medicaid programs. The revisions in this rule will implement section 903 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554) by establishing a process through which PACE organizations may request waiver of certain Medicare and Medicaid regulatory requirements.

DATES: *Effective date:* These regulations are effective on October 31, 2002.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 2, 2002.

ADDRESSES: In commenting, please refer to file code CMS–1201–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1201–IFC, P.O. Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Janet Samen, (410) 786–4533; or Sue Davison, for State technical assistance, (410) 786–5831.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call (410) 786–7195.

I. Background

A. Legislative History

Section 4801 of Public Law 105–33, the Balanced Budget Act of 1997 (BBA), authorized coverage of the Program of All-inclusive Care for the Elderly (PACE) under the Medicare program. It amended title XVIII of the Social Security Act (the Act) by adding section 1894, which addresses Medicare payments and coverage of benefits under PACE. Section 4802 of the BBA authorized the establishment of PACE as a State option under Medicaid. It amended title XIX of the Act by adding section 1934, which directly parallels the provisions of section 1894.

B. Demonstration Project History

The BBA built on the success of the PACE demonstration program. Section 603(c) of the Social Security Amendments of 1983 (Pub. L. 98–21), as extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) authorized the original demonstration waiver for On Lok Senior Health Services in San Francisco. Section 9412(b) of Public Law 99–509, the Omnibus Budget Reconciliation Act of 1986, authorized us to conduct a demonstration project to determine

whether the model of care developed by On Lok may be replicated across the country. The number of sites was originally limited to 10, but the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) authorized an increase to 15 demonstration sites.

The PACE demonstration program replicated a unique model of managed care service delivery for a group of very frail community-dwelling elderly, most of whom were dually eligible for Medicare and Medicaid benefits, and all of whom were assessed as being eligible for nursing home placement according to the standards established by their respective States. The PACE model of care includes as core services the provision of adult day health care and interdisciplinary team case management, through which access to and allocation of all health services is managed. Physician, therapeutic, ancillary, and social support services are furnished in the participant's residence or on-site at a PACE center. Hospital, nursing home, home health, and other specialized services are generally furnished under contract. Financing of the PACE model is accomplished through prospective capitation of both Medicare and Medicaid payments, and under the demonstration, programs gradually assumed full financial risk for all care provided to their enrolled participants.

The PACE demonstration program was operated under a Protocol published by On Lok, Inc., on April 14, 1995. A copy of the Protocol was included as an attachment to the interim final rule with comment period that was published in the **Federal Register** on November 24, 1999, to implement the PACE program (64 FR 66234.) As directed by sections 1894(f)(2) and 1934(f)(2) of the Act, we incorporated the requirements under the Protocol in the PACE regulation, to the extent consistent with the BBA provisions described throughout sections 1894 and 1934 of the Act. The November 24, 1999 PACE regulation was a comprehensive rule that addressed eligibility, administrative requirements, application procedures, services, payment, participant rights, and quality assurance. There are currently 24 approved PACE demonstration programs and two programs that have been approved as permanent PACE organizations. In accordance with section 901 of BIPA, all PACE demonstration programs must transition to permanent provider status by November 2003.

C. Flexibility

As noted above, the PACE demonstration program was operated pursuant to a Protocol developed by On Lok. The PACE Protocol provided authority for CMS and the State Agency to waive specific requirements of the Protocol, if, in their judgment, the intent of the requirements was met by the proposed alternative and safe and quality care would be provided. Written requests for waivers were required to be approved by CMS and the State before implementation of the proposed alternative. Flexibility was limited to the requirements in the section on service coverage and arrangement. That section includes: A requirement that the PACE organization provide all Medicare and Medicaid services and provide care 7 days per week, 365 days per year; a listing of required and excluded services; minimum services provided at the PACE Center; a requirement that each participant be assigned to a multidisciplinary team, as well as the composition and duties of the multidisciplinary team; and assessment and reassessment requirements. Flexibility was not authorized for other sections of the PACE Protocol, such as participant rights, enrollment and disenrollment, and administration.

Sections 1894(f)(2)(B) and 1934(f)(2)(B) of the Act give the Secretary the authority to waive regulatory provisions as follows:

> In order to provide for reasonable flexibility in adapting the PACE service delivery model to the needs of particular organizations (such as those in rural areas or those that may determine it appropriate to use nonstaff physicians according to State licensing law requirements)* * *the Secretary (in close consultation with State administering agencies) may modify or waive provisions of the PACE protocol as long as any such modification or waiver is not inconsistent with and would not impair the essential elements, objectives, and requirements of this section* * *

The statute also specifies the following essential elements that may not be waived:

- The focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.
- The delivery of comprehensive, integrated acute and long-term care services.
- The multidisciplinary team approach to care management and service delivery.
- Capitated, integrated financing that allows the provider to pool payments received from public and private programs and individuals.
- The assumption by the provider of full financial risk.

In the November 24, 1999 interim final rule, we identified, as specific waivers that were intended to encourage development of PACE programs in rural and Tribal areas, waivers of the following three requirements:

- A prohibition on members of the governing body and their family members from having a direct or indirect interest in contracts with the organization (see § 460.68(c));
- A requirement that members of the multidisciplinary team primarily serve PACE participants (see § 460.102(g)); and
- A requirement that the primary care physician must be employed by the PACE organization (see § 460.102(g)).

The regulation includes specific criteria for each waiver related to whether the PACE organization's service area is rural or Tribal, the unavailability of individuals who meet the three regulatory requirements listed above, and a requirement that the proposed alternative does not adversely affect the availability or quality of care furnished to PACE participants.

Our rationale for this rather limited view of the flexibility provision was based on our belief that all PACE demonstration programs were in compliance with the PACE Protocol and, therefore, would need to make only minor changes in their operations to meet the PACE regulatory requirements. Our intention was to allow some flexibility to promote PACE in rural and Tribal areas while maintaining consistency of requirements for other PACE programs. We intended to expand opportunities for flexibility to cover more requirements and provide more flexibility to all PACE organizations once we had gained sufficient experience with PACE and had implemented the program. In addition, we were guided by the fact that the Protocol, and thus the PACE regulation, had been proven effective for new organizations as they built their patient census and attained financial solvency.

We have since learned that although the early PACE demonstration programs initially complied with the Protocol, most of them modified the Protocol requirements as they expanded, using the flexibility provision. While many of these modifications were related to service coverage and arrangement provisions, many others were implemented that were not authorized by the flexibility clause in the Protocol. In addition, many of the later PACE demonstration programs exercised the flexibility clause in the Protocol in developing their programs, especially with regard to direct employment of staff. Finally, very few of the waivers

were requested in writing or approved by CMS or the State before implementation.

II. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, (BIPA) (Pub. L. 106–554)

A. Background

BIPA modified the PACE program in the following three ways:

- Section 901 extended the transition period for the current PACE demonstration programs to allow an additional year for these organizations to transition to the permanent PACE program.
- Section 902 gave the Secretary the authority to grandfather in the modifications these programs had implemented as of July 1, 2000. This provision will allow the PACE demonstration programs to continue program modifications they have implemented and avoid disruptions in participant care where these modifications have been determined to be consistent with the PACE model. These sections are being implemented administratively.
- Section 903 specifically addressed flexibility in exercising the waiver authority provided under sections 1894(f)(2)(B) and 1934(f)(2)(B) of the Act. It allowed the Secretary to modify or waive PACE regulatory provisions in a manner that responds promptly to the needs of PACE organizations relating to the areas of employment and the use of community-based primary care physicians. Section 903 of BIPA also established a 90-day review period for waiver requests. Since the flexibility language is part of the statutory section dealing with regulations (sections 1894(f) and 1934(f) of the Act), we believe it was intended that waiver requirements be incorporated into the PACE regulations.

B. Contracting for Multidisciplinary Team Members and Administrative Staff

We note that although the PACE Protocol and the PACE regulation refer to a multidisciplinary team, it has become more common to regard the team in PACE as an interdisciplinary team to reflect the interactive and collaborative approach of the PACE care team. Therefore, we are amending the PACE regulation to replace the term multidisciplinary with interdisciplinary wherever it appears and will use that phrase in the preamble to describe the PACE team.

Section 460.102(f) of the PACE regulation requires that the following PACE interdisciplinary team members be employees of the PACE organization: primary care physician, registered nurse, social worker, recreational therapist or activity coordinator, PACE Center manager, home care coordinator, and PACE Center personal care attendants. This requirement is based on part IV.B.13.a. of the PACE Protocol that specifies that these team members must be employees of the PACE provider or PACE Center. (Employment of staff by the PACE Center is discussed in the next section of this preamble.) In addition, § 460.60 requires the PACE organization to employ the program director and the medical director.

We are no longer requiring that the PACE organization employ the interdisciplinary team, the program director or the medical director. Instead, the PACE organization may contract with these staff members, and we are expanding § 460.70 to include additional contract requirements. Finally, we are removing the specific waiver in § 460.102(g) for rural or Tribal organizations to contract for the primary care physicians.

The National PACE Association (NPA), an industry group representing the PACE demonstration programs and developing PACE programs, has indicated that the objectives of the Protocol with regard to employment are as follows:

- To assure that the same individuals provide care to the same participants over time (as opposed to a contractual relationship in which a different staff person may provide care from one month or even one day to the next); and
- To assure that the interdisciplinary team members are fully accountable to the PACE organization which has responsibility and is accountable for the entire range of PACE services.

NPA has indicated that contractual arrangements should be utilized only where it is consistent with continuity of care, and efficient and economical delivery of services. In addition, individual team members must be specified by name and work schedule.

We have become aware that most of the PACE demonstration programs have entered into contractual arrangements for interdisciplinary team members and key PACE staff such as the medical director. We have come to agree that there are reasonable circumstances where dedicated staff decide to contract rather than be employed by the PACE organization. For example, the medical director or primary care physicians may wish to maintain their employment with a hospital or academic institution while providing services to PACE participants. We believe that these arrangements may be done so as to be completely transparent to participants and have no impact on care coordination or service delivery.

Current requirements for contracted services are found in § 460.70. We are reorganizing and amending that section to include additional contract requirements for interdisciplinary team members or PACE administrative staff. Where these staff are not employed by the PACE organization, the contract must stipulate that the individuals: (1) Agree to perform all the duties related to their position in the PACE organization and specified in the PACE regulation; (2) participate in interdisciplinary team meetings as required; and (3) be accountable to the PACE organization.

Where the PACE organization contracts with another organization for interdisciplinary team staff, for example, with a rehabilitation agency that employs the physical therapist, the contract must also stipulate the name of the individual assigned to the PACE program and the schedule for attendance at the PACE Center. In this way, participants may be scheduled for attendance at the PACE Center to coincide with the schedule for the staff assigned to their care. Given the frailty of the population served by the PACE organization, we believe it is important that, where possible, services are provided to participants by the same core staff, whether employed directly by the PACE organization or provided via a contracting arrangement.

As mentioned above, our regulations currently require that the PACE program director and the medical director be employees of the PACE organization. In order to allow for contracting of the PACE program director and medical director, we are amending § 460.60(b) and (c) to require that the PACE organization employ these staff members directly or have contracts for these staff that meet the contracting requirements specified in § 460.70.

Finally, we are removing § 460.102(g), which allows CMS and the State administering agency to waive the employment requirement for the primary care physician and the requirement that the interdisciplinary team serve primarily PACE participants. Since the PACE organization may contract for primary care physicians in accordance with the requirements specified in § 460.70 as revised and other waivers are governed by § 460.26, these specific waiver provisions are no longer necessary.

C. Contracting With Another Entity to Furnish PACE Center Services

The PACE Protocol at section IV.B.13.a. provides that the interdisciplinary team may be employed by the PACE organization or the PACE Center. In developing the PACE regulation, we did not address this issue because we believed that in all cases the PACE organization and the PACE Center were the same organization. We have learned that this change was made in the PACE Protocol in 1995 to reflect an operating arrangement implemented by one of the PACE demonstration organizations, On Lok Senior Health Services. In this arrangement, On Lok entered into a contractual relationship with another organization to provide all PACE Center services under which the interdisciplinary team is employed and managed by the contracting organization. On Lok remains responsible for all care provided at the Center and remains at risk for the healthcare needs of the participants attending this center. In addition, On Lok has retained many of the administrative responsibilities associated with PACE, for example, marketing and enrollment. Through this contractual relationship, On Lok has been able to expand PACE services to a different part of their service area without disrupting the care that traditionally had been provided by the other organization.

Since this approach was reflected in the PACE Protocol, we are amending the PACE regulation to allow PACE organizations to provide PACE Center services through contractual arrangements. Although we do not view this approach as a waiver authorized by BIPA, we are establishing specific waiver requirements for this approach consistent with the On Lok arrangement. We are more likely to allow PACE organizations to contract out PACE Center services when they have attained sufficient experience in delivering services and managing the risk associated with the frail elderly.

We are adding a new § 460.70(f) to identify the criteria that a PACE organization must meet to contract out PACE Center services. We are not inclined to approve a waiver for a PACE organization unless it is financially stable and has demonstrated competence with the PACE model by successful CMS and State onsite reviews and monitoring efforts. We specifically invite public comments on the appropriateness of these criteria.

We would expect the PACE organization to retain all key administrative functions including marketing and enrollment, quality assurance and program improvement, and contracting for institutional providers and other key staff. We note that, consistent with § 460.70(e)(5)(iv), all subcontracting arrangements by the PACE Center would need to be approved in writing by the PACE organization. The PACE Center may employ or contract for the team and provide PACE services in accordance with the PACE regulation. However, the PACE organization receives all payment from CMS and the State and remains responsible for all the care provided in these Centers. In addition, we emphasize that contracting out PACE Center services does not change the participants' relationship to the PACE organization. All participants, whether assigned to the PACE organization-owned and operated PACE Center or assigned to a PACE Center that contracts with the PACE organization, are enrolled with the PACE organization and are afforded all benefits and protections offered by the PACE organization.

On Lok is able to monitor the care provided in the contracted PACE Center through the sharing of electronic medical records. While we are not requiring electronic medical records as a condition of our approval, it will be necessary for a PACE organization wishing to pursue this type of arrangement to describe how it will monitor the care provided and perform all the administrative duties required by the PACE regulation.

D. Oversight of Direct Patient Care Services

Given the vulnerable frail population served by the PACE program and the increased opportunity for a PACE organization to contract out participant care services, it is important to reiterate the PACE organization's obligation to monitor the care furnished by direct participant care staff. This obligation applies not only to employees of the PACE organization, but extends to the care provided by contracted staff, including employees of organizations with which the organization contracts (for example, a home health agency, rehabilitation agency, nursing facility, transportation service, or staffing agency). It is especially important for the PACE organization to monitor the care provided in all settings, including the PACE Center and the participant's home, as well as in offsite locations such as physician offices and institutional providers to ensure quality care. To effectively monitor care provided outside the PACE Center, the PACE organization must be vigilant in following up on all unusual occurrences and complaints. In addition, the PACE organization must foster an atmosphere that promotes the voicing of participant complaints about quality of care to assist the PACE organization in monitoring the care provided by contracted staff and organizations.

Currently, § 460.66 requires the PACE organization to provide training to maintain and improve the skills and knowledge of each staff member for the individual's specific duties that results in his or her continued ability to demonstrate the skills necessary for the performance of the position. We are expanding this requirement by creating a new § 460.71 to identify PACE organization oversight requirements for PACE employees and contractors with direct patient care responsibilities. These requirements fall into two categories, that is, competency evaluation and staff and contractor requirements, and are listed as follows:

- The PACE organization must ensure that employees and contracted staff providing care directly to participants demonstrate the skills necessary for performance of their position.
- The PACE organization must provide each employee and all contracted staff with an orientation. The orientation must include at a minimum the organization s mission, philosophy, policies on participant rights, emergency plan, ethics, the PACE benefit, and policies and procedures relevant to each individual's job duties.
- The PACE organization must develop a competency evaluation program that identifies those skills, knowledge, and abilities that must be demonstrated by direct participant care staff (employees and contractors). The program must be evidenced as completed prior to performing participant care and on an ongoing basis by qualified professionals. The PACE organization must designate a staff person to oversee these activities for employees and work with the PACE contractor liaison to ensure compliance by contracted staff.

We note that the PACE organization may satisfy this requirement for contract staff through receipt of competency evaluation documentation from certain independent contractors where licensure requirements include a competency evaluation component, or from organizations or agencies that employ PACE staff.

The PACE organization must develop a program to ensure that all staff providing direct participant care services meet the requirements listed below. We revised § 460.70(e) to require contractors who furnish direct

participant care to meet the requirements of § 460.71 as well. The PACE organization will verify that direct participant care staff or contractors meet the following requirements:

- Comply with any State or Federal requirements for direct patient care staff in their respective settings;
- Comply with the requirements of § 460.68(a) regarding persons with criminal convictions;
- Have verified current certifications or licenses for their respective positions;
- Are free of communicable diseases; and
- Have been oriented to the PACE program.
- Agree to abide by the philosophy, practices, and protocols of the PACE organization.

E. Waiver Process

To implement section 903 of BIPA, we considered amending the November 24, 1999 PACE interim final regulations to identify each requirement that is eligible for waiver and provide separate waiver criteria for each requirement. However, we were concerned that amending the regulation for each waiver would: (1) Create a regulatory level of specificity that might make it difficult to apply to future requests for similar but not identical waivers; and (2) cause a significant delay between when the need for a waiver is identified and when it may be implemented.

As an alternative, we are amending the PACE regulation by adding §§ 460.26 and 460.28 to establish a process for a PACE organization to request waiver of regulatory requirements. As noted previously, the PACE Protocol and the November 24, 1999 PACE regulation have been proven effective as PACE organizations grow and reach financial solvency.

We have learned a great deal about variations in the model through the information we received in processing grandfathering requests under section 902 of BIPA and numerous discussions with the NPA, PACE organizations, and States. Allowing for waivers provides a unique opportunity for PACE organizations, the States, and CMS to experiment with new approaches within the structure of the PACE model. This process will allow for variations that achieve the intent of the regulatory provision while responding to the needs of PACE organizations to develop and expand within their States' long-term care delivery system. The PACE organizations will serve as an ongoing laboratory that over time will establish best practices that may ultimately replace the current regulatory requirements.

We realize that in order to foster innovation and creativity within the PACE program, PACE organizations must be granted some degree of flexibility in their operation and service delivery. However, we must balance this need for flexibility with our responsibility to ensure quality, cost effective care for all beneficiaries.

Based upon our experience and review of grandfathering requests under section 902 of BIPA, we realize we must consider two categories of waiver requests, that is, general waivers and conditional waivers subject to evaluation. They are discussed as follows:

1. General Waivers

A general waiver may be granted to a PACE organization that has successfully implemented a specific operating arrangement, for example, an operating arrangement approved under section 902 of BIPA. General waivers would continue indefinitely; however, approval may be withdrawn for good cause if periodic monitoring of the organization's operations and policies indicates participant care is being jeopardized, there is fiscal instability, or the goals of the PACE model are not maintained.

2. Conditional Waivers

A conditional waiver, subject to evaluation, is a provisional waiver we would approve for a specific period of time to a new or experienced organization. During the conditional period, the PACE organization would need to submit specific data, that we prescribed, that would allow us to monitor and evaluate the conditional waiver to determine whether the waiver may become permanent. This category of waiver may include the following scenarios:

(a) A request for waiver without which a PACE organization would be prevented from entering the program. For example, if a prospective PACE organization has been unable to hire or contract with a social worker with a master's degree, we may consider approving a conditional waiver request to allow a social worker with a baccalaureate degree to operate in this capacity until a qualified social worker is hired. This waiver would only be in effect until the PACE organization could hire or contract for an appropriate staff member.

(b) A request for approval of an arrangement with which a PACE organization does not have any experience. We want to encourage creative approaches to improving the PACE model and view conditional waivers as a responsible way to balance the need of a PACE organization with protection of participant health and safety. We do need to be cautious in approving arrangements in which the PACE organization does not have a proven record of success. In this case, we may limit the number of participants exposed to the waiver or approve the waiver for a limited period of time or at a specific PACE Center until we are assured through evaluation that (1) The intent of the regulation is met; and (2) the approach is not inconsistent with nor impairs the essential elements, objectives, and requirements of PACE. At that time, we may approve a general waiver so that the PACE organization may expand the arrangement to other PACE Centers it manages without jeopardizing participant care.

Each of the conditional waivers will be subject to periodic monitoring. A PACE organization approved for a conditional waiver would need to submit the prescribed data at specified intervals. CMS intends to establish elements for evaluating the conditional requests. This evaluation would serve a dual purpose. It would allow CMS to monitor the impact on participant care as well as enable us to determine if any permanent changes to PACE should be implemented through regulations. In addition, we may provide technical assistance to other PACE organizations requesting a similar waiver.

To obtain a waiver, a PACE organization must provide a detailed description of how its proposed modification differs from the regulatory requirement and describe how it meets the intent of the regulatory provision. The burden is on the PACE organization to explain why a waiver is needed to start up or expand their program. Where a PACE organization has not completed the trial period, attained financial solvency, and demonstrated competence with the PACE model as evidenced by successful CMS and State onsite reviews and monitoring activities, it will be necessary for the organization to explain how the waiver is necessary to meet those objectives. For a new organization, it will be necessary for the organization to explain why a waiver is needed for the organization to begin serving participants.

Consistent with the process developed for initial PACE provider applications, all waiver requests must be submitted to the State administering agency for initial review. The State administering agency would forward the waiver request to CMS along with any concerns or conditions they may have

regarding the waiver. We will not accept waiver requests directly from PACE organizations. Waiver requests submitted with an initial application process must be prepared as a separate document. These requests will be reviewed simultaneously and in conjunction with the application. Where an existing PACE organization is requesting a waiver, the request must be submitted through the State to the CMS address for PACE applications indicated on the PACE homepage *(www.cms.hhs.gov/PACE).* We intend to process waiver requests as expeditiously as possible in order to be responsive to the needs of new organizations to develop their programs and to the needs of mature organizations as they expand.

Section 903 of BIPA directs us to approve or deny a request for a modification or waiver no later than 90 days after the date of receipt. We are clarifying in § 460.28(b) that the date of receipt is the date the request is delivered to the address designated by CMS. We note that there is no statutory authority to stop the 90-day clock if additional information is necessary to make a determination on a waiver request. Thus, it is in the PACE organization's best interest to provide all pertinent information relevant to their request. Where additional information is necessary, the CMS PACE manager will inform the PACE organization as early as possible in the review process. The PACE organization will then be responsible for submitting the additional information in a timely enough manner to allow us to evaluate the additional information and make a determination on the waiver request within the allotted 90 days. If the reply from the PACE organization is not received in a timely manner, we would have to deny the request. The PACE organization may then reapply for the waiver, starting a new 90-day clock.

Consistent with sections 1894 and 1934 of the Act, we are specifying in § 460.26(c) the following requirements that must not be waived:

(1) A focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility;

(2) The delivery of comprehensive, integrated acute and long-term care services;

(3) The interdisciplinary team approach to care management and service delivery;

(4) Capitated, integrated financing that allows the provider to pool payments received from public and private programs and individuals; and

(5) The assumption by the provider of full financial risk (we note that assuming full financial risk does not preclude an organization from utilizing reinsurance, stop-loss protection, or other mechanism to meet its financial obligations).

In addition to these five provisions, the Secretary will not grant waivers that are inconsistent with or would impair the essential elements, objectives, and requirements of sections 1894 and 1934 of the Act.

As noted previously, the November 24, 1999 PACE regulation was a comprehensive document that included many provisions that are not appropriate for waiver. For example, subpart B of the PACE regulation describes the types of entities that may submit PACE applications and the process for submission of applications. Since these requirements reflect statutory requirements and our application process, no waiver or modification is appropriate. Likewise, subpart C of the November 24, 1999 PACE regulation describes the terms and content of the PACE program agreement. Although we agree that it would be easier to manage PACE program agreements without the significant detail, the content of the PACE program agreement is specifically required by statute. Thus, no waiver or modification is appropriate.

Regarding other subparts of the PACE regulation, we view many, but not all, of the requirements as appropriate for waiver or modification. For example, while we may approve a waiver regarding the organization's structure or division of responsibilities amongst staff, we would not be inclined to waive infection control requirements that are standard precautions established by the Centers for Disease Control and Prevention.

We note that providing services through contracts rather than through direct employment of staff is the type of flexibility most often requested by PACE organizations and the NPA and will be permissible without waiver.

In addition to the statutorily excluded requirements specified in sections 1894(f)(2)(B) and 1934(f)(2)(B) of the Act, we believe there are other requirements that distinguish the PACE benefit. For example, health care is focused at a PACE Center; the interdisciplinary team is composed of certain health care professionals that manage all the health care provided to participants; a comprehensive assessment by the interdisciplinary team is conducted before admission into the PACE program; and reassessment occurs at least every 6 months or whenever there is a significant change in a participant's health status. Further, we believe that PACE participants are entitled to the same patient rights' protection available in the Medicare or Medicaid fee-for-service or managed care programs. Therefore, we will not approve waiver or significant modification of these requirements.

Two waiver issues specifically mentioned in section 903 of BIPA are requirements related to employment and the use of community-based primary care physicians. An example of this would be to allow a PACE organization to provide primary care through community physicians operating independent of the PACE program, that is, physicians who do not participate in interdisciplinary team meetings. This approach is part of our demonstration project currently underway in Wisconsin. The evaluation of the demonstration will not be completed until 2005. As this demonstration has developed, the sites have modified their use of community-based physicians over time. We believe that further testing and refinement of this approach is needed. We will follow the evaluation of this demonstration to determine the optimal policies and procedures to require for PACE organizations wishing to adopt this option.

Another example is the use of satellite locations, where required PACE Center services (and the interdisciplinary team services) are provided at various locations. Although services may be provided at various locations currently, we are concerned that routinely dispersing service delivery will fundamentally change the PACE model, especially the focus of services at the PACE Center and care management through the interdisciplinary team.

Since this rule will establish a process for submission and approval of waiver requests, we are removing the restrictive waiver provisions that were limited to rural and Tribal organizations, that is, § 460.68(c) regarding direct or indirect interest in contracts, and, as noted previously, the two waivers in § 460.102(g) related to employment of the primary care physician and the requirement that the interdisciplinary team primarily serve PACE participants. Although we are deleting the specific waivers that were intended to encourage development of PACE in rural or Tribal areas, we continue to recognize the special need for flexibility for these areas and remain committed to allowing waivers to promote PACE in medically underserved areas. Deletion of the specific waiver language is intended to provide greater flexibility within the overall PACE structure. We remain committed to working with rural and Tribal communities to help them

address the challenges of developing successful PACE programs. Organizations that seek waiver of these or any other regulatory requirements would follow the requirements specified in § 460.26.

We note that a PACE organization requesting a waiver of the prohibition on direct or indirect interest in contracts must develop policies and procedures for disclosure of financial interest to the governing body, establish recusal restrictions, and a process to record recusal actions for review by CMS and the State administering agency. The PACE organization must describe its disclosure and recusal policies in its waiver request.

III. Comments and Responses to the November 1999 Interim Final Regulation

We received a total of 27 comments on the November 1999 interim final regulation (64 FR 66234), many of them concerning the waiver provisions published at §§ 460.68 and 460.102.

Comment: Most of the commenters expressed concern that the regulation is too prescriptive and limits flexibility and innovation and that the waiver provisions in §§ 460.68 and 460.102 of the regulation were too restrictive. The commenters argued that developments during the PACE demonstration program had led to alternative practices (primarily associated with contracting flexibility) that were not reflected in the November 1999 interim final regulation. They urged CMS to allow alternative approaches to meeting the regulatory intent and specifically recommended that we broaden the limited waivers provided in the regulation targeted to rural and Tribal organizations to permit waiver of additional requirements by all PACE organizations. In addition, section 903 of BIPA provided us with additional guidance concerning both the practices of longstanding PACE demonstration programs (grandfathering) and new organizations which may apply to become PACE organizations.

Response: This interim final regulation is a response to the portion of the November 1999 regulation that dealt with waivers and flexibility. It responds to the concerns raised in the public comments by establishing a process through which approved PACE organizations, as well as applicants, may request a waiver of regulatory requirements (§ 460.26) and allow expanded contracting opportunities (§ 460.70). Through the waiver process, we hope to learn about any barriers the PACE requirements create in developing new organizations, especially those in medically underserved areas, and expanding existing PACE programs.

Once we have completed the transition of PACE demonstrations to permanent provider status and gained sufficient experience with the waiver process, we intend to develop a final rule to revise the PACE regulation and respond to all the public comments we received on the November 1999 interim final regulation as well as any public comments submitted in response to publication of this regulation.

IV. Provisions of the Interim Final Rule

The regulation amends part 460 by replacing the term ''multidisciplinary'' with ''interdisciplinary'' wherever it appears to reflect the interactive and collaborative approach of the PACE team.

Section 460.10 Purpose

We are amending this section to clarify that subpart B also establishes a process for a PACE organization to request a waiver of regulatory requirements in order to provide for reasonable flexibility in adapting the PACE service delivery model to the needs of particular organizations (such as those in rural areas).

Section 460.12 Application Requirements

We are removing and reserving paragraph (a)(2) to clarify that, although CMS may begin review of PACE organization applications, we may sign a program agreement only with a PACE organization located in a State with an approved State plan amendment electing PACE as an optional benefit under its Medicaid State plan.

Section 460.26 CMS Evaluation of Waiver Requests

In accordance with the requirements in section 903 of BIPA, we are adding this section to subpart B to establish a process for a PACE organization to request waiver of regulatory requirements and to list provisions that are statutorily excluded. This process is described in section II.E. of this preamble.

Section 460.28 Notice of CMS Determination on Waiver Requests

As required by section 903 of BIPA, we are adding this section to subpart B to specify the time limit for notification to PACE organizations of our decisions on waiver requests and to state that we may withdraw approval of a waiver for good cause. This process is described in section II.E. of this preamble.

Section 460.30 Program Agreement Requirements

We are revising paragraph (b) to reflect that the PACE program agreement is a 3-party agreement that is signed by CMS, the State administering agency, and the PACE organization. Also, we are adding a new paragraph (c) to clarify that we may sign a program agreement only with a PACE organization that is located in a State with an approved State plan amendment electing PACE as an optional benefit under its State plan.

Section 460.60 PACE Organizational Structure

In order to allow for contracting of a PACE program director and medical director described in section II.B. of this preamble, we are amending paragraphs (b) and (c) to require that the PACE organization employ these staff members directly or have contracts for these staff that meet the contracting requirements specified in § 460.70.

Section 460.68 Program Integrity

As discussed in section II.E. of this preamble, we are removing paragraph (c) and amending paragraph (b) by removing the cross reference to paragraph (c).

Section 460.70 Contracted Services

As described in section II.B. of this preamble, we are amending paragraph (e) to include additional contract requirements where the PACE organization chooses to contract for interdisciplinary team members or key administrative staff. In addition, we are adding a new paragraph (f) to include specific contract requirements where the PACE organization chooses to contract for PACE Center services. These changes are described in section II.C. of this preamble. Finally, we are amending paragraph (b)(1)(i) to clarify that an institutional contractor, such as a hospital or skilled nursing facility, must meet the Medicare or Medicaid participation requirements. However, where the PACE organization is supplementing its own staff to provide services in the home or at the PACE Center, certain staffing agencies that may not be Medicare certified providers may be used as long as the staff and the agency meet applicable State licensure requirements.

Section 460.71 Oversight of Direct Participant Care

In consideration of the vulnerable population served by PACE, we are adding this section to identify PACE organization oversight requirements for PACE employees and contractors with

direct patient care responsibilities. These requirements are described in section II.D. of this preamble.

Section 460.102 Interdisciplinary Team

We are amending paragraph (d)(2)(iii) to clarify that interdisciplinary team members must document changes of a participant's condition in a participant's medical record consistent with the PACE organization's documentation policies. This will ensure that only designated team members have access to patients records. Also, in consideration of the expanded contracting opportunities described in section II.B. of this preamble, we are removing paragraph (f) that requires members of the PACE interdisciplinary team to be employed by the PACE organization. Finally, we are removing paragraph (g) that allows CMS and the State administering agency to waive the employment requirement for the primary care physician and the requirement that the interdisciplinary team serve primarily PACE participants. Since the PACE organization may contract for primary care physicians in accordance with the requirements specified in § 460.70 (described in section II.B. of this preamble) and other waivers are governed by § 460.26 (described in section II.E. of this preamble), these specific waiver provisions are no longer necessary. We are amending paragraph (d)(3) by removing the cross reference to paragraph (g).

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed and the terms and substance of the proposed rule or a description of the subjects and issues involved. However, section 1894(f)(1) if the Act specifically permits the Secretary to issue interim final or final regulations to carry out sections 1894 and 1934 of the Act. Therefore, we are issuing this final rule on an interim basis with a 60-day comment period.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 460.26 CMS Evaluation of Waiver Requests

Section 460.26(b) requires a PACE organization or prospective PACE organization to submit a written request to obtain CMS approval of its request for waiver or modification of a PACE regulatory requirement. Section 460.26(a) requires that the request be submitted through the State administering agency.

The burden associated with this requirement is the time and effort to develop and submit a waiver request to CMS. We estimate that 25 entities will apply per year and that each entity will take 3 hours to complete the requirements of this section for a total annual burden of 50 hours.

In addition, § 460.26(a) requires that a waiver request must be submitted to the State administering agency of the State in which the program is located for review prior to submittal to CMS.

The burden associated with this requirement is the time and effort for a State to review and submit waiver requests to CMS indicating that it approves the waiver requests. We estimate that 25 States will each take 1 hour to complete these requirements for a total annual burden of 25 hours.

Section 460.71 Oversight of Direct Participant Care

In summary, § 460.71(a) requires a PACE organization to develop a competency evaluation program to ensure that direct participant care staff (employees and contractors) have the skills, knowledge, and ability to perform the duties associated with their positions.

The burden associated with this requirement is the time and effort to develop and maintain a competency evaluation program, perform evaluations including evaluation of all current staff, and document the results. We estimate that each organization will spend 3 hours developing the program, 50 hours implementing the program for all current staff, and 50 hours maintaining the program and verifying the qualifications and competency of new staff and contractors. There will be approximately 54 PACE organizations with approximately 100 contracted staff for a total annual burden of 2700 hours.

Section 460.102 Multidisciplinary Team

Section 460.102(d)(2)(iii) requires the documention of any changes in a participant's condition in the participant's medical record consistent with documentation polices established by the medical director.

We believe that the burden associated with this ICR is exempt from the PRA in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities.

We have submitted a copy of this interim final with comment rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following: Centers for Medicare and Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: John Burke, CMS–1201–IFC, and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, HCFA Desk Officer.

VIII. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by non-profit status or by having revenues of $6 to $29 million or less annually. For purposes of the RFA, all PACE providers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Section 1102(b) of the Social Security Act (the Act) requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule will not affect a significant number of small rural hospitals.

This interim final rule will affect a very limited number of small non-profit entities that are operating, or seek to operate, a PACE program and request waiver of regulatory requirements for startup or expansion. The rule will indirectly affect Medicare beneficiaries and Medicaid recipients who may qualify for a PACE program and who might wish to enroll in one in their geographic area, because it may affect the availability of those programs. A typical mature PACE program maintains an enrollment of about 200 to 300 individuals.

While we do not have data on which to base an estimate of overall costs or savings to the Medicare and Medicaid programs, we believe that any incremental difference would be so small as to be negligible. Payment rates for PACE are adjusted so that the total payment level is less than the projected payment that would have been made if the participants were not enrolled in PACE. Thus, the overall effect of the PACE program should be a slight savings for this small population. Approved PACE organizations that request waivers to support expansion activities or prospective organizations that request waivers to support start up may incur a minimal cost and burden associated with waiver requests.

If this rule were not issued, PACE programs would be unable to implement modifications to PACE regulatory requirements, potentially impeding their ability to start up or expand their programs.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies anticipate costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This interim final rule will not mandate any requirements for State, local, or tribal governments nor would it result in expenditures by the private sector of $110 million or more in any 1 year.

Under Executive Order 13132, this regulation will not significantly affect the States beyond what is required and provided for under the BBA. It follows the intent and letter of the law and does not usurp State authority beyond what the BBA requires. This regulation describes the processes that must be undertaken by CMS, the States, and PACE organizations in order to implement the flexibility afforded by section 903 of BIPA.

As we explained in the November 1999 interim final regulation (64 FR 66235), sections 4801 and 4802 of the BBA clearly describe a cooperative relationship between the Secretary and the States in the development, implementation, and administration of the PACE program. The BIPA amendments reflect this partnership between CMS and the State administering agency. However, section 903 of BIPA does not specifically provide for consultation or agreement by the States in making waiver determinations. Nonetheless, it is our intention to engage the State in discussion regarding waiver requests and to require the PACE organization to submit a waiver request through the State administering agency.

In addition, we continue to obtain State input in the early stages of policy development through conference calls with State Medicaid Agency representatives. The calls, which began after enactment of the BBA, have been very productive in understanding the variety of State concerns inherent in implementing the PACE program. We are committed to continuing this dialogue with States after publication of this regulation to ensure this cooperative atmosphere continues as we complete the transition of the current PACE demonstration sites to full provider status and expand access to the PACE benefit.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 460

Aged, Health facilities, Medicare, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Chapter IV as set forth below:

PART 460—PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

1. The authority citation for part 460 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395).

2. In part 460, revise all references to ''multidisciplinary'' to read ''interdisciplinary'.

Subpart B—PACE Organization Application and Waiver Process

3. The heading for subpart B is revised as set forth above.

4. Section 460.10 is revised to read as follows:

§ 460.10 Purpose.

This subpart sets forth the application requirements for an entity that seeks approval from CMS as a PACE organization and the process by which a PACE organization may request waiver of certain regulatory requirements. The

purpose of the waivers is to provide for reasonable flexibility in adapting the PACE model to the needs of particular organizations (such as those in rural areas).

§ 460.12 [Amended]

5. Section 460.12 is amended by removing and reserving paragraph (a)(2).

6. Sections 460.26 and 460.28 are added to subpart B to read as follows:

§ 460.26 Submission and evaluation of waiver requests.

(a) A PACE organization must submit its waiver request through the State administering agency for initial review. The State administering agency forwards waiver requests to CMS along with any concerns or conditions regarding the waiver.

(b) CMS evaluates a waiver request from a PACE organization on the basis of the following information:

(1) The adequacy of the description and rationale for the waiver provided by the PACE organization, including any additional information requested by CMS.

(1) Information obtained by CMS and the State administering agency in on-site reviews and monitoring of the PACE organization.

(c) Requirements related to the following principles may not be waived:

(1) A focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.

(2) The delivery of comprehensive, integrated acute and long-term care services.

(3) An interdisciplinary team approach to care management and service delivery.

(4) Capitated, integrated financing that allows the provider to pool payments received from public and private programs and individuals.

(5) The assumption by the provider of full financial risk.

§ 460.28 Notice of CMS determination on waiver requests.

(a) *Time limit for notification of determination.* Within 90 days after receipt of a waiver request, CMS takes one of the following actions:

(1) Approves the request.

(2) Denies the request and notifies the PACE organization in writing of the basis for the denial.

(b) *Date of receipt.* For purposes of the 90-day time limit described in this section, the date that a waiver request is received by CMS from the State administering agency is the date on which the request is delivered to the address designated by CMS.

(c) *Waiver approval.* (1) A waiver request is deemed approved if CMS fails to act on the request within 90 days after the date the waiver request is received by CMS.

(2) CMS may withdraw approval of a waiver for good cause.

Subpart C—PACE Program Agreement

7. Section 460.30 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 460.30 Program agreement requirement.

* * * * *

(b) The agreement must be signed by an authorized official of CMS, the PACE organization and the State administering agency.

(c) CMS may only sign program agreements with PACE organizations that are located in States with approved State plan amendments electing PACE as an optional benefit under their Medicaid State plan.

Subpart E—PACE Administrative Requirements

8. In § 460.60, paragraphs (b) and (c) are revised to read as follows:

§ 460.60 PACE organizational structure.

* * * * *

(b) *Program director.* The organization must employ, or contract with in accordance with § 460.70, a program director who is responsible for oversight and administration of the entity.

(c) *Medical director.* The organization must employ, or contract with in accordance with § 460.70, a medical director who is responsible for the delivery of participant care, for clinical outcomes, and for the implementation, as well as oversight, of the quality assessment and performance improvement program.

* * * * *

9. In § 460.68 the following changes are made:

a. Paragraph (b) is revised.

b. Paragraph (c) is removed and reserved.

The revision reads as follows:

§ 460.68 Program integrity.

* * * * *

(b) *Direct or indirect interest in contracts.* No member of the PACE organization's governing body or any immediate family member may have a direct or indirect interest in any contract that supplies any administrative or care-related service or materials to the PACE organization.

* * * * *

10. In § 460.70, the following changes are made:

a. Paragraph (b) introductory text is republished and (b)(1)(i) is revised.

b. Paragraph (e) introductory text is republished and (e)(2) is revised.

c. Paragraph (e)(5) introductory text is republished and paragraphs (e)(5)(vi) through (ix) and (f) are added.

The revisions and additions read as follows:

§ 460.70 Contracted services.

* * * * *

(b) *Contract requirements.* A contract between a PACE organization and a contractor must meet the following requirements:

(1) * * *

(i) An institutional contractor, such as a hospital or skilled nursing facility, must meet Medicare or Medicaid participation requirements.

* * * * *

(e) *Content of contract.* Each contract must be in writing and include the following information:

(1) * * *

(2) Services furnished (including work schedule if appropriate).

* * * * *

(5) Contractor agreement to do the following:

* * * * *

(vi) Agree to perform all the duties related to its position as specified in this part.

(vii) Participate in interdisciplinary team meeting as required.

(viii) Agree to be accountable to the PACE organization.

(ix) Cooperate with the competency evaluation program and direct participant care requirements specified in § 460.71.

(f) *Contracting with another entity to furnish PACE Center services.* (1) A PACE organization may only contract for PACE Center services if it is fiscally sound as defined in § 460.80(a) of this part and has demonstrated competence with the PACE model as evidenced by successful monitoring by CMS and the State administering agency.

(2) The PACE organization retains responsibility for all participants and may only contract for the PACE Center services identified in § 460.98(d).

11. Section 460.71 is added to subpart E to read as follows:

§ 460.71 Oversight of direct participant care.

(a) The PACE organization must ensure that all employees and contracted staff furnishing care directly to participants demonstrate the skills necessary for performance of their position.

(1) The PACE organization must provide each employee and all contracted staff with an orientation. The orientation must include at a minimum

the organization's mission, philosophy, policies on participant rights, emergency plan, ethics, the PACE benefit, and any policies related to the job duties of specific staff.

(2) The PACE organization must develop a competency evaluation program that identifies those skills, knowledge, and abilities that must be demonstrated by direct participant care staff (employees and contractors).

(3) The competency program must be evidenced as completed before performing participant care and on an ongoing basis by qualified professionals.

(4) The PACE organization must designate a staff member to oversee these activities for employees and work with the PACE contractor liaison to ensure compliance by contracted staff.

(b) The PACE organization must develop a program to ensure that all staff furnishing direct participant care services meet the following requirements:

(1) Comply with any State or Federal requirements for direct patient care staff in their respective settings.

(2) Comply with the requirements of § 460.68(a) regarding persons with criminal convictions.

(3) Have verified current certifications or licenses for their respective positions.

(4) Are free of communicable diseases.

(5) Have been oriented to the PACE program.

(6) Agree to abide by the philosophy, practices, and protocols of the PACE organiztion.

Subpart F—PACE Services

12. In § 460.102, the following changes are made: a. Paragraph (d)(2) introductory text is republished and (d)(2)(iii) is revised.

b. Paragraph (d)(3) is amended by removing ''Except as specified in paragraph (g) of this section''.

c. Paragraphs (f) and (g) are removed.

The revisions read as follows:

§ 460.102 Interdisciplinary team.

* * * * *

(d) * * *

(2) Each team member is responsible for the following:

* * * * *

(iii) Documenting changes of a participant's condition in the participant's medical record consistent with documentation polices established by the medical director.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 17, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: September 16, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–24858 Filed 9–27–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1090–AA82

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals is publishing final rules to update addresses and telephone numbers and to conform cross-references and language in existing rules with rules of the Office of Surface Mining Reclamation and Enforcement.

DATES: Effective Date: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203. Phone 703–235–3750.

SUPPLEMENTARY INFORMATION:

I. Background

The rules governing procedures for hearings and appeals under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201–1328 (2000), that appear in Title 43, Part 4, Subpart L, of the Code of Federal Regulations (CFR) have been adopted by the Office of Hearings and Appeals (OHA) at various times since that statute was enacted. Over the years some of the addresses, phone numbers, cross references, and language of those rules have become out of date. For example, the Office of Surface Mining Reclamation and Enforcement (OSM) adopted final rules in December 2000, 65 FR 79582 (Dec. 19, 2000) in Title 30 CFR. The result is that the language and section numbers in OHA's existing rules in 43 CFR part 4, subpart L, that refer to OSM's rules do not correspond to the language and section numbers in OSM's recent rules. The final rules OHA adopts today are intended only to make technical amendments to the rules in Subpart L so that they will conform to the rules in 30 CFR and otherwise be up to date.

Definitions

Some rules in 43 CFR, Part 4, Subpart L, use the abbreviation ''OSM'' for the Office of Surface Mining Reclamation and Enforcement and some rules use ''OSMRE.'' As OSM's definition in 30 CFR 700.5 makes clear, the two abbreviations have the same meaning. The definition in 43 CFR 4.1100(e) is revised to correspond to OSM's definition.

Jurisdiction of the Board

The cross reference in 43 CFR 4.1101(a) to the jurisdiction of the Board, ''as set forth in 43 CFR 4.1(4),'' is out of date. In 1982, the Interior Board of Surface Mining and Reclamation Appeals (IBSMA) was abolished and jurisdiction over appeals under SMCRA was transferred to the Interior Board of Land Appeals (IBLA). *See* 49 FR 7564–7565 (March 1, 1984); 48 FR 22370 (May 18, 1983). IBLA's jurisdiction is now set forth in 4.1(b)(3), so 4.1101(a) is amended to read ''as set forth in 43 CFR 4.1(b)(3).''

In addition, the reference in 4.1101(a) to 43 CFR 4.21(c) is out of date. When 4.1101 was adopted in 1978, 4.21(c) dealt with requests for reconsideration. 43 CFR 4.21 was amended in 1993, however, and 4.21(c) became 4.21(d). 58 FR 4939, 4941 (Jan. 19, 1993). The reference in 4.1101(a) is revised to conform to the 1993 amendment of 4.21.

Several rules have been added to Subpart L since that subpart was originally promulgated in August 1978, *i.e.*, sections 4.1350–4.1356, 4.1360–4.1369, 4.1370–4.1377, 4.1380–4.1387, and 4.1390–4.1394. Some subjects covered in the rules that have been added are not specifically included in the list of subjects under the Board's jurisdiction in 4.1101(a)(1)–(7). The subjects not included by the rules that have been added to Subpart L are therefore added to the list in 4.1101(a) as (8)–(11) and previous sections (8) and (9) are renumbered (12) and (13).

Service

Some of the jurisdictions, addresses, and telephone numbers of the offices of the Office of the Solicitor that are to receive service of a document under 43 CFR 4.1109(a)(1) and (a)(3) have changed. 4.1109(a)(2) is amended to reflect these changes.

Suspension or Revocation of Permits Under Section 521(a)(4) of the Act

The rules in 4.1190–4.1196 of Subpart L, adopted in 1978, provide procedures to review an OSM order to show cause why a permit should not be suspended or revoked under the rule adopted by OSM in December 1977 for the initial regulatory program. *See* 30 CFR 722.16. The rules in Subpart L have not been revised since OSM adopted its permanent regulatory program rule governing such proceedings in 1979. 30 CFR 843.13. OSM revised that rule in 1982. The rules in 4.1190–4.1196 are revised to adjust the timing of the filing of an OSM Director's order with OHA (4.1190(a)); to delete references to the initial regulatory program rule (4.1192 and 4.1194); to add a requirement for notice of a hearing contained in 30 CFR 843.13(b) (new 4.1193); and to redesignate former 4.1193, 4.1194, 4.1195, and 4.1196 as 4.1194, 4.1195, 4.1196, and 4.1197.

Applications for Review of Alleged Discriminatory Acts Under Section 703 of the Act

It is 30 CFR Part 865 rather than Part 830 that contains the OSM regulations governing review of alleged discriminatory actions. Therefore, the references in 4.1200 and 4.1204 to the regulations in 30 CFR are amended.

Determination on an Application Concerning an Order of Cessation

The telephone numbers of the OSM field offices that are to receive telephone notice of an application for review under 4.1266(b)(2), and the states served by those field offices, are updated.

Appeals to the Board From Decisions or Orders of Administrative Law Judges

Since Subpart L was adopted in 1978, OSM has added Part 845 to 30 CFR. 43 CFR 4.1270(f) is therefore amended to refer to this part as well as part 723.

43 CFR 4.1276(a), which provides that a party may move for reconsideration of a Board decision, refers to 43 CFR 4.21(c). When 4.21 was amended in 1993, paragraph (c) was redesignated paragraph (d). 58 FR 4939, 4941 (Jan. 19, 1993). 4.1276(a) is therefore amended to refer to subsection (d).

Request for Hearing on a Preliminary Finding Concerning a Demonstrated Pattern of Willful Violations Under Section 510(c) of the Act

In December 2000, OSM adopted 30 CFR 774.11, ''Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information.'' That regulation requires OSM to serve a ''preliminary finding of permanent permit ineligibility'' under section 510(c) of the Act if an applicant or operator controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations and the violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, its implementing regulations, the regulatory program, or a permit. In making such a finding OSM will only consider control relationships and violations that would make or would have made the applicant or operator ineligible for a permit under 30 CFR 773.12(a) and (b). 30 CFR 774.11(c), 65 FR 79582, 79667 (Dec. 19, 2000). An applicant or operator may request a hearing on a preliminary finding of permanent permit ineligibility under 43 CFR 4.1350 through 4.1356. 30 CFR 774.11(d).

The OHA rules referred to in 30 CFR 774.11(d) that provide procedures for review of a preliminary finding under section 510(c) of the Act, 4.1350–4.1356, were adopted in 1987 and 1991 and their language does not conform to the language adopted in OSM's more recent rules. OHA's rules in 4.1350, 4.1351, 4.1352, and 4.1355 are therefore amended to do so.

Review of an OSM Notice That an Applicant Is Ineligible for a Permit

The rules OSM adopted in December 2000 provide that OSM is to provide written notice of its decision that an applicant is ineligible for a permit under section 510(c) of the Act. The notice is to tell the applicant of its appeal rights under 30 CFR Part 775 and 43 CFR 4.1360 through 4.1369. 30 CFR 773.12(e), 65 FR 79582, 79664 (Dec. 19, 2000).

OHA's regulations in 43 CFR 4.1360–4.1369 set forth the procedures for administrative review of OSM decisions concerning permits. 4.1360, however, does not list review of an OSM decision under 30 CFR 773.12 that an applicant is ineligible for a permit. A new subsection (e) is therefore added to 4.1360 to include such a decision.

Review of OSM Decisions Proposing To Suspend or Rescind or Suspending or Rescinding Improvidently Issued Permits

When OSM published its regulations in December 2000, it revised 30 CFR 773.21–773.23 concerning improvidently-issued permits. *See* 65 FR 79582, 79665–79666 (Dec. 19, 2000). In doing so, OSM changed the subsections under which it would issue notices of proposed suspension or rescission and notices of suspension or rescission. Therefore, the cross references in 43 CFR 4.1370–4.1372 to OSM's regulations need to be changed to reflect the correct subsections, and 43 CFR 4.1372(a)(1), 4.1374(a) and 4.1376(a) are amended to refer to both types of notices.

Review of OSM Decisions Concerning Ownership or Control

In its December 2000 regulations, OSM eliminated 30 CFR 773.24, revised 30 CFR 773.25, and added 773.26–773.28 concerning challenges to an OSM ''ownership or control listing or finding.'' *See* 65 FR 79582, 79666–79667 (Dec. 19, 2000). Any person who receives a written decision from OSM in response to a challenge to a listing or finding of ownership or control ''and who wishes to appeal that decision, must exhaust administrative remedies under the procedures at 43 CFR 4.1380 through 4.1387 or, when a State is the regulatory authority, the State regulatory program counterparts, before seeking judicial review.'' 30 CFR 773.28(e).

These changes in OSM's rules require conforming changes in OHA's rules that provide procedures for review of such OSM decisions. 43 CFR 4.1380 and 4.1381(a) are amended accordingly.

Review of OSM Determinations Under 30 CFR Part 761

On December 17, 1999, OSM adopted rules redefining when a person has valid existing rights (VER) to conduct surface coal mining operations on lands listed in section 522(e) of the Act, 30 U.S.C. 1272(e); establishing procedures for submitting requests for VER determinations; modifying the exception from the statutory limitations and prohibitions for existing operations; and revising the procedures for compatibility findings for surface coal mining operations on federal lands in national forests. 64 FR 70766 (Dec. 17, 1999).

OHA's rules for obtaining review of OSM determinations under section 522(e) were adopted in 1987 and 1991. The existing 43 CFR 4.1390 states that those rules ''set forth procedures for obtaining review pursuant to 30 CFR 761.12(h) of a determination by OSM that a person holds or does not hold a valid existing right.''

The preamble to OSM's December 1999 rules explained that 30 CFR 761.12 was reorganized and recodified. Former 761.12(h) is now 761.16(f). 64 FR 70766, 70804 col. 2 (Dec. 17, 1999). 761.16(f) provides for administrative review of an OSM determination that a person does or does not have valid existing rights.

This rule therefore amends 4.1390 to change the reference from 30 CFR 761.12 to 761.16.

Existing § 4.1390 also states that OHA's rules provide procedures for review of OSM determinations ''that surface coal mining operations did or did not exist on the date of enactment of the Act, on lands where operations are prohibited or limited by section 522(e) of the Act.''

In December 1999, OSM explained that it removed ''the portion of former 30 CFR 761.12(h) that provided for administrative appeals of existing operation determinations':

> The exception for existing operations in 30 CFR 761.12 does not require any affirmative action or decision on the part of either the permittee or the regulatory authority. As explained in Part XVI of this preamble, the exception for existing operations merely allows an already permitted operation to continue operating within the permit boundaries in existence at the time that the land comes under the protection of section 522(e) and 30 CFR 761.11. Hence, there is no action or decision to appeal.

64 FR 70766, 70804, col. 2 (Dec. 17, 1999). OSM's explanation in Part XVI states:

> [W]hen lands covered by an approved permanent program permit come under the protection of 30 CFR 761.11 and section 522(e) after permit issuance, the permittee has the right to continue to operate on those lands under the exception for existing operations unless the regulatory authority orders the permittee to revise the permit to remove those lands from the permit area in accordance with the procedures and criteria of 30 CFR 774.13. A person who believes that a permit has been improperly issued because a protected feature came into existence before rather than after permit issuance has the option of either filing a timely challenge to approval of the permit application or submitting a complaint to the regulatory authority in accordance with the State program counterpart to 30 CFR 842.12 or to us under 30 CFR 842.12. If the permit is ultimately found to be defective, the regulatory authority must require that the permittee revise the permit in accordance with 30 CFR 774.13.

64 FR 70766, 70803 col. 1 (Dec. 17, 1999). This rule therefore amends 4.1390 to remove the reference to existing operation determinations.

Finally, existing § 4.1390 states that the rules set forth the procedures ''for obtaining review pursuant to 30 CFR 761.12(h) of a determination by OSM * * * that surface coal mining operations may be permitted within the boundaries of a national forest in accordance with section 522(e)(2).'' This statement was adopted in error. The former 30 CFR 761.12(h) did not refer to such determinations. Under section 522(e)(2), it is the Secretary, not OSM, who makes a finding ''that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations and * * *.'' *See* 30 CFR 761.11(b), 761.13. OSM's December 1999 rules make clear that this authority is reserved by the Secretary. 30 CFR 740.4(a)(5), 745.13(p). The IBLA is delegated authority to decide appeals from decisions on behalf of the Secretary; it does not have authority to review decisions made by the Secretary. *See Alamo Ranch Co., Inc.,* 135 IBLA 61, 67–68 (1996). This rule therefore amends 4.1390 to remove the reference to compatibility determinations under 30 CFR 761.11(b), 761.13.

Section 4.1391(a) is revised to reflect the amendments to 4.1390.

A VER determination may either be made independently or in conjunction with a decision on an application for a permit or a permit boundary revision. 30 CFR 716.16(b). It would not be made in connection with an application for a permit renewal or for the transfer, assignment, or sale of permit rights, nor does section 522(e) apply to coal exploration. 64 FR 70766, 70819 (Dec. 17, 1999). Therefore, 4.1391(b)(1) and (2) are revised to delete references to those applications.

Because one need not be a permit applicant to request a VER determination, 4.1394(a) is revised to refer to ''a person who requested the determination.'' 4.1394(b) is revised to reflect the scope of 4.1390, as amended.

II. Procedural Requirements

A. Review Under Procedural Statutes and Executive Orders

1. Regulatory Planning and Review (E.O. 12688)

In accordance with the criteria in Executive Order 12866, this document is not a significant rule. The Office of Management and Budget has not reviewed this rule under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, competition, jobs, the environment, public health or safety, or other units of government. A cost-benefit and economic analysis is not required. These amended rules will have virtually no effect on the economy because they are simply providing updated addresses and phone numbers and correcting references to and quotations from other regulations.

b. This rule will not create inconsistencies with or interfere with other agencies' actions. These rules will conform the rules in 43 CFR part 4, subpart L, with current information about other agencies, thereby making the rules consistent rather than inconsistent with actions that have been taken by other agencies.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These rules have to do only with the procedures for hearings and appeals of OSM decisions, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, and they make no substantive changes in the procedures.

d. This rule does not raise novel legal or policy issues. Because these rules only make technical, conforming changes to details such as addresses and phone numbers applicable to procedures for hearings and appeals, they raise no policy or legal issues, novel or otherwise.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The changes in addresses, phone numbers, citations to and quotations from other rules will have no effect on small entities. A Small Entity Compliance Guide is not required.

3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

a. This rule does not have an annual effect on the economy of $100 million or more. The changes in phone numbers, addresses, citations, etc., made by these rules should have no effect on the economy.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Updating and correcting the information in the existing rules in 43 CFR part 4, subpart L, will save citizens, individual industries, and government agencies resources that would have been wasted utilizing the outdated information, *e.g.*, phone numbers and addresses.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The housekeeping changes in these rules will have no effects, adverse or beneficial, on

competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Small governments rarely request hearings or appeals under the Surface Mining Act, and these rules would neither uniquely nor significantly affect them because these rules only bring existing rules up to date by correcting addresses, phone numbers, etc. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, is not required.

b. This rule does not produce an unfunded Federal mandate of $100 million or more on State, local, or tribal governments or the private sector in any year, *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. These amendments to procedural rules have no effect on property rights.

6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The only potential effect on states would be that ''primacy'' states, *i.e.*, those approximately two dozen states with approved state programs under the Surface Mining Act, may have to amend some of their procedural regulations to correspond to the changes made in these rules, and those amendments would not be significant. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order. These rules, because they bring up to date rules about jurisdiction, agency addresses and phone numbers, and the language and citation of rules, will relieve, not burden, both administrative and judicial tribunals.

8. Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. These rules provide the public with updated information concerning hearings and appeals under the Surface Mining Act; they do not require the public to provide information.

9. National Environmental Policy Act

The Department has analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact assessment or environmental impact statement under NEPA is not required. Because of the strictly organizational and procedural contents of this rule, it is categorically excluded from NEPA review under 516 DM.

10. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, the Department of the Interior has evaluated potential effects of these rules on Federally recognized Indian tribes and has determined that there are no potential effects. These rules do not affect Indian trust resources; they provide updated information about procedures for hearings and appeals of decisions of the Office of Surface Mining under the Surface Mining Act.

11. Effects on the Nation's Energy Supply

In accordance with Executive Order 13211, this regulation does not have a significant effect on the nation's energy supply, distribution, or use. The changes of address, telephone numbers, and cross-references to other regulations are simply updating of information and will not affect energy supply or consumption.

B. Determination of Good Cause for Immediate Effect

The Department has determined that this rule should be effective immediately because it updates the Code of Federal Regulations to include accurate information. Delaying the effective date by 30 days as required by 5 U.S.C. 553(d) would mean that parties to appeals would not have correct information, resulting in delays and inconvenience. A delayed effective date would also mean that the revisions in this rule would not appear in the soon-to-be published annual revision of title 43 of the Code of Federal Regulations. This would mean that for the next year anyone consulting title 43 Part 4 Subpart L would receive inaccurate information about filing appeals. For these reasons, good cause exists for making this rule effective immediately upon publication under 5 U.S.C. 553(d)(3).

C. Determination To Issue Final Rule Without Notice and Comment

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply to this rulemaking because the changes made relate solely to matters of agency organization, procedure, and practice. These rules are procedural, not substantive, and they only change addresses, phone numbers, cross references to other rules, and language to conform to language in other rules. They therefore satisfy the exemption from notice and comment rulemaking in 5 U.S.C. 553(b)(A).

List of Subjects in 43 CFR Part 4

Administrative practice and procedure; Mines; Public lands; Surface mining.

Dated: September 19, 2002.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

For the reasons set forth in the preamble, the Office of Hearings and Appeals amends 43 CFR part 4, subpart L, as follows:

PART 4—[AMENDED]

Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

1. The authority for 43 CFR Part 4 Subpart L continues to read as follows:

Authority: 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

2. In § 4.1100, revise paragraph (e) to read as follows:

§ 4.1100 Definitions.

* * * * *

(e) *OSM* and *OSMRE* mean the Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

3. In § 4.1101, revise paragraph (a) introductory text, redesignate

paragraphs (a)(8) and (a)(9) as paragraphs (a)(12) and (a)(13), and add paragraphs (a)(8) through (a)(11) to read as follows:

§ 4.1101 Jurisdiction of the Board.

(a) The jurisdiction of the Board, as set forth in § 4.1(b)(3), and subject to §§ 4.21(d) and 4.5, includes the authority to exercise the final decisionmaking power of the Secretary under the act pertaining to—

* * * * *

(8) Preliminary findings concerning a demonstrated pattern of willful violations under section 510(c) of the act;

(9) Suspension or rescission of improvidently-issued permits;

(10) Challenges to ownership or control listings or findings;

(11) Determinations under 30 CFR part 761;

(12) Appeals from orders or decisions of administrative law judges; and

(13) All other appeals and review proceedings under the act which are permitted by these regulations.

* * * * *

4. In § 4.1109, revise paragraph (a)(2) to read as follows:

§ 4.1109 Service.

(a)(1) * * *

(2) The jurisdictions, addresses, and telephone numbers of the applicable officers of the Office of the Solicitor to be served under paragraph (a)(1) of this section are:

(i) For mining operations in Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, Texas, and Virginia: Field Solicitor, U.S. Department of the Interior, 530 S. Gay Street, Room 308, Knoxville, Tennessee 37902; Telephone: (865) 545–4294; FAX: (865) 545–4314.

(ii) For mining operations in Maryland, Massachusetts, Michigan, Ohio, Pennsylvania, Rhode Island, and West Virginia: Field Solicitor, U.S. Department of the Interior, Three Parkway Center, Suite 385, Pittsburgh, Pennsylvania 15220; Telephone: (412) 937–4000; FAX: (412) 937–4003.

(iii) For mining operations in Alaska, Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, including mining operations located on Indian lands within those states: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215; Telephone: (303) 231–5353; FAX: (303) 231–5363 or 231–5360.

(iv) For mining operations in Arizona, California, and New Mexico, including mining operations located on Indian lands within those states except for the challenge of permitting decisions affecting mining operations located on Indian lands in those states: Regional Solicitor, Southwest Region, U.S. Department of the Interior, 505 Marquette Avenue, NW., Suite 1800, Albuquerque, NM 87102; Telephone: (505) 248–5600; FAX: (505) 248–5623.

(v) For the challenge of permitting decisions affecting mining operations located on Indian lands within Arizona, California, and New Mexico: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215; Telephone: (303) 231–5353; FAX: (303) 231–5363 or 231–5360.

* * * * *

5. In § 4.1190, revise paragraph (a) to read as follows:

§ 4.1190 Initiation of proceedings.

(a) A proceeding on a show cause order issued by the Director of OSM pursuant to section 521(a)(4) of the Act shall be initiated by the Director of OSM filing a copy of such an order with the Hearings Division, OHA, 801 N. Quincy Street, Suite 300, Arlington, VA 22203, promptly after the order is issued to the permittee.

* * * * *

6. In § 4.1192, revise paragraph (a) to read as follows:

§ 4.1192 Contents of answer.

The permittee's answer to a show cause order shall contain a statement setting forth—

(a) The reasons in detail why a pattern of violations does not exist or has not existed, including all reasons for contesting—

* * * * *

§§ 4.1193–4.1196 [Redesignated]

7. Redesignate §§ 4.1193 through 4.1196 as §§ 4.1194 through 4.1197, respectively.

8. Add a new § 4.1193 to read as follows:

§ 4.1193 Notice of hearing.

If a hearing on the show cause order is requested, or if no hearing is requested but the administrative law judge determines that a hearing is necessary, the administrative law judge shall give thirty days written notice of the date, time, and place of the hearing to the Director, the permittee, the State regulatory authority, if any, and any intervenor.

9. In newly redesignated § 4.1195, revise paragraph (a) to read as follows:

§ 4.1195 Determination by the administrative law judge.

(a) Upon a determination by the administrative law judge that a pattern of violations exists or has existed, the administrative law judge shall order the permit either suspended or revoked. In making such a determination, the administrative law judge need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

* * * * *

10. In § 4.1200, revise paragraphs (a), (b)(2), (b)(3), and (b)(4) to read as follows:

§ 4.1200 Filing of the application for review with the Office of Hearings and Appeals.

(a) Pursuant to 30 CFR 865.13, within 7 days of receipt of an application for review of alleged discriminatory acts, OSM shall file a copy of the application in the Hearings Division, OHA, 801 N. Quincy Street, Suite 300, Arlington, VA 22203. OSM shall also file in the Hearings Division, OHA, Arlington, VA, a copy of any answer submitted in response to the application for review.

(b) * * *

(1) * * *

(2) A request is made by OSM for the scheduling of a hearing pursuant to 30 CFR 865.14(a);

(3) A request is made by the applicant for the scheduling of a hearing pursuant to 30 CFR 865.14(a);

(4) A request is made by the applicant for the scheduling of a hearing pursuant to 30 CFR 865.14(b);

* * * * *

11. In § 4.1204, revise the introductory text to read as follows:

§ 4.1204 Determination by administrative law judge.

Upon a finding of a violation of section 703 of the act or 30 CFR 865.11, the administrative law judge shall order the appropriate affirmative relief, including but not limited to—

* * * * *

12. In § 4.1266, revise the section heading and paragraph (b)(2) to read as follows:

§ 4.1266 Determination on application concerning an order of cessation.

* * * * *

(b) * * *

(2) The application shall include an affidavit stating that telephone notice has been given to the field office of OSM serving the state in which the minesite subject to the order is located. The telephone notice shall identify the mine, the mine operator, the date and number of the order from which relief is

requested, the name of the OSM inspector involved, and the name and telephone number of the applicant. OSM's field offices and their numbers follow:

Albuquerque Field Office (serving Arizona, California, and New Mexico) (505) 248–5070.
Big Stone Gap Field Office (serving Virginia) (276) 523–4303.
Birmingham Field Office (serving Alabama and Mississippi) (205) 290–7282 (ext. 16).
Casper Field Office (serving Idaho, Montana, North Dakota, South Dakota, and Wyoming) (307) 261–6550.
Charleston Field Office (serving West Virginia) (304) 347–7158.
Columbus Team Office (serving Maryland, Michigan, and Ohio) (412) 937–2153.
Harrisburg Field Office (serving Massachusetts, Pennsylvania, and Rhode Island) (717) 782–4036.
Knoxville Field Office (serving Georgia, Tennessee, and North Carolina) (865) 545–4103 (ext. 186).
Lexington Field Office (serving Kentucky) (859) 260–8402.
Mid-Continent Regional Coordinating Center (serving Iowa, Kansas, and Missouri) (618) 463–6460.
Olympia Office (serving Washington) (360) 753–9538.
Tulsa Field Office (serving Arkansas, Louisiana, Oklahoma, and Texas) (918) 581–6431 (ext. 23).
Western Regional Coordinating Center (serving Alaska, Colorado, Oregon, and Utah) (303) 844–1400 (ext. 1424).

* * * * *

13. In § 4.1270, revise paragraph (f) to read as follows:

§ 4.1270 Petition for discretionary review of a proposed civil penalty.

* * * * *

(f) If the petition is granted, the rules in §§ 4.1273 through 4.1277 are applicable and the Board shall use the point system and conversion table contained in 30 CFR part 723 or 845 in recalculating assessments; however, the Board shall have the same authority to waive the civil penalty formula as that granted to administrative law judges in § 4.1157(b)(1). If the petition is denied, the decision of the administrative law judge shall be final for the Department, subject to § 4.5.

14. In § 4.1276, revise paragraph (a) to read as follows:

§ 4.1276 Reconsideration.

(a) A party may move for reconsideration under § 4.21(d); however, the motion shall be filed with the Board within 30 days of the date of the decision.

* * * * *

15. Revise § 4.1350 to read as follows:

§ 4.1350 Scope.

These rules set forth the procedures for obtaining review of a preliminary finding by OSM under section 510(c) of the Act and 30 CFR 774.11(c) of an applicant's or operator's permanent permit ineligibility.

16. Revise § 4.1351 to read as follows:

§ 4.1351 Preliminary finding by OSM.

(a) If OSM determines that an applicant or operator controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations and the violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, its implementing regulations, the regulatory program, or the permit, OSM must serve a preliminary finding of permanent permit ineligibility on the applicant or operator.

(b) OSM must serve the preliminary finding by certified mail, or by overnight delivery service if the applicant or operator has agreed to bear the expense for this service. The preliminary finding must specifically state the violations upon which it is based.

17. Revise § 4.1352 to read as follows:

§ 4.1352 Who may file; where to file; when to file.

(a) The applicant or operator may file a request for hearing on OSM's preliminary finding of permanent permit ineligibility.

(b) The request for hearing must be filed with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703–235–3800), within 30 days of receipt of the preliminary finding by the applicant or operator.

(c) Failure to file a timely request constitutes a waiver of the opportunity for a hearing before OSM makes its final finding concerning permanent permit ineligibility. Any untimely request will be denied.

18. Revise § 4.1355 to read as follows:

§ 4.1355 Burden of proof.

OSM shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the existence of a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, its implementing regulations, the regulatory program, or the permit.

19. In § 4.1360, in paragraph (c), remove the word ''and'', revise paragraph (d), and add a new paragraph (e) to read as follows:

§ 4.1360 Scope.

* * * * *

(d) Applications for coal exploration permits; and

(e) Ineligibility for a permit under section 510(c) of the Act and 30 CFR 773.12.

20. Revise the heading for 43 CFR 4.1370–4.1377 to read:

Review of OSM Decisions Proposing To Suspend or Rescind or Suspending or Rescinding Improvidently Issued Permits

21. Revise § 4.1370 to read as follows:

§ 4.1370 Scope.

Sections 4.1370 through 4.1377 govern the procedures for review of a written notice of proposed suspension or rescission of an improvidently issued permit issued by OSM under 30 CFR 773.22 and of a written notice of suspension or rescission of an improvidently issued permit issued by OSM under 30 CFR 773.23.

22. In § 4.1371, revise paragraph (a) to read as follows:

§ 4.1371 Who may file, where to file, when to file.

(a) A permittee that is served with a notice of proposed suspension or rescission under 30 CFR 773.22 or a notice of suspension or rescission under 30 CFR 773.23 may file a request for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703–235–3800) within 30 days of service of the notice.

* * * * *

23. In § 4.1372, revise paragraphs (a)(1) and (a)(2) to read as follows:

§ 4.1372 Contents of request for review, response to request, amendment of request.

(a) * * *

(1) A copy of the notice of proposed suspension or rescission or the notice of suspension or rescission;

(2) Documentary proof, or, where appropriate, offers of proof, concerning the matters in 30 CFR 773.21(a) and (b) or 30 CFR 773.14(c) for a notice of proposed suspension or rescission, or 30

CFR 773.23(a)(1) through (a)(6) for a notice of suspension or rescission, showing that the person requesting review is entitled to administrative relief;

* * * * *

24. In § 4.1374, revise paragraph (a) to read as follows:

§ 4.1374 Burdens of proof.

(a) OSM shall have the burden of going forward to present a prima facie case of the validity of the notice of proposed suspension or rescission or the notice of suspension or rescission.

* * * * *

25. In § 4.1376, revise the section heading and paragraph (a) to read as follows:

§ 4.1376 Petition for temporary relief from notice of proposed suspension or rescission or notice of suspension or rescission; appeals from decisions granting or denying temporary relief.

(a) Any party may file a petition for temporary relief from the notice of proposed suspension or rescission or the notice of suspension or rescission in conjunction with the filing of the request for review or at any time before an initial decision is issued by the administrative law judge.

* * * * *

26. Revise the heading for 43 CFR 4.1380–4.1387 to read as follows:

Review of Office of Surface Mining Written Decisions Concerning Ownership or Control Challenges

27. Revise § 4.1380 to read as follows:

§ 4.1380 Scope.

Sections 4.1380 through 4.1387 govern the procedures for review of a written decision issued by OSM under 30 CFR 773.28 on a challenge to a listing or finding of ownership or control.

28. In § 4.1381, revise paragraph (a) to read as follows:

§ 4.1381 Who may file; when to file; where to file.

(a) Any person who receives a written decision issued by OSM under 30 CFR 773.28 on a challenge to an ownership or control listing or finding may file a request for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703–235–3800) within 30 days of service of the decision.

* * * * *

29. Revise § 4.1390 to read as follows:

§ 4.1390 Scope.

Sections 4.1391 through 4.1394 set forth the procedures for obtaining review of an OSM determination under 30 CFR 761.16 that a person does or does not have valid existing rights.

30. In § 4.1391, revise paragraphs (a) and (b) to read as follows:

§ 4.1391 Who may file; where to file; when to file; filing of administrative record.

(a) The person who requested a determination under 30 CFR 761.16 or any person with an interest that is or may be adversely affected by a determination that a person does or does not have valid existing rights may file a request for review of the determination with the office of the OSM official whose determination is being reviewed and at the same time shall send a copy of the request to the Interior Board of Land Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203 (telephone 703–235–3750). OSM shall file the complete administrative record of the determination under review with the Board as soon as practicable.

(b) OSM must provide notice of the valid existing rights determination to the person who requested that determination by certified mail, or by overnight delivery service if the person has agreed to bear the expense of this service.

(1) When the determination is made independently of a decision on an application for a permit or for a permit boundary revision, a request for review shall be filed within 30 days of receipt of the determination by a person who has received a copy of it by certified mail or overnight delivery service. The request for review shall be filed within 30 days of the date of publication of the determination in a newspaper of general circulation or in the **Federal Register**, whichever is later, by any person who has not received a copy of it by certified mail or overnight delivery service.

(2) When the determination is made in conjunction with a decision on an application for a permit or for a permit boundary revision, the request for review must be filed in accordance with § 4.1362.

* * * * *

31. Revise § 4.1394 to read as follows:

§ 4.1394 Burden of proof.

(a) If the person who requested the determination is seeking review, OSM shall have the burden of going forward to establish a prima facie case and the person who requested the determination shall have the ultimate burden of persuasion.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the person who requested the determination does or does not have valid existing rights.

[FR Doc. 02–24417 Filed 9–30–02; 8:45 am]

BILLING CODE 4310–79–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 201 and 206

RIN 3067–AD22

Hazard Mitigation Planning and Hazard Mitigation Grant Program

AGENCY: Federal Emergency Management Agency.

ACTION: Interim final rule.

SUMMARY: This rule extends the date by which State and local governments must develop mitigation plans as a condition of grant assistance in compliance with 44 CFR Part 201. The regulations in Part 201 outline the requirements for State and local mitigation plans, which must be completed by November 1, 2003 in order to continue to receive FEMA grant assistance. This interim final rule extends that date to November 1, 2004.

DATES: *Effective Date:* October 1, 2002.

Comment Date: We will accept written comments through December 2, 2002.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840,Washington, DC 20472, (facsimile) 202–646–4536, or (e-mail) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Terry Baker, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC, 20472, 202–646–4648, (facsimile) 202–646–3104, or (e-mail) *terry.baker@fema.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Throughout the preamble and the rule the terms ''we'', ''our'' and ''us'' refer to FEMA.

On February 26, 2002, FEMA published an interim final rule implementing Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act or the Act), 42 U.S.C. 5165, enacted under § 104 of the Disaster Mitigation Act of 2000, (DMA 2000) Pub. L. 106–390. This identified the requirements for State and local mitigation plans necessary for FEMA assistance. The critical portion of the current interim

final rule being published extends the date that the planning requirements take effect. The date is being modified from November 1, 2003 to November 1, 2004 for all programs except the Pre-Disaster Mitigation (PDM) program.

The date that local mitigation plans will be required for the PDM program as a condition of ''brick and mortar'' project grant funding will continue to be November 1, 2003. Our objective is to encourage the use of the PDM program to develop State and local mitigation plans that will meet the criteria for all of our mitigation programs. The initial implementation of the PDM program allows States to prioritize the funding towards the development of mitigation plans in their most high-risk communities, positioning them to be eligible for project grant funding when it becomes available. The PDM program will benefit from the experiences in the Flood Mitigation Assistance (FMA) program, which has had a planning requirement for many years. States often prioritize FMA planning funds to a community in one year, with the implementation of the project occurring after the appropriate planning has been completed.

We received many thoughtful comments on much of the rule, and we intend to address them all prior to finalizing the rule. However, the overwhelming number of comments regarding the effective date for the new planning requirements on both the State and local governments indicated to us a need to extend that date. This new interim final rule will address this issue, and clarify the planning requirement for the recently published Fire Management Assistance Grant Program final rule.

Since publication of the interim final rule, it became clear to us that, in some cases, there was a need to extend the effective date of the planning requirement to allow more time for plan development. An additional year will allow State, tribal, and local governments time to identify necessary resources, establish support for the planning process, and develop meaningful mitigation plans. Legislative sessions, which in some cases may be once every two years, may be necessary to obtain funding for plan development and/or adoption of the plan prior to submittal to FEMA. Many State and local fiscal years run from July through June, and budget requests must be made months prior to the beginning of the fiscal year. This has made it difficult for many jurisdictions to begin the planning process. Our intention in extending the date is to allow for more thoughtful and comprehensive development of plans and implementation of this regulation.

Nearly all of those commenting on the rule recognize the importance of planning. The generally accepted model is that good mitigation happens when good mitigation plans are the basis for the actions taken.

Even though we are extending the date for meeting the planning requirements, we encourage States and localities to continue to work on getting plans developed and approved as soon as feasible, and not to wait until the deadline to begin the process. It is important to note that although there is no deadline for approval of Enhanced State Mitigation Plans in order to qualify for the 20 percent HMPG funding, it will only be available to States if the plan is approved prior to a disaster declaration.

Although many comments addressed the need to extend the deadline, only a few provided specific alternative dates. We received several comments requesting a phased approach to the deadline for communities based on general risk levels or the priorities identified in a State plan. At this point, FEMA is not considering any option for a phased approach to the timeline since we believe that it would make this requirement too difficult to administer, for both States and FEMA. We believe that the one-year extension for the HMGP will address most of the concerns regarding the effective date of the planning requirements.

We have also received some questions regarding the relationship of the planning requirements of the Fire Management Assistance Grant Program to the plans developed under 44 CFR part 201. A Standard or Enhanced State Mitigation plan, which includes an evaluation of wildfire risk and mitigation, as identified in 44 CFR part 201 will meet the planning requirement of the Fire Management Assistance Grant Program. Until States develop and have either of those plans approved by FEMA, States must comply with the fire management planning requirement as stated in 44 CFR part 204 by ensuring that there is a fire component to the existing State Mitigation Plan or a separate wildfire mitigation plan.

Finally, we would like to clarify that for grants awarded under any hazard mitigation program prior to October 30, 2000 for the purpose of developing or updating a hazard mitigation plan, we will not provide an increase in funding or extensions for changes in the scope of work for purposes of meeting the enhanced state plan criteria, since the enhanced plan concept did not exist prior to the Disaster Mitigation Act of 2000, enacted on that date.

We encourage comments on this interim final rule, and we will make every effort to involve all interested parties, including those who commented on the original interim final planning rule, prior to the development of the Final Rule.

Justification for Interim Final Rule

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds the procedures for comment and response contrary to public interest.

This interim final rule extends the date that State, tribal, and local governments have to develop mitigation plans required as a condition of FEMA grant assistance. State, tribal, and local governments are currently under the assumption that plans are required by November 1, 2003, whereas this interim final rule extends that date to November 1, 2004 for the HMGP. It does not affect the date for compliance for other programs, such as the Pre-disaster Mitigation (PDM) program. In order for State, local and tribal resources to be appropriately identified and used, it is essential that the date extension be made effective as soon as possible. We believe it is contrary to the public interest to delay the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), we find that there is good cause for the interim final rule to take effect immediately upon publication in the **Federal Register** in order to meet the needs of States and communities by identifying the new effective date for planning requirement under 44 CFR part 201. Therefore, we find that prior notice and comment on this rule would not further the public interest. We actively encourage and solicit comments on this interim final rule from interested parties, and we will consider them as well as those submitted on the original interim final planning rule in preparing the final rule. For these reasons, we believe we have good cause to publish an interim final rule.

National Environmental Policy Act

44 CFR 10.8(d)(2)(ii) excludes this rule from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(iii), such as the development of plans under this section.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to review by The Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive 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.

The purpose of this rule is to extend the date by which State and local governments have to prepare or update their plans to meet the criteria identified in 44 CFR part 201. The original date, November 1, 2003, was determined to be difficult to meet. This interim final rule extends that date to November 1, 2004 for the post disaster Hazard Mitigation Grant Program. The date of November 1, 2003 will still apply to project grants under the Pre-disaster Mitigation program. As such, the rule itself will not have an effect on the economy of more than $100,000,000.

Therefore, this rule is not a significant regulatory action and is not an economically significant rule under Executive Order 12866. OMB has not reviewed this rule under Executive Order 12866.

Executive Order 12898, Environmental Justice

Under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, we incorporate environmental justice into our policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in our programs, denying persons the benefits of our programs, or subjecting persons to discrimination because of their race, color, or national origin.

No action that we can anticipate under the final rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. This rule extends the date for development or update of State and local mitigation plans in compliance with 44 CFR part 201. Accordingly, the requirements of Executive Order 12898 do not apply to this interim final rule.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) we submitted a request for review and approval of a new collection of information when the initial interim final rule was published on February 26, 2002. OMB approved this collection of information for use through August 31, 2002, under the emergency processing procedures in OMB regulation 5 CFR 1320.1, OMB Number 3067–0297. There have been no changes to the collection of information, and we have submitted a request for OMB approval to continue the use of the collection of information for a term of three years. The request is being processed under OMB's normal clearance procedures in accordance with provisions of OMB regulation 5 CFR 1320.11.

This new interim final rule simply extends the date by which States and communities have to comply with the planning requirements, and clarifies which FEMA programs are affected by these requirements. The changes do not affect the collection of information; therefore, no change to the request for the collection of information is necessary. In summary, this interim final rule complies with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the OMB paperwork clearance package by contacting Ms. Muriel Anderson at (202) 646–2625 (voice), (202) 646–3347 (facsimile), or by e-mail at *informationcollectios@fema.gov*.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

We will continue to evaluate the planning requirements and will work with interested parties as we implement the planning requirements of 44 CFR part 201. In addition, we actively encourage and solicit comments on this interim final rule from interested parties, and we will consider them in preparing the final rule.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

We have reviewed this interim final rule under Executive Order 13175, which became effective on February 6, 2001. In reviewing the interim final rule, we find that it does not have ''tribal implications'' as defined in Executive Order 13175 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. Moreover, the interim final rule does not impose substantial direct compliance costs on tribal governments, nor does it preempt tribal law, impair treaty rights or limit the self-governing powers of tribal governments.

Congressional Review of Agency Rulemaking

We have sent this interim final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104–121. The rule is a not ''major rule'' within the meaning of that Act. It is an administrative action to extend the time State and local governments have to prepare mitigation plans required by section 322 of the Stafford Act, as enacted in DMA 2000.

The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is subject to the information collection requirements of the Paperwork Reduction Act, and OMB has assigned Control No. 3067–0297. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, and any enforceable duties that we impose are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Parts 201 and Part 206

Administrative practice and procedure, Disaster assistance, Grant programs, Mitigation planning, Reporting and record keeping requirements.

Accordingly, amend 44 CFR, chapter I, as follows:

PART 201—MITIGATION PLANNING

1. The authority for Part 201 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Revise § 201.3(c)(3) to read as follows:

§ 201.3 Responsibilities.

* * * * *

(c) * * *

(3) At a minimum, review and, if necessary, update the Standard State Mitigation Plan by November 1, 2004 and every three years from the date of the approval of the previous plan in order to continue program eligibility.

* * * * *

3. Revise § 201.4(a) to read as follows:

§ 201.1 Standard State Mitigation Plans.

(a) *Plan requirement.* By November 1, 2004, States must have an approved Standard State Mitigation plan meeting the requirements of this section in order to receive assistance under the Stafford Act, although assistance authorized under disasters declared prior to November 1, 2004 will continue to be made available. Until that date, existing, FEMA approved State Mitigation Plans will be accepted. In any case, emergency assistance provided under 42 U.S.C 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. The mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing the effects of natural hazards. States may choose to include the requirements of the HMGP Administrative Plan in their mitigation plan, but must comply with the updates, amendments or revisions requirement listed under 44 CFR 206.437.

* * * * *

4. Revise § 201.6(a) to read as follows:

§ 201.6 Local Mitigation Plans.

* * * * *

(a) *Plan requirements.*

(1) For disasters declared after November 1, 2004, a local government must have a mitigation plan approved pursuant to this section in order to receive HMGP project grants. Until November 1, 2004, local mitigation plans may be developed concurrent with the implementation of the HMGP project grant.

(2) By November 1, 2003, local governments must have a mitigation plan approved pursuant to this section in order to receive a project grant through the Pre-Disaster Mitigation (PDM) program, authorized under § 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5133. PDM planning grants will continue to be made available to all local governments after this time to enable them to meet the requirements of this section.

(3) Regional Directors may grant an exception to the plan requirement in extraordinary circumstances, such as in a small and impoverished community, when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant's termination will not be reimbursed by FEMA.

(4) Multi-jurisdictional plans (*e.g.* watershed plans) may be accepted, as appropriate, as long as each jurisdiction has participated in the process and has officially adopted the plan. State-wide plans will not be accepted as multi-jurisdictional plans.

* * * * *

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

4. The authority for Part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

5. Revise § 206.432(b)(1) to read as follows:

§ 206.432 Federal grant assistance.

* * * * *

(b) * * *

(1) *Fifteen (15) Percent.* Effective November 1, 2004, a State with an approved Standard State Mitigation Plan, which meets the requirements outlined in 44 CFR 201.4, shall be eligible for assistance under the HMGP not to exceed 15 percent of the total estimated Federal assistance described in this paragraph. Until that date, existing, FEMA approved State Mitigation Plans will be accepted.

* * * * *

6. Revise § 206.434(b)(1) to read as follows:

§ 206.434 Elgibility.

* * * * *

(b) * * *

(1) For all disasters declared on or after November 1, 2004, local and tribal government applicants for subgrants must have an approved local mitigation plan in accordance with 44 CFR 201.6 prior to receipt of HMGP subgrant funding. Until November 1, 2004, local mitigation plans may be developed concurrent with the implementation of subgrants.

* * * * *

Dated: September 26, 2002.

Joe M. Allbaugh,

Director.

[FR Doc. 02–24998 Filed 9–30–02; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2315, MB Docket No. 02–130, RM–10438]

Digital Television Broadcast Service; Des Moines, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Frank Duross, Kaleidoscope Partners, Caroline K. Powley, JJJH, LLP, Stead Communications, and ValueVision International, Inc., applicants for a new television station to operate on analog channel 69 at Des Moines, Iowa, substitutes DTV channel 56 for channel 69 at Des Moines. *See* 67 FR 39932, June 11, 2002. DTV channel 56 can be allotted to Des Moines in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates 41–38–05 N. and 93–34–46 W. with a power of 1000, HAAT of 151 meters and with a DTV service population of 645 thousand. With is action, this proceeding is terminated.

DATES: Effective November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–130, adopted September 18, 2002, and released September 24, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Iowa, is amended by removing TV channel 69 at Des Moines.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Iowa, is amended by adding DTV channel 56 at Des Moines.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–24896 Filed 9–30–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 206, 207, 217, 223, 237, 242, 245, and 247 and Appendix G to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update activity names and addresses and references to DoD publications.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Parts 206, 207, 217, 223, 237, 242, 245, and 247

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 206, 207, 217, 223, 237, 242, 245, and 247 and Appendix G to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR Parts 206, 207, 217, 223, 237, 242, 245, and 247 and Appendix G to subchapter I continues to read as follows:

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

PART 206—COMPETITION REQUIREMENTS

206.302–2 [Amended]

2. Section 206.302–2 is amended in paragraph (b)(iv) by removing ''DoDD 4410.6, Uniform Material Movement and Issue Priority System'' and adding in its place ''DoD 4140.1–R, DoD Materiel Management Regulation''.

PART 207—ACQUISITION PLANNING

207.103 [Amended]

3. Section 207.103 is amended in paragraph (h) introductory text, paragraph (h)(i)(A), twice in paragraph (h)(i)(B), paragraph (h)(i)(C), paragraph (h)(ii) introductory text, and paragraph (h)(ii)(B) in the second sentence, by removing ''SCMA'' and adding in its place ''SMCA''.

207.105 [Amended]

4. Section 207.105 is amended as follows:

a. In the introductory text, in the first sentence, by removing the parenthetical ''(c)'' and adding in its place ''(d)'; and

b. In paragraph (b)(19)(C), by removing ''DoDD 4210.15, Hazardous Material Pollution Prevention'' and adding in its place ''DoD Instruction 4715.4, Pollution Prevention''.

PART 217—SPECIAL CONTRACTING METHODS

217.7600 [Amended]

5. Section 217.7600 is amended in the second sentence by removing ''DoDD 4140.40, Provisioning of End Items of Material'' and adding in its place ''DoD 4140.1–R, DoD Materiel Management Regulation, Chapter 1''.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

223.7100 [Amended]

6. Section 223.7100 is amended in the second sentence by removing ''DoD Directive 6050.8, Storage and Disposal of Non-DoD-Owned Hazardous or Toxic Materials on DoD Installations'' and adding in its place ''DoD Instruction 4715.6, Environmental Compliance''.

223.7102 [Amended]

7. Section 223.7102 is amended in paragraph (b) by removing ''DoD Directive 6050.8'' and adding in its place ''DoD Instruction 4715.6''.

PART 237—SERVICE CONTRACTING

237.104 [Amended]

8. Section 237.104 is amended in paragraph (b)(ii)(C)*(1)*, in the first sentence, by removing ''Contracting Authority for Direct'' and adding in its place ''Contracts for''.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.1105 [Amended]

9. Section 242.1105 is amended in paragraph (1)(i) by removing ''DoD Directive 4410.6, Uniform Materiel Movement and Issue Priority System'' and adding in its place ''DoD 4140.1–R, DoD Materiel Management Regulation''.

PART 245—GOVERNMENT PROPERTY

245.403 [Amended]

10. Section 245.403 is amended in paragraph (1), in the second sentence, by removing ''Products and Technology'' and adding in its place ''Items'; and by removing ''combat'' and adding in its place ''military''.

245.609 [Amended]

11. Section 245.609 is amended in the second sentence by removing ''Reutilization and Disposal'' and adding in its place ''Materiel Disposition''.

PART 247—TRANSPORTATION

247.305–10 [Amended]

12. Section 247.305–10 is amended in paragraph (b)(i)(A)*(3)* by removing ''DoD 4500.32–R, Military Standard Transportation and Movement Procedures (MILSTAMP)'' and adding in its place ''DoD 4500.9–R, Defense Transportation Regulation''.

247.371 [Amended]

13. Section 247.371 is amended by removing ''DoD Regulation 4500.32–R, MILSTAMP'' and adding in its place ''DoD 4500.9–R, Defense Transportation Regulation''.

Appendix G—Activity Address Numbers

14. Appendix G to Chapter 2 is amended in Part 6 by adding, after entry SP0999, entries SPE100 through SPM999 to read as follows:

PART 6—DEFENSE LOGISTICS AGENCY ACTIVITY ADDRESS NUMBERS

* * * * *

Appendix G—Activity Address Numbers

SPE100, TW Defense Supply Center Philadelphia, Directorate of Clothing & Textiles, 700 Robbins Avenue, Philadelphia, PA, 19111–5096

SPE103, W7 Defense Supply Center Philadelphia, Installation Support, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPE200, TX Defense Supply Center Philadelphia, Directorate of Medical Materiel, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPE300, UE Defense Supply Center Philadelphia, Directorate of Subsistence, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPE302, W6 Defense Supply Center Philadelphia, DSCP–Pacific, 2155 Mariner Square Loop, Alameda, CA 94501–1022

SPE303, U6 Defense Supply Center Philadelphia, DSCP–Europe, APO AE 09052–5000

SPE400, TY, XK, Z1, Z3, Z6, Y8, XH Defense Supply Center Richmond, Business Operations, 8000 Jefferson Davis Highway, Richmond, VA 23297–5770

SPE410, XH Defense Supply Center Richmond, Supplier Operations—Acquisition Mgmt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5720

SPE411, TY Defense Supply Center Richmond, Proc Br (ESOC), Customer Asst Ctr, 8000 Jefferson Davis Highway, Richmond, VA 23297–5871

SPE413, TY Defense Supply Center Richmond, Spec Purchase Br, Prod Ctr Spt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5864

SPE414, TY Defense Supply Center Richmond, SASPS Phase I Br, Prod Ctr Spt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5864

SPE415, TY Defense Supply Center Richmond, Supplier Operations—Hamilton Sunstrand, 8000 Jefferson Davis Highway, Richmond, VA 23297–5728

SPE416, TY Defense Supply Center Richmond, Supplier Operations—Boeing, 8000 Jefferson Davis Highway, Richmond, VA 23297–5729

SPE417, TY Defense Supply Center Richmond, Supplier Operations—Honeywell, 8000 Jefferson Davis Highway, Richmond, VA 23297–5730

SPE418, TY Defense Supply Center Richmond, Supplier Operations—Lockheed Martin, 8000 Jefferson Davis Highway, Richmond, VA 23297–5731

SPE419, TY Defense Supply Center Richmond, Supplier Operations—BAE, 8000 Jefferson Davis Highway, Richmond, VA 23297–5732

SPE420, TY Defense Supply Center Richmond, Supplier Operations—General Electric, 8000 Jefferson Davis Highway, Richmond, VA 23297–5733

SPE430, TY Defense Supply Center Richmond, Procurement Branch, Product Center 5, 8000 Jefferson Davis Highway, Richmond, VA 23297–5813

SPE440, TY Defense Supply Center Richmond, Procurement Branch, Product Center 7, 8000 Jefferson Davis Highway, Richmond, VA 23297–5834

SPE441, TY Defense Supply Center Richmond, Procurement Branch, Product Center 6, 8000 Jefferson Davis Highway, Richmond, VA 23297–5822

SPE450, TY Defense Supply Center Richmond, Procurement Branch, Product Center 4, 8000 Jefferson Davis Highway, Richmond, VA 23297–5800

SPE451, TY Defense Supply Center Richmond, Procurement Branch, Product Center 2, 8000 Jefferson Davis Highway, Richmond, VA 23297–5787

SPE460, TY Defense Supply Center Richmond, Procurement Branch, Product Center 1, 8000 Jefferson Davis Highway, Richmond, VA 23297–5772

SPE461, TY Defense Supply Center Richmond, Special Purchase Branch (SPUR), 8000 Jefferson Davis Highway, Richmond, VA 23297–5864

SPE470, TY Defense Supply Center Richmond, Procurement Branch, Product Center 10, 8000 Jefferson Davis Highway, Richmond, VA 23297–5352

SPE475, TY Defense Supply Center Richmond, Procurement Branch, Product Center 11, 8000 Jefferson Davis Highway, Richmond, VA 23297–5361

SPE480, TY Defense Supply Center Richmond, Procurement Branch, Product Center 3, 8000 Jefferson Davis Highway, Richmond, VA 23297–5877

SPE490, TY Defense Supply Center Richmond, Procurement Branch, Product Center 8, 8000 Jefferson Davis Highway, Richmond, VA 23297–5846

SPE499 Defense Supply Center Richmond, Special Purchase Branch, Project Orders, 8000 Jefferson Davis Highway, Richmond, VA 23297–5864

SPE500, TZ, WU Defense Supply Center Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPE510 Defense Supply Center Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPE520 Defense Supply Center Philadelphia, Product Verification Testing Acquisition, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPE540 Defense Supply Center Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPE560 Defense Supply Center Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPE580 Defense Supply Center Philadelphia, Special Programs, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPE599 Defense Supply Center Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPE700, UB, UZ, U3 Defense Supply Center Columbus, PO Box 3990, Columbus, OH 43216–3990

SPE701 Defense Supply Center Columbus, ATTN: DSCC–OT, Building 20, Fourth Floor, Columbus, OH 43216–5000

SPE710, YL Defense Supply Center Columbus, Base Contracting, PO Box 16704, Columbus, OH 43216–5010

SPE720, YM Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5010

SPE730, WZ Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5010

SPE740, XJ Defense Supply Center Columbus, Aerospace Solicitations/Awards, PO Box 3990, Columbus, OH 43216–5000

SPE749 Defense Supply Center Columbus, Aerospace/Public Manufacturing, PO Box 3990, Columbus, OH 43216–3990

SPE750, UB Defense Supply Center Columbus, Land Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010

SPE759 Defense Supply Center Columbus, Land Public Manufacturing, PO Box 16704, Columbus, OH 43216–5010

SPE760, UB Defense Supply Center Columbus, Maritime Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010

SPE769 Defense Supply Center Columbus, Maritime Public Manufacturing, PO Box 16704, Columbus, OH 43216–5010
SPE770, UB Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5010
SPE779 Defense Supply Center Columbus, Public Manufacturing, PO Box 16704, Columbus, OH 43216–5010
SPE780 Defense Supply Center Columbus, Government Furnished Property Account, ATTN: DSCC–PAPB GFP, Building 20 A2N, 3990 East Broad Street, Columbus, OH 43216–5000
SPE799 Defense Supply Center Columbus-FCIM, PO Box 3990, Columbus, OH 43216–5000
SPE900, UD Defense Supply Center Columbus, Electronics, PO Box 16704, Columbus, OH 43216–5010
SPE905 Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5010
SPE910, U7 Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5010
SPE920, W4 Defense Supply Center Columbus, Electro Mechanical, PO Box 16704, Columbus, OH 43216–5010
SPE930 Defense Supply Center Columbus, Switches, PO Box 16704, Columbus, OH 43216–5000
SPE935 Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5000
SPE960 Defense Supply Center Columbus, Active Devices, PO Box 16704, Columbus, OH 43216–5000
SPE970 Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5000
SPE999 Defense Supply Center Columbus-FCIM, PO Box 16704, Columbus, OH 43216–5000
SPM100, TW Defense Supply Center Philadelphia, Directorate of Clothing & Textiles, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SPM103, W7 Defense Supply Center Philadelphia, Installation Support, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SPM200, TX Defense Supply Center Philadelphia, Directorate of Medical Materiel, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SPM300, UE Defense Supply Center Philadelphia, Directorate of Subsistence, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SPM302, W6 Defense Supply Center Philadelphia, DSCP-Pacific, 2155 Mariner Square Loop, Alameda, CA 94501–1022
SPM303, U6 Defense Supply Center Philadelphia, DSCP-Europe, APO AE 09052–5000
SPM400, TY, XK, Z1, Z3, Z6, Y8, XH Defense Supply Center Richmond, Business Operations, 8000 Jefferson Davis Highway, Richmond, VA 23297–5770
SPM410, XH Defense Supply Center Richmond, Supplier Operations—Acquisition Mgmt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5720
SPM411, TY Defense Supply Center Richmond, Proc Br (ESOC), Customer Asst Ctr, 8000 Jefferson Davis Highway, Richmond, VA 23297–5871
SPM413, TY Defense Supply Center Richmond, Spec Purchase Br, Prod Ctr Spt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5864
SPM414, TY Defense Supply Center Richmond, SASPS Phase I Br, Prod Ctr Spt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5864
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SPM419, TY Defense Supply Center Richmond, Supplier Operations—BAE, 8000 Jefferson Davis Highway, Richmond, VA 23297–5732
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SPM460, TY Defense Supply Center Richmond, Procurement Branch, Product Center 1, 8000 Jefferson Davis Highway, Richmond, VA 23297–5772
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SPM470, TY Defense Supply Center Richmond, Procurement Branch, Product Center 10, 8000 Jefferson Davis Highway, Richmond, VA 23297–5352
SPM475, TY Defense Supply Center Richmond, Procurement Branch, Product Center 11, 8000 Jefferson Davis Highway, Richmond, VA 23297–5361
SPM480, TY Defense Supply Center Richmond, Procurement Branch, Product Center 3, 8000 Jefferson Davis Highway, Richmond, VA 23297–5877
SPM490, TY Defense Supply Center Richmond, Procurement Branch, Product Center 8, 8000 Jefferson Davis Highway, Richmond, VA 23297–5846
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SPM730, WZ Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5010
SPM740, XJ Defense Supply Center Columbus, Aerospace Solicitations/Awards, PO Box 3990, Columbus, OH 43216–5000
SPM749 Defense Supply Center Columbus, Aerospace/Public Manufacturing, PO Box 3990, Columbus, OH 43216–3990
SPM750, UB Defense Supply Center Columbus, Land Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010
SPM759 Defense Supply Center Columbus, Land Public Manufacturing, PO Box 16704, Columbus, OH 43216–5010
SPM760, UB Defense Supply Center Columbus, Maritime Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010
SPM769 Defense Supply Center Columbus, Maritime Public Manufacturing, PO Box 16704, Columbus, OH 43216–5010
SPM770, UB Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5010
SPM779 Defense Supply Center Columbus, Public Manufacturing, PO Box 16704, Columbus, OH 43216–5010
SPM780 Defense Supply Center Columbus, Government Furnished Property Account, Attn: DSCC–PAPB GFP,

Building 20 A2N, 3990 East Broad Street, Columbus, OH 43216–5000
SPM799 Defense Supply Center Columbus-FCIM, PO Box 3990, Columbus, OH 43216–5000
SPM900, UD Defense Supply Center Columbus, Electronics, PO Box 16704, Columbus, OH 43216–5010
SPM905 Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5010
SPM910, U7 Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5010
SPM920, W4 Defense Supply Center Columbus, Electro Mechanical, PO Box 16704, Columbus, OH 43216–5010
SPM930 Defense Supply Center Columbus, Switches, PO Box 16704, Columbus, OH 43216–5000
SPM935 Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5000
SPM960 Defense Supply Center Columbus, Active Devices, PO Box 16704, Columbus, OH 43216–5000
SPM970 Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5000
SPM999 Defense Supply Center Columbus-FCIM, PO Box 16704, Columbus, OH 43216–5000

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[FR Doc. 02–24717 Filed 9–30–02; 8:45 am]
BILLING CODE 5001–08–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1833 and 1852

RIN 2700–AC33

Approval Authority for Contract Actions Pending Resolution of an Agency Protest

AGENCY: National Aeronautics And Space Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the NASA FAR Supplement (NFS) to specify the approval authority to award a contract or continue contract performance when a protest is filed directly with the agency. It also makes administrative changes to specify internal NASA distribution requirements for protest notifications and to correct a position title.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–0478; e-mail: *thomas.otoole@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

FAR 33.103 and 33.104 address protests to the agency and the General Accounting Office (GAO), respectively. Both FAR sections allow an agency to establish an approval authority for awarding a contract when a protest is received prior to contract award and for continuing contract performance when a protest is received after award. NFS 1833.104(b)(1) and (c)(2) already specify that the Assistant Administrator for Procurement is the approval authority for those actions when a protest is filed with GAO, but no authority is specified relative to agency protests. To ensure the same degree of review and approval regardless of the forum where the protest is filed, this change to the NFS establishes the Assistant Administrator for Procurement as the approval authority for contract award and continuing contract performance for agency protests.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS Parts 1833 and 1852 in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1833 and 1852

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1833 and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1833 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1833—PROTEST, DISPUTES, AND APPEALS

2. Amend section 1833.103 by deleting the word ''Deputy'' in paragraph (c), and by revising paragraph (f) to read as follows:

1833.103 Protests to the agency.

* * * * *

(f) Protests received at NASA offices or locations other than that of the cognizant contracting officer shall be immediately referred to the contracting officer for disposition (see 1833.106(a)). The contracting officer shall advise the Headquarters Offices of Procurement (Code HS) and the General Counsel (Code GK) of the receipt of the protest and the planned and actual disposition. This paragraph does not apply when the protester has requested an independent review under the provision at 1852.233–70.

(1) The Assistant Administrator for Procurement (Code HS) is the approval authority for contract award.

(3) The Assistant Administrator for Procurement (Code HS) is the approval authority for authorizing continued contract performance.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.233–70 [Amended]

3. Amend section 1852.233–70 by revising the date of the provision to read ''Oct. 2002'' and by deleting the word ''Deputy'' each time it appears.

[FR Doc. 02–24773 Filed 9–30–02; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1852 and 1872

RIN 2700–AC33

Broad Agency Announcements

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule adopts with changes the proposed rule published in the **Federal Register** on August 31, 2001. This final rule amends the NASA FAR Supplement (NFS) to require, when relevant, consideration of safety and risk-based acquisition management in NASA's broad agency announcements. This change will ensure consistency in the way safety and risk based acquisition management are treated in all NASA acquisitions.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Brundage, NASA, Office of Procurement, Analysis Division (Code HC), (202) 358–0481, or e-mail: *paul.brundage@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

NASA recently made several changes to the NFS to address safety and risk based acquisition management (RBAM) in the acquisition planning processes for

negotiated procurements. This final rule makes corresponding changes to the proposal preparation processes for NASA's broad agency announcements (BAA). Two types of BAAs used by NASA include the Announcement of Opportunity (AO) and the NASA Research Announcement (NRA). This final rule amends the NASA FAR Supplement (NFS) to require, when relevant, consideration of safety and risk-based acquisition management in NASA's broad agency announcements. This change allows NASA to consider safety and RBAM as part of the proposal selection done under NASA's broad agency announcements. This change will ensure consistency in the way safety and RBAM are treated in all NASA acquisitions.

NASA published a proposed rule in the **Federal Register** at 66 FR 45955 on August 31, 2001. NASA received one comment on the proposed rule. The commenter suggested that risk analysis should not be imposed at early stages of research solely for consistency when it is unlikely there will be any identifiable risk that could benefit from a premature risk analysis. The commenter further recommended that NASA not require RBAM on BAAs unless the statement of work involved procurement, development, manufacture, and operation of hardware and equipment.

NASA included the phrase ''where they are relevant'' in its proposed rule because it agrees that in some cases the proposed work in response to a BAA may be so early in the development cycle that identification and discussion of risk factors may not be possible. However, NASA disagrees with the suggestion that risk factor identification and discussion occur only when the statement of work involves procurement, development, manufacture, and operation of hardware and equipment.

To ensure that the identification and discussion of risk factors is conducted when appropriate, NASA's proposed rule required the identification and discussion of risk factors and issues throughout the proposal ''where they are relevant.''

Relevancy of risk should be easily determinable, even during the initial BAA process. For example, research involving flight hardware, hazardous material, or potentially dangerous operations includes identifiable risks. In other cases, it may indeed be too early in the research process to identify and discuss risk factors, so such a discussion would not be relevant.

Moreover, BAAs include information that will help a proposer in determining whether an identification and discussion of risks may be relevant. For instance, AO's include, as applicable, safety, reliability, and quality assurance provisions. NRAs contain programmatic information and certain requirements and will generally specify topics for which additional information or greater detail is desirable. NASA is ensuring that areas that may involve potential risk are highlighted in AOs and NRAs by requiring the participation of the appropriate NASA Safety Offices in the NRA and AO (by this rule) processes.

It is anticipated and understood that the identification of risk factors where relevant will be consistent with the level of information available at the time of the proposal. Therefore, no change is being made as a result of comments received. Minor grammatical changes have been made to NFS section 1872.307.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because it does not impose new requirements. Rather, it focuses attention on safety and risk management.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any record keeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1852 and 1872

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1852 and 1872 are amended as follows:

1. The authority citation for 48 CFR 1852 and 1872 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Amend the clause at section 1852.235–72 by revising the clause date, redesignating paragraph (c)(11)(ii) as (c)(11)(iii), and adding a new paragraph (c)(11)(ii) to read as follows:

1852.235–72 Instructions for responding to NASA Research Announcements.

* * * * *

Instructions for Responding to NASA Research Announcements (Oct. 2002)

* * * * *

(c) * * *

(11) * * *

(ii) Identify and discuss risk factors and issues throughout the proposal where they are relevant, and your approach to managing these risks.

* * * * *

PART 1872 —ACQUISITION OF INVESTIGATIONS

3. Amend paragraph (b) of section 1872.303 by adding the words ''Office of Safety and Mission Assurance,'' immediately after ''Office of General Counsel,''.

4. Amend section 1872.307 by adding the following sentence at the end of paragraph (b) to read as follows:

1872.307 Guidelines for proposal preparation.

* * * * *

(b) * * * Investigators shall be required to identify and discuss risk factors and issues throughout the proposal where they are relevant, and describe their approach to managing these risks.

5. Amend section 1872.402, by redesignating paragraph (b)(7) as (b)(8), and adding a new paragraph (b)(7) to read as follows:

1872.402 Criteria for evaluation.

* * * * *

(b) * * *

(7) The proposed approach to managing risk (*e.g.*, level of technology maturity being applied or developed, technical complexity, performance specifications and tolerances, delivery schedule, etc.).

* * * * *

6. Amend section 1872.705 by redesignating sections II, III, IV, V, VI, VII, VIII, and IX as III, IV, V, VI, VII, VIII, IX, and X respectively, and adding a new section II to read as follows:

1872.705 Format of Announcement of Opportunity (AO).

* * * * *

II. NASA's Safety Priority

Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect:

(1) The public,

(2) Astronauts and pilots,

(3) The NASA workforce (including NASA employees working under NASA instruments), and

(4) High-value equipment and property.

* * * * *

[FR Doc. 02–24774 Filed 9–30–02; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2002–13431]

RIN 2105–AD13

Procedures for Transportation Workplace Drug and Alcohol Testing Programs; Procedures for Non-Evidential Alcohol Screening Devices

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT) originally established procedures for use of non-evidential alcohol screening devices (ASDs) in April, 1995. At that time, we indicated that as additional ASDs were determined by the National Highway Traffic Safety Administration (NHTSA) to be capable of detecting the presence of alcohol at the 0.02 or greater level of alcohol concentration, they would be suitable for use within DOT regulated industry testing programs. Because NHTSA has approved a device, the operating mechanism of which differs from other ASDs, the Department had no Part 40 procedures for its use. This rule establishes procedures for the use of this device.

DATES: This rule is effective October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Jim L. Swart, Drug and Alcohol Policy Advisor at 202–366–3784 (voice), 202–366–3897 (fax), or at: *jim.swart@ost.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background

When the Department originally published its alcohol testing rules on February 15, 1994 (54 FR 7302 *et seq.*), the Department established breath testing using evidential breath testing devices (EBTs) as the method to be used. However, in response to comments requesting additional flexibility in testing methods the Department said that NHTSA would develop model specifications, evaluate additional screening devices, and periodically publish a conforming products list of those additional screening devices that meet model specifications. The Department noted, too, that the Department would also have to undertake separate rulemaking proceedings to establish procedures for use by DOT-regulated industries of any devices after they are approved by NHTSA.

On April 20, 1995 (FR Vol. 60, No. 76), the Department published procedures for use of ASDs, both breath devices and saliva devices. At that time, the Department did not anticipate that additional devices would be developed that, while using breath or saliva as the means of obtaining a result, would necessitate new procedures for their use. As a result, the revised Part 40 (65 FR 79462) published December 19, 2000 stated, in part, that ASDs on the NHTSA conforming products list (CPL) could be used for Part 40 alcohol screening tests. Because NHTSA added an ASD to their CPL and the Department had no procedures for its use, we were forced to amend that rule. On August 9, 2001 (65 FR 41944) Part 40 was amended to read, ''You may use an ASD that is on the NHTSA CPL for DOT alcohol tests only if there are instructions for its use in this part.''

This effectively prevented use of this ASD for DOT testing purposes even though it was on NHTSA's CPL. The Department has taken steps to rectify this situation by developing procedures for this ASD's use and by amending the regulation accordingly. We have also taken the step to fine-tune the regulation to include in regulation text the fact that breath alcohol technicians (BAT), knowledgeable of how to use an ASD (or ASDs), can conduct screening tests using them.

Instructions for use of the breath tube are somewhat parallel to those for the saliva device. Both devices prohibit use of the device after the expiration date has been reached. Both have procedures for conducting additional tests if proper procedures cannot be followed. Both have some similar fatal flaw criteria.

The breath tube requires the STT or BAT to remove a tube from the box and break the device's ampule in the presence of the employee. The STT or BAT must then attach an inflation bag to the appropriate end of the tube. The employee is given the opportunity to hold the tube and provided instructions regarding how to blow (*i.e.*, forcefully and steadily for approximately 12 seconds) through the tube.

The rules also provide instructions for reading the results. In this case, the STT or BAT must compare the color of the crystals in the breath tube with the colored crystals on manufacturer-produced control tube. Comparisons must take place within specific time frames.

Fatal Flaws'' require tests to be cancelled. Problems with the breath tube which cause fatal flaws are: The STT or BAT reads the device either sooner or after than the time allotted; and the device is used after its expiration date.

The breath tube works this way. When a person's breath is blown though the tube it goes around and across the tube's crystals. If the person's breath contains no alcohol, the crystals remain their original color. However, if the person's breath contains alcohol, the alcohol causes a chemical reaction leading to a change in crystal color. A color change matching the color of crystals in the control tube is indicative of a screening test result that must subsequently be confirmed using an EBT. Such a color change indicates that the screening test result is 0.02 or above.

Regulatory Analyses and Notices

This rule is not a significant rule for purposes of Executive Order 12866 and DOT. It does not increase costs on regulated parties. In fact it may facilitate the use of a device that may increase flexibility, and decrease costs, for employers who choose to use them. There are not sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. To the extent that there is any such impact, it is expected to be a small favorable impact, since some small entities may be able to conduct screening tests at a lower cost.

The Department is issuing this as a final rule without opportunity for notice and public comment. The Department determined that doing so would be impracticable, unnecessary, and contrary to the public interest because this breath device already appears on NHTSA's CPL and has, therefore, proven to be an accurate screening device for Part 40 alcohol screening tests.

List of Subjects in 49 CFR Part 40

Alcohol testing, Drug testing, laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 20th day of September at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

For reasons set forth in the preamble, the Department of Transportation amends Part 40 of Title 49, Code of Federal Regulations, as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

1. The authority citation for 49 CFR part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*

2. Revised § 40.245 to read as follows:

§ 40.245 What is the procedure for an alcohol screening test using a saliva ASD or a breath tube ASD?

(a) As the STT or BAT, you must take the following steps when using the saliva ASD:

(1) Check the expiration date on the device or on the package containing the device and show it to the employee. You may not use the device after its expiration date.

(2) Open an individually wrapped or sealed package containing the device in the presence of the employee.

(3) Offer the employee the opportunity to use the device. If the employee uses it, you must instruct the employee to insert it into his or her mouth and use it in a manner described by the device's manufacturer.

(4) If the employee chooses not to use the device, or in all cases in which a new test is necessary because the device did not activate (see paragraph (a)(7) of this section), you must insert the device into the employee's mouth and gather saliva in the manner described by the device's manufacturer. You must wear single-use examination or similar gloves while doing so and change them following each test.

(5) When the device is removed from the employee's mouth, you must follow the manufacturer's instructions regarding necessary next steps in ensuring that the device has activated.

(6)(i) If you were unable to successfully follow the procedures of paragraphs (a)(3) through (a)(5) of this section (*e.g.*, the device breaks, you drop the device on the floor), you must discard the device and conduct a new test using a new device.

(ii) The new device you use must be one that has been under your control or that of the employee before the test.

(iii) You must note on the ''Remarks'' line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test.)

(iv) You must offer the employee the choice of using the device or having you use it unless the employee, in the opinion of the STT or BAT, was responsible (*e.g.*, the employee dropped the device) for the new test needing to be conducted.

(v) If you are unable to successfully follow the procedures of paragraphs (a)(3) through (a)(5) of this section on the new test, you must end the collection and put an explanation on the ''Remarks'' line of the ATF.

(vi) You must then direct the employee to take a new test immediately, using an EBT for the screening test.

(7) If you are able to successfully follow the procedures of paragraphs (a)(3)—(a)(5) of this section, but the device does not activate, you must discard the device and conduct a new test, in the same manner as provided in paragraph (a)(6) of this section. In this case, you must place the device into the employee's mouth to collect saliva for the new test.

(8) You must read the result displayed on the device no sooner than the device's manufacturer instructs. In all cases the result displayed must be read within 15 minutes of the test. You must then show the device and it's reading to the employee and enter the result on the ATF.

(9) You must never re-use devices, swabs, gloves or other materials used in saliva testing.

(10) You must note the fact that you used a saliva ASD in Step 3 of the ATF.

(b) As the STT or BAT, you must take the following steps when using the breath tube ASD:

(1) Check the expiration date on the device or on the package containing the device and show it to the employee. You must not use the device after its expiration date.

(2) Remove a device from the package and break the tube's ampule in the presence of the employee.

(3) Secure an inflation bag onto the appropriate end of the device, as directed by the manufacturer on the device's instructions.

(4) Offer the employee the opportunity to use the device. If the employee chooses to use (*e.g.* hold) the device, instruct the employee to blow forcefully and steadily into the blowing end of device until the inflation bag fills with air (approximately 12 seconds).

(5) If the employee chooses not to hold the device, you must hold it and provide the use instructions in paragraph (b)(4) of this section.

(6) When the employee completes the breath process, take the device from the employee (or if you were holding it, remove it from the employee's mouth); remove the inflation bag; and either hold the device or place it on a clean flat surface while waiting for the reading to appear.

(7)(i) If you were unable to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section (*e.g.*, the device breaks apart, the employee did not fill the inflation bag), you must discard the device and conduct a new test using a new one.

(ii) The new device you use must be one that has been under your control or that of the employer before the test.

(iii) You must note on the ''Remarks'' line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test.)

(iv) You must offer the employee the choice of holding the device or having you hold it unless the employee, in the your opinion, was responsible (*e.g.*, the employee failed to fill the inflation bag) for the new test needing to be conducted.

(v) If you are unable to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section on the new test, you must end the collection and put an explanation on the ''Remarks'' line of the ATF.

(vi) You must then direct the employee to take a new test immediately, using another type of ASD (*e.g.*, saliva device) or an EBT.

(8) If you were able to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section, you must compare the color of the crystals in the device with the colored crystals on the manufacturer-produced control tube no sooner than the manufacturer instructs. In all cases color comparisons must take place within 15 minutes of the test.

(9) You must follow the manufacturer's instructions for determining the result of the test. You must then show both the device and the control tube side-by-side to the employee and record the result on the ATF.

(10) You must never re-use devices or gloves used in breath tube testing. The inflation bag must be voided of air following removal from a device. One inflation bag can be used for up to 10 breath tube tests.

(11) You must note the fact that you used a breath tube device in Step 3 of the ATF.

3. Amend § 40.267 by revising the introductory text and paragraph (a) to read as follows:

§ 40.267 What problems always cause an alcohol test to be cancelled?

As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are ''fatal flaws.'' You must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are:

(a) In the case of a screening test conducted on a saliva ASD or a breath tube ASD:

(1) The STT or BAT reads the result either sooner than or later than the time allotted by the manufacturer and this Part (see § 40.245(a)(8) for the saliva ASD and §40.245(b)(8) for the breath tube ASD).

(2) The saliva ASD does not activate (*see* § 40.245(a)(7); or

(3) The device is used for a test after the expiration date printed on the device or on its package (see § 40.245(a)(1) for the saliva ASD and § 40.245(b)(1) for the breath tube ASD).

* * * * *

[FR Doc. 02–24731 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2001–10916, Notice 2]

RIN 2127–AI55

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: NHTSA has been mandated by Congress to consider whether to prescribe clearer and simpler labels and instructions for child restraints. This rule amends the requirements for child restraint labels and the written instructions that accompany child restraints. This rule makes changes to the format, location, and content of some of the existing requirements.

DATES: This final rule is effective October 1, 2003. Child restraints may be certified to the new requirements prior to this date. If you wish to submit a petition for reconsideration of this rule, your petition must be received by December 2, 2002.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mary Versailles of the NHTSA Office of Planning and Consumer Programs, at 202–366–2057.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel at 202–366–2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

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I. Overview

The National Highway Traffic Safety Administration (NHTSA) has been mandated by Congress to consider whether to prescribe clearer and simpler labels and instructions for child restraints (Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, November 1, 2000, Pub. L. 106–414, 114 Stat. 1800). Section 14 of the TREAD Act directed NHTSA to initiate a rulemaking for the purpose of improving the safety of child restraints by November 1, 2001, and to complete it by issuing a final rule or taking other action by November 1, 2002.

On November 2, 2001 (66 FR 55623), NHTSA published a notice of proposed rulemaking (NPRM) proposing changes to the format, location, and content of some of the existing labeling requirements of the Federal motor vehicle safety standard for child restraint systems (49 CFR 571.213). Specifically, NHTSA proposed (1) a requirement that some information be molded into or heat embossed to the shell to improve durability, (2) changes to existing location requirements for some labels, (3) a uniform font specified for all labels on all child restraints, (4) a requirement that most labels be white with black text, and (5) color-coding of installation information to distinguish forward-facing from rear-facing information. In addition, with regard to content, NHTSA proposed (6) a reworded warning statement, (7) a requirement that all mandated statements related to use be arranged below that statement in a bulleted form, (8) rewording of some of these statements to simplify their language, and (9) a new diagram showing the child restraint using a new child restraint anchorage system (see 49 CFR 571.213). With regard to written instructions, NHTSA proposed (10) conforming changes with those proposed for labels and (11) a new requirement for information to assist owners in determining the meaning of the term ''snugly'' used on child restraint labels. Last, NHTSA proposed (12) a new labeling requirement for harness slots.

After reviewing the comments received in response to the NPRM, and research conducted subsequent to the NPRM by Transport Canada, this final rule amends the current requirements for child restraint labels and the written instructions that accompany child restraints. Specifically, the agency is changing the existing location requirements for some labels (number 2 above), requiring most labels to be white with black text (number 4 above), rewording some label statements to simplify their language (number 8 above), requiring mandated statements on labels to be in a bulleted list headed by the statement ''WARNING! DEATH or SERIOUS INJURY can occur'' (number 6 and 7 above), requiring a new diagram showing the child restraint using the new child restraint anchorage system (number 9 above), and requiring some additional information defining the term ''snugly'' to be in the written instructions (number 11 above). The other changes proposed by the NPRM have not been adopted by this final rule.

II. Current Requirements

A. Labels

Federal Motor Vehicle Safety Standard (FMVSS) No. 213 (49 CFR 571.213) requires that all currently manufactured add-on child restraint systems [1] must be labeled with the following information (S5.5.2): the model name or number, the manufacturer's (or distributor's) name, the statement ''manufactured in (*month, year*),'' the place of manufacture (or location of the distributor's principal office), a certification statement, a statement concerning the manufacturer's recommendations for maximum mass and height of children who should use the child restraint, a warning statement concerning the consequences of failing to follow the instructions, statements about proper use of belts or other restraints as appropriate, an air bag warning label if the child restraint can be used rear-facing, an installation diagram, a registration statement for recalls, and a statement about use in motor vehicles and/or aircraft as appropriate.[2] This information must be in English, lettered not smaller than 10 point type, and on contrasting background, except the air bag warning label has very specific requirements for location and size.[3] The warning statement to follow the instructions, the statements about proper use of belts and other restraints, and the air bag warning must also be visible when the restraint is installed in a vehicle.

B. Written Instructions

Each add-on child restraint system must have printed installation instructions (an owner's manual) that includes a step-by-step procedure, including diagrams, for installing the system in motor vehicles, securing the system in the vehicles, positioning a child in the system, and adjusting the system to fit the child (S5.6). The installation instructions must include information on attaching the child restraint to a tether anchorage or a child restraint anchorage system [4] if appropriate. The owner's manual must also include a statement that children are safer in rear seating positions; information about the types of vehicles, seats and seat belts with which the restraint can or cannot be used; a statement about the consequences of not following the warnings; a statement that the restraint should be secured in the vehicle even when not occupied, an air bag warning statement, and a registration statement for recalls. There are also some specific statements about proper use required for various types of restraints. Finally, the child restraint must have a location on the restraint for storing the owner's manual.

III. Summary of Comments and Transport Canada Research

NHTSA received 14 comments on the proposal, from child restraint and automobile manufacturers, child restraint and automobile trade groups, and child safety consumer groups. In general, commenters were supportive of efforts to improve labels, and felt that overall the proposal would make existing labels simpler and easier to read. However, there were a number of comments about specific aspects of the proposal that will be discussed in the remainder of this notice.

The Alliance of Automobile Manufacturers objected to any changes in label and instruction requirements for built-in child restraints (other than simpler required wording and a bullet format). They asserted that requirements for built-ins would be unnecessary and burdensome without any safety benefit. The only additional changes to the requirements for built-in child restraints being adopted in this rule are black text on white background and the definition of ''snugly.'' For required information, a requirement for black text on a white background is just as effective at improving readability of built-in restraint labels as it is for add-on restraint labels. In addition, NHTSA is not aware of any information that there is less risk from improperly adjusting the straps on a built-in child restraint as there is on a add-on child restraint. Therefore, where built-in child restraints have the same current requirements as add-on child restraints parallel changes have been adopted.

Subsequent to the publication of the NPRM, Transport Canada conducted research on child restraint labels. The report for this research will be placed in the docket for this notice as soon as it is available. As part of that research, participants were asked to install a child restraint into a vehicle and then to install and secure a 6-month infant dummy and a 18-month child dummy. The order of the dummies was randomized. The child restraint was equipped with one of four label configurations. These configurations were:

(1) No labels,

(2) Existing manufacturer labels,

(3) Labels based on NHTSA's proposed changes to FMVSS 213, and

(4) Labels developed by Transport Canada based on a review of the human factors literature and an analysis of the tasks necessary to operate the seat chosen for the study.

After reviewing the Transport Canada study, NHTSA has concerns about some aspects of our proposal. Specifically, the study raised concerns about font, color-coding and harness slot labeling. Based on their review of the literature, Transport Canada concluded sans serif fonts were more readable, the opposite of NHTSA's research. Transport Canada's research shows that child restraints with color-coded instructions were oriented forward- or rear-facing correctly more often than child restraints without labels or with existing labels, but were still oriented incorrectly at least half of the time. The child restraint used in the Transport Canada study had an adjustable harness, rather than separate harness slots and therefore NHTSA's proposal was inappropriate for the design. Because of these findings, NHTSA believes that it would be advisable to conduct further research and then to repropose those issues in another rulemaking.

In discussing Transport Canada's research with us, Transport Canada has indicated that other research they are conducting on a performance requirement for label permanence is also promising and they expect to be able to propose a performance requirement when they begin their rulemaking. NHTSA would like to be able to review this research before making a final decision on the permanence and therefore will also repropose that issue in another rulemaking.

Therefore, this final rule will only address the following issues from the NPRM: location, background color, capital letters, height and weight statement, warning regarding the consequences of not following instructions, belt use statement, installation diagram, and voluntary labels. NHTSA plans to work with Transport Canada on a future proposal regarding further changes to the labels. NHTSA will consider any comments on those issues when it is developing that proposal.

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[1] Please note that the requirements for built-in child restraint systems are not summarized here. Factory-installed built-in's are required to have some, but not all, of the information required for add-on's, primarily due to the lack of need for warnings about proper installation. While this preamble will only discuss requirements in terms of add-on's, this final rule is also making conforming changes to the built-in labeling requirements. These changes can be found in the regulatory text for paragraphs S5.5.5, and S5.5.5(f) through (i).

[2] The use statement must be in red lettering and placed after the certification statement.

[3] These requirements can be found in S5.5.2(k)(4).

[4] See 49 CFR § 571.225.

IV. Changes to the General Label Requirements

The following sections discuss new format requirements for mandatory labels.

A. Location

NHTSA currently requires the warning statement about failure to follow the instructions, the statements about proper use of belts and other restraints, and the air bag warning to be visible when the restraint is installed in a vehicle. Location is not specified for other mandatory information. NHTSA proposed that all required information, other than model name or number, manufacturer name, manufacturing date, and place of manufacture, be labeled on the child restraint so that it is visible when the restraint is installed in a motor vehicle. This would have been a change for the requirements for the certification statement, height and weight labeling, the installation diagram, the registration statement, and the statement about use in motor vehicles and/or aircraft, which are not currently required to be visible by FMVSS No. 213.

Commenters sought clarification as to what the agency meant by ''visible.'' For example, must the label be visible from both sides of the vehicle? NHTSA did not intend to change what is currently meant by ''visible'' in S5.5.3, only to broaden the list of labels that needed to meet this requirement. The specified information must be visible from either side when the child restraint is installed as specified on the standard bench seat.

Commenters also argued that only information regarding installation and securing the child needed to be visible when the child restraint was installed in a vehicle. After reviewing the comments, NHTSA agrees that only information related to installation and securing the child needs to be visible once the restraint is installed. NHTSA's purpose in proposing changes to the existing requirements is to reduce misuse of child restraints. The certification statement and registration statements are not related to proper use and therefore would not decrease misuse by being visible. The statement about use in aircraft is used when boarding aircraft, not when the seat is installed in a vehicle. Therefore, the language of this section has been modified so that only the statement regarding height and weight and the installation diagrams have been added to the visibility requirement.

B. Background

NHTSA currently requires the information to be labeled ''on a contrasting background.'' NHTSA proposed to require all information to be in black text on a white background, except for the heading of the warnings which would be in black text on a yellow background.

Many commenters objected to this proposal, either because they felt that the current requirement for a contrasting background was sufficient, or because they felt that ''white'' was not specific enough to be enforceable. The Juvenile Products Manufacturers Association (JPMA) asked NHTSA to allow dark blue text to reduce costs.

As discussed in the NPRM, experience with existing labels shows that the current requirements are not sufficient. NHTSA is also not convinced that the use of the term ''white'' will cause problems. NHTSA has had a similar requirement for air bag labels for over five years and vehicle manufacturers have not had problems complying with the requirement for ''white.'' NHTSA believes that JPMA's comment was related to the proposal to color-code rear-facing information with blue. Because that proposal is not adopted by the final rule the cost issue should be moot. For these reasons, NHTSA is adopting the proposed requirement.

C. All Capital Letters

NHTSA proposed to delete the current requirement for block letters, and proposed that capital letters only be required in the heading for the warnings.

Commenters generally supported these proposals, but asked that the capitalization in the heading be changed to be consistent with the capitalization in the air bag warning label. This suggestion has been adopted in the final rule.

To clarify the capitalization requirements, NHTSA is amending S5.5.2(h) through (j), S5.5.5(h) and (i), and S5.6.1.10 so that the regulation is not written in all capitals. NHTSA has interpreted the requirements so that capital letters were not required. However, this change will clarify that normal sentence capitalization shall be used in labels and instructions, unless Standard No. 213 shows a word as all capital letters.

V. Changes to Label Contents

In the following subsections, NHTSA discusses changes and additions to mandated language for child restraint labels.

A. Statement Regarding Height and Weight

NHTSA proposed minor changes to simplify the language in the required statement regarding height and weight, so that it would read, ''Use only with children * * *'' NHTSA asked for comments on deleting the height references in these statements to further simplify them.

While only one commenter explicitly supported the simplified language, no commenter objected to it. Therefore, NHTSA is adopting the simplified language in this final rule.

With regard to deleting the height reference, only one commenter disagreed. Other commenters that supported deleting this reference noted that the important measures are seated height, which parents don't generally know, or the relative position of the child's head to the child restraint. One commenter suggested that the agency require a label with functional wording such as, ''This child seat should not be used rear-facing if the top of the child's head is above the red line.'' (see comment of National SAFE KIDS Campaign, NHTSA–2001–10916–14)

Despite the widespread support for deleting the reference to standing height, NHTSA is not doing so at this time. None of the commenters suggested that height was irrelevant to proper use, only that there may be better ways to convey this information. NHTSA plans to explore requirements for more functional wording, such as that suggested in these comments, in future research. In the interim, NHTSA believes that while standing height may not be a perfect indicator of proper fit, it is better than no information.

NHTSA has also added an option for seats that can only be used as belt-positioning seats to be labeled only with the maximum height the seat can be used for. NHTSA believes that by allowing manufacturers the option of labeling these seats only with the maximum height for which they can be used, we will more clearly convey the appropriate information to parents and caregivers. This will also allow manufacturers of these seats to label them consistent with NHTSA's policy that children who have outgrown child safety seats should use a booster seat until they are at least 8 years old, unless they are 4'9'' tall, regardless of weight.

B. Warning Regarding the Consequences of Not Following Instructions

NHTSA proposed to replace the current statement about the consequences of not following the instructions on child restraints with the following statement:

WARNING! DEATH OR SERIOUS INJURY CAN OCCUR

• Follow all instructions on this child restraint and in the written instructions located_____

This would be followed with additional bullets for any additional mandated statements, including the statement about maximum height and weight, and the statements about use of belts or other restraints. As discussed earlier, NHTSA also proposed to require the heading to be in black text on a yellow background and requested comments on whether it should require or allow the alert symbol used on the air bag warning label (see Figure 10 in FMVSS No. 213).

Generally commenters supported this proposal and the use of the alert symbol, but had some questions and suggestions. One commenter asked that only the alert symbol and the word ''warning'' be on a yellow background, consistent with the vehicle air bag warning label on the sun visor. One commenter objected to the proposed label, speculating that the proposed heading might lead parents to believe that the child restraint itself is a source of potential harm.

Because of the universal support for the alert symbol, NHTSA is requiring it in this final rule. NHTSA is not removing the phrase ''death or serious injury can occur'' from the heading. The commenter offered no evidence that this phrase would discourage child restraint use. NHTSA's research for other labels indicates that this statement is more likely to get the user's attention and cause them to read the warnings that follow than the word ''warning'' alone. This is particularly true for parents that are being provided information related to their children. However, NHTSA will explore this phrase in future research to ensure that it is not interpreted differently in this context. Because of the similarity between the new heading required for child restraint label warnings and the air bag warning label in vehicles, NHTSA is allowing manufacturers the option of having the phrase ''death or serious injury can occur'' on either a yellow or white background.

The Alliance of Automobile Manufacturers requested a minor change to the first bullet for built-in child restraints to read, ''Follow all instructions on this child restraint and in the vehicle's owner's manual.'' NHTSA agrees that this is simpler than language that would have been likely under the proposal (* * * in the written instructions located in the vehicle's owner's manual). Therefore, the requirements for built-in child restraints are modified to reflect this comment.

Graco, a child restraint manufacturer, asked if the label had to be one label or could be multiple labels as long as they were applied in the correct order. NHTSA is not requiring that the mandated warnings be on a single label, so long as the separate components are attached to the child restraint in the correct order and without any intervening labels.

C. Belt Use Statement

Because of concerns about the vagueness of the term ''snugly,'' NHTSA proposed requiring the following information to be included in the written instructions. This information is used in NHTSA's Standardized Child Passenger Safety Training Curriculum.

—A snug harness should not allow any slack. A snug harness should not, however, be so tight as to press into the child's body.

—A ''snug'' strap lies in a relatively straight line without sagging, but neither does it press on the child's flesh or push the child's body into an unnatural position.

Commenters did not strongly support this proposal, noting that the proposed language is fairly complicated. Some commenters suggested requiring a picture, though no specific pictures were suggested. One commenter noted that the information is not needed on self-adjusting harnesses.

NHTSA is not aware of a commonly used picture that could be used to illustrate how snugly to adjust a harness. Since further research will be required on other issues in light of the Transport Canada study, NHTSA could also develop and test one or more illustrations that could be required. In the interim, NHTSA is requiring a modified statement be included in the written instructions. In reviewing the comments NHTSA noted that the second half of the first statement was duplicated in the second statement.

The new statement is:

—A snug strap should not allow any slack. It lies in a relatively straight line without sagging. It does not press on the child's flesh or push the child's body into an unnatural position.

NHTSA is also modifying the language of the regulation requiring the ''snugly'' statement on child restraints and the explanatory statement in the written instructions to exclude belts that automatically adjust to fit the child.

D. Installation Diagram

NHTSA proposed to require an additional installation diagram showing the child restraint installed in a seating position with a child restraint anchorage system, and requested comments on whether the current requirement for a diagram showing the child restraint installed in a seating position equipped with a lap belt can be deleted.

Commenters uniformly support requiring a diagram showing a child restraint installed in a seating position with a child restraint anchorage system, and this proposal has been adopted.

Commenters were mixed in their opinions about whether NHTSA should delete the diagram of a child restraint installed in a seating position equipped with a lap belt. Commenters who disagreed with deleting this diagram noted that there are still a number of vehicles in use that have lap belts only at one or more seating positions. Ford stated that NHTSA should delete this requirement because in some vehicles the only position with a lap belt only is the center front position and some users may interpret this diagram to require them to install a rear-facing child restraint in this position.

With regard to the Ford comment, child restraints are required to have three different diagrams—lap belt only, lap/shoulder belt and a child restraint anchorage system. In addition there are numerous warnings against putting a rear-facing child restraint in the front seat of a vehicle with an air bag. Thus NHTSA believes there is sufficient contradictory information to prevent the interpretation Ford suggests.

In addition, NHTSA notes that in addition to all the vehicles currently in use with seating positions that have only a lap belt, lap/shoulder belts are also not required at all seating positions in vehicles being produced today. Therefore, there will be many instances where a child restraint user needs to know how to install the child restraint in a seating position with only a lap belt. Accordingly, NHTSA has not deleted the requirement for the lap belt only diagram.

VI. Language

In the NPRM, NHTSA requested comments on whether Spanish should be required on child restraint labels. While all commenters would have supported allowing other languages, many were critical of mandating another language. Those who were against mandating Spanish language labels noted that, combined with the visibility requirement, this could limit the amount of information a manufacturer could label on a child restraint. One commenter suggested requiring a statement both labeled on the child restraint and in the written instructions

directing the user to the availability of Spanish language instructions unless a manufacturer voluntarily used Spanish language labels and instructions.

While NHTSA encourages manufacturers to provide Spanish language labels and instructions, or labels and instructions in other languages if warranted by the target sales population, NHTSA is not convinced that it should mandate that manufacturers provide labels or instructions in any additional languages. NHTSA will continue to allow additional labels in languages other than English, however language has been added to the standard to specify that information in additional languages must be an accurate translation of the required information.

VII. Voluntary Labels

NHTSA requested comment on whether voluntary labels should be required to meet the same requirements as mandatory labels. Some commenters noted that this question was vague, but assumed that it referred to the requirements regarding visibility, font and color. These were indeed the types of requirements NHTSA was referring to. Most commenters, while noting that most manufacturers would use the same font or background colors, felt that this should not be required. Some of the concerns noted were space with the visibility requirement or effect on corporate logos.

NHTSA is not requiring voluntary labels to comply with any of the requirements for mandatory labels in this rule. NHTSA is sensitive to some of the possible concerns raised by the commenters and has decided that its current position that voluntary information is permitted as long as it does not distract from mandatory information is sufficient. However, to reinforce this NHTSA has added language to the standard that voluntary labels cannot distract from mandatory information. Such distraction could be caused by color, size, font or other visual attributes, not just content.

VIII. Other Issues

In the NPRM, NHTSA requested comment on mandating a minimum reading level for labels and written instructions in lieu of mandating specific language. One of the commenters on the NPRM, Uniformed Services University of the Health Sciences, stated that they had conducted readability tests on written instructions and found that they required a 10th grade reading level on average. NHTSA will reconsider mandating a minimum reading level for labels and written instructions after conducting more research.

NHTSA also asked for comments on the availability of on-line registration. Commenters supported this idea, as long as mail-in registration cards were still available for those who do not have access to the internet. In the next rulemaking NHTSA will propose changes to the registration card to make it easier for manufacturers to inform child restraint purchasers of such an option.

Commenters also raised issues not addressed in the NPRM. The Alliance of Automobile Manufacturers asked NHTSA to specify that metric measurements be listed first in the height and weight statements to harmonize with Canadian requirements. Because metric measurements are not the most commonly used in the United States, NHTSA is not considering such a mandate. However a 1996 interpretation letter to General Motors has stated that manufacturers have this option if they chose. Ford stated that there were still statements that were not in plain English. One suggested change regarding the statements about placing certain child restraints in a rear-facing position has been made since it parallels the proposed changes for the height/weight statements. Other suggestions will be considered in the next rulemaking. Any other suggestions for issues not raised in the NPRM, such as formats for dates, will be considered prior to issuing the next proposal.

IX. Effective Date

While NHTSA didn't propose a specific effective date, a couple of commenters addressed this issue. The Alliance of Automobile Manufacturers asked NHTSA to allow either the current or new requirements for several years because there is no safety need for changes for built-in child restraints. The Alliance also asked NHTSA to coordinate the effective date with rulemaking Transport Canada plans to do in the future. Evenflo, a child restraint manufacturer, asked for a one year leadtime, but noted that they could implement the proposed changes in 180 days if the molding requirement were dropped.

NHTSA is requiring all child restraints to comply with these new requirements within one year of the date of publication of this final rule. As discussed earlier, to the extent that built-in child restraints have requirements similar to add-on child restraints, there is no indication that the safety need to understand the required information is different. NHTSA cannot wait until an unspecified time in the future when Transport Canada will conduct rulemaking to coordinate effective dates because we have a statutory mandate to conduct rulemaking now. However, NHTSA hopes to coordinate the next rulemaking with Transport Canada, including effective dates. Since Evenflo indicated that it could comply within 180 days if there were no molding requirement and automobile manufacturers have complied with other labeling requirements within the same time frame, allowing a year should not impose an unreasonable burden. Manufacturers will be allowed to comply with either the existing requirements or the new requirements prior to that date.

X. Future Research

In the NPRM, NHTSA stated that it intended to conduct further passive evaluation,[5] at a minimum, prior to issuance of a final rule to verify that the changes have reduced the reading level necessary to comprehend the labels. NHTSA has not conducted this research prior to issuing this final rule. NHTSA intends to do this and other research prior to beginning the next rulemaking on child restraint labels. While the changes made in this final rule include recommendations made during the initial passive evaluation and therefore should improve readability, NHTSA anticipates that the changes made at this stage are modest and would result in only a minor change to the reading level required to comprehend child restraint labels. Therefore, we have decided that it would be a better use of agency resources to conduct further passive evaluation as part of the research NHTSA will be conducting for the next rulemaking, which will further improve the labels and are more likely to achieve the level of reduction in reading level that the agency would ultimately like to achieve. NHTSA expects to conduct additional research within the next year and begin another rulemaking after the completion of that research.

Prior to issuing this final rule, NHTSA has discussed which issues are covered with Transport Canada to ensure that they agree that these issues are not contraindicated by their research. Prior to beginning further research, NHTSA will work with Transport Canada to coordinate our research efforts to ensure that the efforts of both agencies are consistent.

[5] Passive evaluation refers to an evaluation based on the characteristics of the language, vocabulary and visual presentation of the information using standard readability measures, rather than an evaluation based on consumer feedback.

XI. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not ''significant'' under them. In the ''Final Economic Assessment, FMVSS No. 213, FMVSS No. 225, Child Restraint Systems, Child Restraint Anchorage Systems,'' February 1999, the agency estimated that there were 68 fatalities and 874 injuries caused annually by misuse of child restraints. We are unable to estimate the effectiveness of these proposals on this target population, but by providing clearer instructions we expect to reduce misuse.

NHTSA anticipates that the cost of changing the location and text of the labels to be minor. There is a cost for adding color, estimated to be $.01 to $.03 per label.

B. Regulatory Flexibility Act

The agency has considered the effects of this final rule under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the agency does not anticipant any significant economic impact from this final rule.

C. Paperwork Reduction Act

The Department of Transportation has not submitted an information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). The affected public is 10 child restraint manufacturers and 6 vehicle manufacturers. This rule does not impose any new information collection requirements on manufacturers. NHTSA does not anticipant a significant change to the hour burden or costs associated with child restraint labels and written instructions.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule has been analyzed in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this final rule does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The final rule would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

F. Executive Order 12778 (Civil Justice Reform)

This final rule would not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except if the state requirement imposes a higher level of performance and applies only to vehicles procured for the States' use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceeding before parties may file suite in court.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

There are no voluntary consensus standards available at this time. However, NHTSA will consider any such standards when they become available.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA 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 NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not result in the expenditure of more than $100 million annually.

I. Regulation Identifier Number

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Child restraint systems, Motor vehicle safety.

In consideration of the foregoing, NHTSA is amending 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166 and 30177; delegation of authority at 49 CFR 1.50.

2. Section 571.213 is amended by revising the introductory text of S5.5.2, S5.5.2(f), S5.5.2(g), S5.5.2(h), S5.5.2(i), S5.5.2(j), S5.5.2(k), S5.5.2(l), S5.5.3, the introductory text of S5.5.5, S5.5.5(f), S5.5.5(g), S5.5.5(h), S5.5.5(i), S5.6.1.10(a) and S5.6.1.10(b); redesignating existing S5.6.3 as S5.6.2.4 and existing S5.6.4 as S5.6.2.5; adding new introductory text to sections S5.5 and S5.6; and adding new section S5.6.3 to read as follows:

§ 571.213 Standard No. 213; Child Restraint Systems.

* * * * *

S5.5 *Labeling.*

Any labels or written instructions provided in addition to those required by this section shall not obscure or confuse the meaning of the required information or be otherwise misleading to the consumer. Any labels or written instructions other than in the English language shall be an accurate translation of English labels or written instructions.

* * * * *

S5.5.2 The information specified in paragraphs (a) through (m) of this section shall be stated in the English language and lettered in letters and numbers that are not smaller than 10 point type. Unless otherwise specified, the information shall be labeled on a white background with black text. Unless written in all capitals, the information shall be stated in sentence capitalization.

* * * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum mass of children who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg and seats that can only be used as belt-positioning seats may delete the reference to weight:

(1) Use only with children who weigh ____ pounds (____ kg) or less and whose height is (*insert values in English and metric units; use of word ''mass'' in label is optional*) or less; or

(2) Use only with children who weigh between ____ and ____ pounds (*insert appropriate English and metric values; use of word ''mass'' is optional*) and whose height is (*insert appropriate values in English and metric units*) or less and who are capable of sitting upright alone; or

(3) Use only with children who weigh between ____ and ____ pounds (*insert appropriate English and metric values; use of word ''mass'' is optional*) and whose height is (*insert appropriate values in English and metric units*) or less.

(g) The statements specified in paragraphs (1) and (2):

(1) A heading as specified in S5.5.2(k)(4)(i), with the statement ''WARNING! DEATH or SERIOUS INJURY can occur,'' capitalized as written and followed by bulleted statements in the following order:

(i) As appropriate, the statements required by the following sections will be bulleted and placed after the statement required by 5.5.2(g)(1) in the following order: 5.5.2(k)(1) or 5.5.2(k)(2), 5.5.2(f), 5.5.2(h), 5.5.2(j), and 5.5.2(i).

(ii) Secure this child restraint with the vehicle's child restraint anchorage system if available or with a vehicle belt.

(iii) Follow all instructions on this child restraint and in the written instructions located (*insert storage location on the restraint for the manufacturer's installation instruction booklet or sheet*).

(iv) Register your child restraint with the manufacturer.

(2) At the manufacturer's option, the phrase ''DEATH or SERIOUS INJURY can occur'' in the heading can be on either a white or yellow background.

(h) In the case of each child restraint system that has belts designed to restrain children using them and which do not adjust automatically to fit the child: Snugly adjust the belts provided with this child restraint around your child.

(i)(1) For a booster seat that is recommended for use with either a vehicle's Type I or Type II seat belt assembly, one of the following statements, as appropriate:

(i) Use only the vehicle's lap and shoulder belt system when restraining the child in this booster seat; or,

(ii) Use only the vehicle's lap belt system, or the lap belt part of a lap/shoulder belt system with the shoulder belt placed behind the child, when restraining the child in this seat.

(2)(i) Except as provided in paragraph (i)(2)(ii) of this section, for a booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies, the following statement: Use only the vehicle's lap belt system, or the lap belt part of a lap/shoulder belt system with the shoulder belt placed behind the child, when restraining the child with the (*insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield)*), and only the vehicle's lap and shoulder belt system when using the booster without the (*insert above description*).

(ii) A booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies is not subject to S5.5.2(i)(2)(i) if, when the booster is used with the shield or similar component, the booster will cause the shoulder belt to be located in a position other than in front of the child when the booster is installed. However, such a booster shall be labeled with a warning to use the booster with the vehicle's lap and shoulder belt system when using the booster without a shield.

(j) In the case of each child restraint system equipped with a top anchorage strap, the statement: Secure the top anchorage strap provided with this child restraint.

(k) (1) In the case of each rear-facing child restraint system that is designed for infants only, the statement: Use only in a rear-facing position when using it in the vehicle.

(2) In the case of a child restraint system that is designed to be used rearward-facing for infants and forward-facing for older children, the statement: Use only in a rear-facing position when using it with an infant weighing less than (*insert a recommended weight that is not less than 20 pounds*).

(3) Except as provided in (k)(4) of this section, each child restraint system that can be used in a rear-facing position shall have a label that conforms in content to Figure 10 and to the requirements of S5.5.2(k)(3)(i) through S5.5.2(k)(3)(iii) of this standard permanently affixed to the outer surface of the cushion or padding in or adjacent to the area where a child's head would

rest, so that the label is plainly visible and easily readable.

(i) The heading area shall be yellow with the word ''warning'' and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 square cm.

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 30 mm in diameter.

(4) If a child restraint system is equipped with a device that deactivates the passenger-side air bag in a vehicle when and only when the child restraint is installed in the vehicle and provides a signal, for at least 60 seconds after deactivation, that the air bag is deactivated, the label specified in Figure 10 may include the phrase ''unless air bag is off'' after ''on front seat with air bag.''

(l) An installation diagram showing the child restraint system installed in:

(1) A seating position equipped with a continuous-loop lap/shoulder belt;

(2) A seating position equipped with only a lap belt, as specified in the manufacturer's instructions; and

(3) A seating position equipped with a child restraint anchorage system.

* * * * *

S5.5.3 The information specified in S5.5.2(f) through (l) shall be located on the add-on child restraint system so that it is visible when the system is installed as specified in S5.6.1.

* * * * *

S5.5.5 The information specified in paragraphs (a) through (l) of this section that is required by S5.5.4 shall be in English and lettered in letters and numbers using a not smaller than 10 point type. Unless specified otherwise, the information shall be labeled on a white background with black text. Unless written in all capitals, the information shall be stated in sentence capitalization.

* * * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum mass of children who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg and seats that can only be used as belt-positioning seats may delete the reference to weight:

(1) Use only with children who weigh ____ pounds (____ kg) or less and whose height is (*insert values in English and metric units; use of word ''mass'' in label is optional*) or less; or

(2) Use only with children who weigh between ____ and ____ pounds (____ and ____ kg) and whose height is (*insert appropriate values in English and metric units; use of word ''mass'' in label is optional*) or less and who are capable of sitting upright alone; or

(3) Use only with children who weigh between ____ and ____ pounds (____ and ____ kg) and whose height is (*insert appropriate values in English and metric units; use of word ''mass'' in label is optional*) or less.

(g) The heading and statement specified in paragraph (1), and if appropriate, the statements in paragraph (2) and (3). If used, the statements in paragraphs (2) and (3) shall be bulleted and precede the bulleted statement required by paragraph (1) after the heading.

(1) A heading as specified in S5.5.2(k)(4)(i), with the statement ''WARNING! DEATH or SERIOUS INJURY can occur'' capitalized as written and followed by the bulleted statement: Follow all instructions on this child restraint and in the vehicle's owner's manual. At the manufacturer's option the phrase ''DEATH or SERIOUS INJURY can occur'' in the heading can be on either a white or yellow background.

(2) In the case of each built-in child restraint system which is not intended for use in motor vehicles in certain adjustment positions or under certain circumstances, an appropriate statement of the manufacturers restrictions regarding those positions or circumstances.

(3) As appropriate, the statements required by the following sections will be bulleted and placed after the statement required by 5.5.5(g)(1) in the following order: 5.5.5(g)(2), 5.5.5(f), S5.5.5(h) and S5.5.5(i).

(h) In the case of each built-in child restraint system that has belts designed to restrain children using them and which do not adjust automatically to fit the child: Snugly adjust the belts provided with this child restraint around your child.

(i) In the case of each built-in child restraint which can be used in a rear-facing position, the following statement: Place an infant in a rear-facing position in this child restraint.

* * * * *

S5.6 *Printed Instructions for Proper Use.*

Any labels or written instructions provided in addition to those required by this section shall not obscure or confuse the meaning of the required information or be otherwise misleading to the consumer. Any labels or written instructions other than in the English language shall be an accurate translation of English labels or written instructions. Unless written in all capitals, the information required by S5.6.1 through S5.6.3 shall be stated in sentence capitalization.

* * * * *

S5.6.1.10(a) For instructions for a booster seat that is recommended for use with either a vehicle's Type I or Type II seat belt assembly, one of the following statements, as appropriate, and the reasons for the statement:

(1) Warning! Use only the vehicle's lap and shoulder belt system when restraining the child in this booster seat; or,

(2) Warning! Use only the vehicle's lap belt system, or the lap belt part of a lap/shoulder belt system with the shoulder belt placed behind the child, when restraining the child in this seat.

(b)(1) Except as provided in S5.6.1.10(b)(2), the instructions for a booster seat that is recommended for use with both a vehicle's Type I and Type II seat belt assemblies shall include the following statement and the reasons therefor: Warning! Use only the vehicle's lap belt system, or the lap belt part of a lap/shoulder belt system with the shoulder belt placed behind the child, when restraining the child with the (*insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield*)), and only the vehicle's lap and shoulder belt system when using this booster without the (*insert above description*).

(2) A booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies is not subject to S5.6.1.10(b)(1) if, when the booster is used with the shield or similar component, the booster will cause the shoulder belt to be located in a position other than in front of the child when the booster is installed. However, the instructions for such a booster shall include a warning to use the booster with the vehicle's lap and shoulder belt system when using the booster without a shield.

* * * * *

S5.6.3 *Add-on and built-in child restraint systems.*

In the case of each child restraint system that has belts designed to restrain children using them and which do not adjust automatically to fit the child, the printed instructions shall include the following statement: A snug strap should not allow any slack. It lies in a relatively straight line without sagging. It does not press on the child's

flesh or push the child's body into an unnatural position.

* * * * *

Issued on September 26, 2002.

Annette M. Sandberg,

Deputy Administrator.

[FR Doc. 02–24936 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF30

Endangered and Threatened Wildlife and Plants; Amended Special Regulations for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: On May 22, 2001, the U.S. Fish and Wildlife Service adopted special regulations governing take of the threatened Preble's meadow jumping mouse (*Zapus hudsonius preblei*), which provide exemption from take provisions under section 9 of the Endangered Species Act for certain activities related to rodent control, ongoing agricultural activities, landscape maintenance, and perfected water rights. On August 30, 2001, the Service published a proposal to amend those regulations to provide additional exemptions. This action amends the regulations to exempt certain noxious weed control and ditch maintenance activities from the section 9 take prohibitions.

DATES: This amendment will be effective from October 1, 2002 through May 22, 2004.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service's Colorado Field Office, Ecological Services, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: In Colorado, contact LeRoy W. Carlson at the above address or telephone (303) 275–2370. In Wyoming, contact Mike Long, Field Supervisor, Cheyenne, Wyoming, at telephone (307) 772–2374.

SUPPLEMENTARY INFORMATION:

Background

The final rule listing the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Preble's) as a threatened species under the Endangered Species Act (Act) of 1973, as amended, (16 U.S.C. 1531 *et seq.*) was published in the **Federal Register** on May 13, 1998 (63 FR 26517). Section 9 of the Act prohibits take of endangered wildlife. The Act defines take to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct. However, the Act also provides for the authorization of take and exceptions to the take prohibitions. Take of listed species by non-Federal property owners can be permitted through the process set forth in section 10 of the Act. For federally funded or permitted activities, take of listed species may be allowed through the consultation process of section 7 of the Act. We, the Fish and Wildlife Service, have issued regulations (50 CFR 17.31) that generally apply to threatened wildlife the prohibitions that section 9 of the Act establishes with respect to endangered wildlife. Our regulations for threatened wildlife also provide that a ''special rule'' under section 4(d) of the Act can be tailored for a particular threatened species. In that case, the general regulations for some section 9 prohibitions do not apply to that species, and the special rule contains the prohibitions, and exemptions, necessary and advisable to conserve that species.

On December 3, 1998, we proposed a section 4(d) rule (63 FR 66777) to define conditions under which certain activities that could result in incidental take of Preble's would be exempt from the section 9 take prohibitions. We held two public meetings, attended by 129 people. We also received 614 comment letters. On May 22, 2001, we published a final rule (66 FR 28125) adopting certain portions of this proposal. Some comments received on the proposed rule suggested additional exemptions to promote conservation of the Preble's. On August 30, 2001, we published a proposed rule (66 FR 45829) to amend the section 4(d) rule to add special provisions providing exemptions from section 9 prohibitions for certain noxious weed control and ditch maintenance activities. We are now adopting the amendment providing these additional exemptions.

Summary of Comments and Recommendations

In the August 30, 2001, proposed amendment and associated notifications, we asked all interested parties to submit comments on the proposed amendment. We received nine comment letters in response to the proposed amendment to the 4(d) rule. The State of Wyoming sent comments from two of their State agencies under one cover letter. One Colorado and one Wyoming county submitted comments, as did a Colorado municipality. Two letters came from water and irrigation-related organizations or companies, one letter came from a real estate interest in the development community, and two letters came from ranching/agriculture-related groups.

Most of the comment letters acknowledged the need for the proposed exemptions. Many stated that the exemptions are necessary to allow citizens and companies to comply with State laws in both Colorado and Wyoming, and to improve landowner and ditch owner cooperation in conservation of the mouse and its habitat. The comments also generally recognized that the exemptions are necessary for the long-term maintenance of the ditches and the adjacent mouse habitat that is dependent upon those ditches.

Several of the comment letters expressed general concerns or questions about the validity of the Preble's listing and its scientific foundation, questions about uncertainty in distinguishing Preble's from similar species and the need for genetic testing, and requests that the listing be withdrawn or that the Service delist the Preble's. These issues are not germane to the proposed amendment and, therefore, are not discussed here.

Written comments received during the comment period that are specific to the proposed amendment are addressed in the following summary. Comments of a similar nature are grouped under a number of general issues.

Issues and Discussion

Issue 1—Two letters expressed confusion regarding the timeframe that the proposed amendment would be in place, believing that it extended or continued beyond the 36-month timeframe of the existing 4(d) rule.

Response—The amendment should run concurrently with the existing 4(d) rule that became effective on May 22, 2001 (66 FR 45829). Therefore, this rule should expire on May 22, 2004, at the same time as the existing 4(d) rule.

Issue 2—One commentor felt that the definition of noxious weeds is unclear and seems to apply only to plants designated on the State lists of noxious weeds as defined by Colorado and Wyoming. This letter suggests that the term ''noxious'' should be replaced with the term ''undesirable'' wherever it occurs in the rule.

Response—State statutes in both Colorado and Wyoming require noxious

weeds to be controlled. The term ''noxious'' is legally defined in statutory requirements to mean plant species that are nonindigenous and have negative impacts on crops, livestock, native plant communities, or the management of natural or agricultural systems. The term ''undesirable'' is not a legally defined term relating to these statutory requirements and is not consistent with our purpose to limit the exemption to control actions for ''noxious'' weeds as defined by the States of Colorado and Wyoming. This amendment exempting noxious weed control should alleviate possible conflicts due to the Preble's listing with statutory requirements regarding weed control activities in the States of Colorado and Wyoming and is consistent with the conservation of the Preble's.

Issue 3—The requirement for noxious weed control to be done pursuant to a weed management plan implemented in ''consultation with the weed control officer designated by the applicable county or municipal government'' will be administratively burdensome. The commentor suggests that ''consultation'' with local governments use a ''programmatic approach.''

Response—We discovered that our proposed rule language regarding noxious weed control did not properly consider regulations within the State of Wyoming. The Colorado Noxious Weed Act requires county and municipal governments to develop a recommended integrated management plan for noxious weed control and also requires that individual landowners either implement the county or local government plan or develop their own integrated management plans for their property. The Wyoming Weed and Pest Control Act requires weed management plans to be completed by the individual weed and pest districts and requires individual landowners to control noxious weeds identified by the State list and the local jurisdiction.

To more accurately reflect these State's regulations, we have changed the language of § 17.40 (l)(2)(vi) to read as follows:

(vi) *Noxious weed control.* Preble's meadow jumping mice may be taken incidental to noxious weed control that is conducted in accordance with:

(A) Federal Law, including Environmental Protection Agency label restrictions;

(B) Applicable State laws for noxious weed control;

(C) Applicable county bulletins;

(D) Herbicide application guidelines as prescribed by herbicide manufacturers; and

(E) Any future revisions to the authorities listed in paragraphs (1)(2)(vi)(A)–(D) of this section that apply to the herbicides proposed for use within the species' range.

The language in the proposed rule requiring a weed management plan and consultation with the weed control officer has been deleted. We intend to exempt those noxious weed control activities that are conducted in accordance with State law. We are willing to work with county and local municipality weed management personnel or other weed management professionals familiar with local areas to develop a suitable programmatic approach with reasonable and easy-to-follow guidelines.

In the event of future revisions to EPA label restrictions and herbicide application guidelines, users shall follow these revisions to assure protection of the Preble's meadow jumping mouse.

Issue 4—One commentor suggested that the standards for ''best available methods of integrated management'' be prescribed in the local weed management plan, and the required contents of such a plan should be understood and agreed to by the local governments prior to including this provision in the final rule.

Response—As addressed in the Response to Issue 3, the proposed language in section (vi) (B) referring to ''best available methods of integrated management'' language has been deleted from the rule. With this rule language, local governments and municipalities retain control over noxious weed management. We should exempt those noxious weed control activities that are conducted in accordance with State law.

The Colorado Noxious Weed Act requires that Integrated Pest Management techniques be used to the extent that they are the least environmentally damaging, practical, and economically reasonable means of control. Integrated Pest Management is defined as the planning and implementation of a coordinated management program using a variety of mechanical, biological, and chemical methods to control noxious weeds. Article 3 of the Wyoming Weed and Pest Control Act calls for a ''Special Management Program,'' which strongly emphasizes the use of integrated management and provides for financial incentives when individuals sign up under this program. In addition, the Wyoming Department of Agriculture, Wyoming Weed and Pest Council, and the University of Wyoming conduct two training sessions annually that emphasize integrated weed management techniques and the latest information in environmentally friendly methods of control.

Issue 5—Comments included concerns regarding the amount of area in which noxious weeds can be controlled and what limitations the Service deems ''appropriate.'' One commentor suggested that no limitations should be considered because that would contradict State laws and Federal policy and that incomplete control would not be effective.

Response—The rule includes no limitations concerning the ''amount of area'' in which noxious weeds can be controlled. The only area limitations in the rule relate to ditch maintenance activities. The language in the amendment exempts noxious weed control activities that are conducted pursuant to State law and in accordance with EPA herbicide labeling. We encourage efforts to reduce the adverse effects of weed control on native plant communities and limit unnecessary eradication of entire plant communities and suggest that methods to reduce impacts to nontarget species should be employed whenever possible, such as the use of selective herbicides that target broad-leaved plants and do not damage native grasses.

Issue 6—One comment letter requested unrestricted ditch maintenance be allowed when the ditch is located outside ''naturally occurring potential Preble's habitat,'' which the commentor defined as ''the 100-year flood plains associated with rivers and creeks, between 7,600 feet and 4,500 feet in elevation.''

Response—This amendment provides certain exemptions from take as defined by the Act. If a ditch does not have habitat and/or mice, then no exemption is needed.

Trapping data show that many ditches have suitable habitat for Preble's and, in several areas, that Preble's exist on ditches that occur outside the 100-year floodplain. We intend to limit exemption of ditch maintenance to those activities that have minimal take of Preble's and are consistent with the protection and enhancement of Preble's habitat. As stated in the May 22, 2001, 4(d) rule, we believe it is imprudent to provide unrestricted exemption from take along ditches because in some areas: (a) Many ditches are suspected or known to be occupied by Preble's; (b) the stability of the local Preble's population is uncertain; (c) the degree of importance of ditch habitat to Preble's populations is not completely known; and, (d) some occupied ditches may serve as important population refugia and travel corridors connecting populations.

Under appropriate circumstances, permits can be obtained to carry out ditch maintenance activities even when

more than minimal take is likely to occur. These activities may be addressed through future Habitat Conservation Plans or section 7 consultations.

Issue 7—One comment letter suggested that exemption will not be sufficient and ditches will be unable to convey water. This letter requested that the exemption be changed to an ''entire range-wide exemption.''

Response—As discussed above, we do not believe it would be prudent to grant a range-wide or unrestricted exemption for ditch maintenance activities. It is our intent to limit exemption of ditch maintenance to those activities that have minimal take of Preble's and are consistent with the protection and enhancement of Preble's habitat.

Issue 8—How does the exemption apply to ditch maintenance activities that are subject to other Federal approvals?

Response—This exemption does not affect other Federal approvals required for ditch maintenance. Under section 7 of the Act, a Federal agency that undertakes, permits, or funds activities that are likely to adversely affect a listed species, whether or not take is involved, shall formally consult with the Service regarding the proposed action. Exemption from take prohibitions in section 9 of the Act does not alter responsibility of Federal agencies under section 7. This said, the number of section 7 consultations is expected to be low based on past numbers and, because of exempted actions, the amended rule should further expedite the section 7 process because subsequent consultations will consist of verifying whether the effects of the proposed action are consistent with the effects analysis conducted in establishing this regulation and documenting the determination. For actions that are consistent with this regulation, consultation will be streamlined by linking to the biological opinion prepared in conjunction with this rulemaking. For any actions not consistent with this regulation, preparation of a separate biological opinion will be necessary.

Issue 9—Does the exemption apply to both sides of the ditch or just one?

Response—The exemption applies to both sides of the ditch. Ditch maintenance activities under the exemption should allow for the loss of ¼-mile of riparian shrub habitat on both banks of a ditch within any 1 linear mile of ditch within any calendar year.

However, if only one bank of a ditch is to be maintained, the ¼-mile loss limit still applies.

Issue 10—The final rule should consider both physical and legal access under the requirement to ''avoid shrubs if possible.''

Response—The amendment states that impacts to shrub vegetation shall be avoided ''to the maximum extent practicable.'' The intention of this statement is to refer to both physically practicable and legally practicable, *i.e.*, through legal access to the ditch.

Issue 11—The ¼-mile limitation on ditch maintenance activities will result in changes to normal procedures and increased maintenance costs. Additionally, one letter expressed concern that the two additional exemptions would not benefit landowners and the economy. The commentor argued that any benefits to the landowner or economy would only be because the owners would not have to consult on every ditch-cleaning project. This commentor also stated that limits on maintenance activities of ¼-mile per mile of ditch are inconvenient for owners because it would take 4 years to be able to clear the entire ditch.

Response—This rule does not place any additional restrictions on land use activities and does not place any additional prohibitions on take of Preble's. Rather, this rule removes some take prohibitions that might otherwise restrict certain activities. Currently, on ditches that are occupied by Preble's, take is prohibited by section 9 of the Act without the appropriate permits. This take prohibition is removed by this amendment within the limitations given in the amendment. Therefore, this exemption is expected to decrease any current financial burden caused by the existing prohibitions. Normal ditch maintenance activities should be allowed without the time, money, and effort required to obtain incidental take permits, while still allowing for the conservation of the species. Under certain circumstances when more than minimal take is likely to occur, permits can be obtained through Habitat Conservation Plans or section 7 consultations to carry out additional maintenance activities not covered by the rule or amendments.

Issue 12—The November to April timeframe for ditch maintenance activities is difficult in Wyoming where it may snow from September through May.

Response—This seasonal limitation for ditch maintenance activities is designed to occur while the mouse is in hibernation, in order to reduce adverse impacts and be consistent with the conservation of the Preble's. However, as stated in the amended rule in ''Timing of Work'', under ''Best Management Practices'', this restriction is to be observed to the ''maximum extent practicable.'' Otherwise, if this restriction is impracticable, exempted maintenance activities shall be conducted during daylight hours and only carried out during the Preble's active season, May through October.

Issue 13—The proposed rule has too many ''subjective'' standards and does not provide ''adequate notice'' or understandable definitions regarding which activities are covered and which are not (*e.g.*, ''normal and customary,'' ''maximum extent practicable,'' ''functionally intact and viable'').

Response—The goal of this amendment is to allow agriculture and water use to continue while being consistent with conservation of the species. We did not want to define the exemptions too narrowly because there is a wide variation of how these activities might be applied on the ground. The Service recognizes the need to maintain some amount of flexibility in interpretation.

Issue 14—One comment letter stated that the scale of agricultural operations in Wyoming makes the rule ''unworkable.'' The commentor believes that these exemptions may be reasonable for smaller, more intensively managed plots in Colorado, but will only result in ''frustrations and resentment'' in Wyoming. The commentor states that we are placing an unfair and disproportionate burden on agriculture in Wyoming when the real threats lie within the Front Range of Colorado.

Response—This rule does not place any additional restrictions on land use or any additional prohibitions on take. Current prohibitions on take through section 9 of the Act require a Federal permit for activities that are deemed to adversely affect the Preble's to the point where take may occur. Our goal in exempting noxious weed control and ditch maintenance activities through this amendment is to remove some of these take prohibitions and provide relief from current regulatory restrictions on agricultural entities and water users, regardless of location.

Issue 15—Some respondents believed that any exemption should include maintenance of (1) water supply wells and water measurement devices, (2) dams and other infrastructure, and (3) associated roads.

Response—In regard to (1) above, an exemption applying to activities covered in § 17.40 (l)(2)(v) of the final rule relates to existing uses of water associated with the exercise of perfected water rights, so maintenance of water supply wells and water measurement

devices is covered. In regard to (2), this exemption covers only maintenance and replacement of dams or infrastructure directly related to, and used in, the operation of ditches. Any person contemplating dam or infrastructure work not covered by either of these two exemptions should consult with us when the maintenance procedure has the potential to take Preble's. Finally, pertaining to (3), this amendment includes a limited exemption for maintenance of roads used to access existing ditches and related infrastructure provided that these activities do not exceed the maximum allowable loss of riparian shrub habitat in any calendar year.

Provisions of the Rule Amendment

Term

The special regulations contained in this amendment are applicable until May 22, 2004, which is the end of the effective period for the May 22, 2001, final 4(d) rule. We expect that, by that date, comprehensive Habitat Conservation Plans for the Preble's should be developed, and a recovery plan and other conservation efforts for the Preble's should be completed.

Additional Exemptions

The activities discussed below, which may result in incidental take of Preble's, are exempted from the section 9 take prohibitions. ''Incidental take'' refers to a taking that is otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Take not exempted by this amendment and not otherwise authorized under the Act may be referred to the appropriate authorities for civil enforcement or criminal prosecution.

a. *Noxious weed control activities*—Comments on the proposed 4(d) rule of December 3, 1998, included a request to consider a rangewide exemption for control of noxious weeds. The comments stressed that laws in both Colorado and Wyoming require control of noxious weeds and that such control is compatible with Preble's conservation. We are amending the final 4(d) rule by including a rangewide exemption for noxious weed control to conform to existing State laws and Federal regulations regarding herbicide labeling. We believe that this exemption should facilitate conservation of the Preble's, because noxious weeds are displacing desirable natural vegetation on which the Preble's depends for survival.

b. *Ongoing ditch maintenance activities*—In the December 3, 1998, proposed 4(d) rule, we stated that we considered adopting an unrestricted exemption for periodic maintenance of existing water supply ditches, but chose not to do so because ditches support occupied and potential Preble's habitat. We received a large number of comments on this decision, many supporting an unrestricted exemption and arguing that current maintenance practices have resulted in viable habitat for the Preble's.

In response to these comments, we have elected to adopt a limited exemption for customary ditch maintenance activities that are designed to result in only minimal take of Preble's and are consistent with the protection and enhancement of Preble's habitat. This exemption builds upon the guidance provided in a January 31, 2001, ''To Whom It May Concern Letter'' (Letter), which we originally issued on March 11, 1999, and reissued on February 1, 2000, and January 31, 2001, and which was our initial response to these comments. While the Letter specifically describes activities throughout the range of the Preble's that we believe would not constitute take under section 9 of the Act, this amendment to the 4(d) rule specifies certain activities that may result in take and grants exemption from such take.

Our intent is to allow normal and customary maintenance activities that should result only in temporary or limited disturbance of Preble's habitat, and that should result in only minimal take of Preble's. We intend for this exemption to apply only to manmade ditches and not to alteration of habitat along naturally occurring streams and watercourses.

We believe that a limited exemption is necessary and advisable, not only to provide relief to those who shall maintain active ditches, but to assure that currently existing Preble's habitat along ditches remains functionally intact and viable. Should limited ditch maintenance not be allowed to continue, we face the possibility that these ditches would no longer be capable of conveying water and any habitat dependent on this water would degrade over time and eventually be lost. Maintenance of these ditches, as defined by this amended rule, is necessary and advisable to maintain future conservation options for the Preble's.

Therefore, we are exempting from the section 9 take prohibitions, limited maintenance activities on water conveyance ditches throughout the range of the Preble's. We believe that providing unrestricted exemption from take for all ditch maintenance activities would be imprudent because—(a) Some areas contain many ditches known or thought to be occupied by Preble's, (b) the stability of many local Preble's populations is uncertain, (c) the importance of ditch habitat to Preble's populations in many areas is not completely known, and (d) some occupied ditches may serve as important population refugia and travel corridors connecting populations.

The following ditch maintenance activities are exempted from the take prohibitions of section 9 of the Act, if the Best Management Practices described below are followed:

1. Normal and customary ditch maintenance activities that result in the annual loss of no more than ¼-mile of riparian shrub habitat within any 1 linear mile of ditch within any calendar year. Riparian shrub habitat is defined as vegetation dominated by plants that generally have more than one woody stem that measures less than 2 inches in diameter and are typically less than 10 feet in height at maturity, put on new growth each season, and have a bushy appearance. Examples of shrubs include, but are not limited to, willow, snowberry, wild plum, and alder.

2. Included in No. 1 above is the burning of ditches that results in the annual loss of no more than ¼-mile of riparian shrub habitat within any 1 linear mile of ditch within any calendar year and is conducted out-of-season (see ''Best Management Practices'').

The following Best Management Practices shall be implemented in order for the exemptions to apply:

1. Persons engaged in ditch maintenance activities shall, to the maximum extent practicable, avoid impacts to shrub vegetation. For example, if it is possible to access the ditch for maintenance or repair activities from an area containing no shrubs, then damage to adjacent shrub vegetation shall be avoided.

2. Persons engaged in placing or sidecasting (a) silt and debris removed during ditch cleaning, (b) vegetation or mulch from mowing/cutting, or (c) other material from ditch maintenance shall, to the maximum extent practicable, avoid shrub habitat, and at no time disturb more than ¼-mile of riparian shrub habitat within any 1 linear mile of ditch within any calendar year.

3. To the maximum extent practicable, all ditch maintenance should be carried out during the Preble's hibernation season, November through April. Any maintenance activities carried out during the Preble's active season, May through October, should be conducted during daylight hours only.

This exemption includes maintenance of roads used to access ditches and related infrastructure. These maintenance activities are limited to the historic footprint associated with the infrastructure and access roads. Examples of activities that are covered by the exemption include the following activities, each limited to the destruction of 1/4-mile of riparian shrub habitat within 1 linear mile of ditch within any calendar year:

1. *Clearing trash, debris, vegetation, and silt by either physical, mechanical, chemical, or burning procedures*—Examples include mowing or cutting grasses and weeds, removal of silt and debris from the ditch below the high-water line, and control of shrubs that could result in ditch leakage.

2. *Reconstruction, reinforcement, repair, or replacement of existing infrastructure with components of substantially similar materials and design*—Examples include replacement of a damaged headgate, grading or filling areas susceptible to ditch failure, patchwork on a concrete ditch liner, or replacement of failed culvert with a new culvert of the same design and material.

The following maintenance activities are not exempted from the take provisions of section 9 of the Act:

1. *Replacement of existing infrastructure with components of substantially different materials and design*—such as replacing an existing gravel access road with a permanently paved road.

2. *Construction of new infrastructure or the movement of existing infrastructure to new locations*—Examples include redrilling a well in a new location, building a new access road, change in the location of a diversion structure or installation of new diversion works where none previously existed.

We proposed the two additional exemptions contained in this rule in the August 30, 2001, proposed amendment in response to comments received during the public review of the December 3, 1998, 4(d) rule proposal. Water rights owners argued that the lack of an exemption for periodic maintenance of existing ditches conflicted with the exemption for existing uses of perfected water rights, because ditch maintenance is an intrinsic part of exercising a perfected water right. In addition, respondents noted that ditch maintenance is required by State law in both Wyoming and Colorado. Failure to adequately maintain water conveyance structures can result in fines, penalties, and liability for damage to property caused by ditch failures. Finally, respondents noted that prohibition of ditch maintenance could subsequently result in curtailment or cessation of water diversions. This situation in turn could result in forfeiture or abandonment of water rights under State law.

By exempting limited periodic maintenance activities on existing water supply ditches, this amendment facilitates consistency among the rangewide exemptions. Where appropriate, permits can be issued under section 10 of the Act to allow incidental take of Preble's for activities not exempted through this rule.

Several respondents requested rangewide exemptions for maintenance of other types of water-related infrastructure. The suggested exemptions included: maintenance of (1) sewer lines; (2) wastewater treatment and conveyance facilities; and (3) storm water collection, conveyance, and treatment facilities.

We elected not to exempt these types of water-related infrastructure. These systems typically incorporate extensive pipeline systems that either cross Preble's habitat, or are installed along stream corridors that provide Preble's habitat. Activities to maintain this infrastructure can create large areas of surface disturbance within or near Preble's habitat that could temporarily or permanently prevent occupation of habitat or migration from one Preble's habitat area to an adjacent Preble's habitat area.

Owners and operators of stormwater and wastewater systems should contact us when their maintenance activities have the potential to result in take of Preble's. We will work with wastewater and stormwater system owners and operators to develop maintenance procedures that minimize and mitigate take of Preble's when maintenance activities occur within Preble's habitat.

Required Determinations

We prepared a Record of Compliance for the May 22, 2001, final rule that exempted from the take prohibitions listed in section 9 of the Act, the four activities of rodent control, ongoing agricultural activities, landscaping, and ongoing use of existing water rights. A Record of Compliance certifies that a rulemaking action complies with the various statutory, Executive Order, and Department Manual requirements applicable to rulemaking. Amendment of the May 22, 2001, rule to include the two additional exemptions adopted herein, noxious weed control and ongoing ditch maintenance, does not add any significant elements to this Record of Compliance.

Without this amendment, noxious weed control or ongoing ditch maintenance activities that may result in take of Preble's would not be exempted from the take prohibitions. This rule allows certain affected landowners to engage in certain noxious weed control and ditch maintenance activities that may result in take of Preble's. Without this rule, anyone engaging in those activities would need to seek an authorization from us through an incidental take permit under section 10(a)(1)(b) or an incidental take statement under section 7(a)(2) of the Act. This process takes time and can involve an economic cost. The rule allows these landowners to avoid the costs associated with abstaining from conducting these activities or with seeking an incidental take permit from us. These economic benefits, while important, do not rise to the level of ''significant'' under the following required determinations.

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget has determined that this rule is not a significant regulatory action. This rule does not have an annual economic impact of more than $100 million, or significantly affect any economic sector, productivity, jobs, the environment, or other units of government. This rule reduces the regulatory burden of the listing of the Preble's meadow jumping mouse under the Act as a threatened species by providing certain exemptions to the section 9 take prohibitions that currently apply throughout the Preble's range. These exemptions reduce the economic costs of the listing; therefore, the economic effect of the rule benefits landowners and the economy. This effect does not rise to the level of ''significant'' under Executive Order 12866.

This rule should not create inconsistencies with other Federal agencies' actions. Other Federal agencies are mostly unaffected by this rule.

This rule should not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Because this rule allows landowners to continue otherwise prohibited activities without first obtaining individual authorization, the rule's impacts on affected landowners is positive.

This rule should not raise novel legal or policy issues. We have previously promulgated section 4(d) rules for other species, including the special rule for the Preble's pertaining to rodent control,

ongoing agricultural activities, landscaping, and activities associated with water rights. This rule simply adds exempted activities to that rule.

Regulatory Flexibility Act

We have determined that this rule does not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required, and a Small Entity Compliance Guide is not required. This rule reduces the regulatory burden of the listing of the Preble's as a threatened species. Without the final special rule and this amendment, all of the take prohibitions listed in section 9 of the Act would apply throughout the range of the Preble's. This amended rule allows certain affected landowners to engage in noxious weed control and ditch maintenance activities that may result in take of Preble's. This rule enables these landowners to avoid the costs associated with abstaining from conducting these activities to avoid take of Preble's or seeking incidental take permits from us.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. As described above, this rule reduces regulatory burdens on affected entities, who are mostly agricultural producers.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. By reducing the regulatory burden placed on affected landowners resulting from the listing of the Preble's as a threatened species, this rule reduces the likelihood of potential takings. Affected landowners have more freedom to pursue activities, *i.e.*, noxious weed control and ditch maintenance, that may result in take of Preble's without first obtaining individual authorization.

Federalism

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Currently, the State of Colorado, the Service, and various local governmental entities in Colorado and Wyoming are working together to develop plans to conserve the Preble's and its habitat. This collaborative approach is expected to result in the development of Habitat Conservation Plans that should provide the foundation upon which to build a lasting, effective, and efficient conservation program for the Preble's. Because we anticipate beneficial impacts of such collaborative conservation efforts, this rule is applicable only until the end of the 36-month timeframe of the May 22, 2001, special rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

Paperwork Reduction Act

We have examined this amended rule under the Paperwork Reduction Act of 1995 and found it to contain no requests for 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.

National Environmental Policy Act

The National Environmental Policy Act analysis has been conducted. An Environmental Assessment was prepared for the final special rule. The additional exemptions covered in this amended rule were included in this analysis.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951) and E.O. 13175, we have evaluated possible effects on federally recognized Indian Tribes. We have determined that, because no Indian trust resources occur within the range of the Preble's, this rule has no effects on federally recognized Indian Tribes.

Executive Order 13211

We have evaluated this amended rule in accordance with E.O. 13211 and have determined that this rule has no effects on energy supply, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends 50 CFR part 17, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.40 by adding paragraphs (l)(2)(vi) and (vii) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(l) * * *

(2) * * *

(vi) *Noxious weed control.* Preble's meadow jumping mice may be taken incidental to noxious weed control that is conducted in accordance with:

(A) Federal law, including Environmental Protection Agency label restrictions;

(B) Applicable State laws for noxious weed control;

(C) Applicable county bulletins;

(D) Herbicide application guidelines as prescribed by herbicide manufacturers; and

(E) Any future revisions to the authorities listed in paragraphs (1)(2)(vi)(A) through (D) of this section that apply to the herbicides proposed for use within the species' range.

(vii) *Ditch maintenance activities.* Preble's meadow jumping mice may be taken incidental to normal and customary ditch maintenance activities only if the activities:

(A) Result in the annual loss of no more than ¼ mile of riparian shrub habitat per linear mile of ditch, including burning of ditches that results in the annual loss of no more than ¼

mile of riparian shrub habitat per linear mile of ditch.

(B) Are performed within the historic footprint of the surface disturbance associated with ditches and related infrastructure, and

(C) Follow the Best Management Practices described in paragraphs (l)(2)(vii)(C)(*1*) through (*3*) of this section.

(*1*) Persons engaged in ditch maintenance activities shall avoid, to the maximum extent practicable, impacts to shrub vegetation. For example, if accessing the ditch for maintenance or repair activities from an area containing no shrubs is possible, then damage to adjacent shrub vegetation shall be avoided.

(*2*) Persons engaged in placement or sidecasting of silt and debris removed during ditch cleaning, vegetation or mulch from mowing or cutting, and other material from ditch maintenance shall, to the maximum extent practicable, avoid shrub habitat and at no time disturb more than ¼-mile of riparian shrub habitat per linear mile of ditch within any calendar year.

(*3*) To the maximum extent practicable, all ditch maintenance activities should be carried out during the Preble's hibernation season, November through April.

(D) All ditch maintenance activities carried out during the Preble's active season, May through October, should be conducted during daylight hours only.

(E) Ditch maintenance activities that would result in permanent or long-term loss of potential habitat that would not be considered normal or customary include replacement of existing infrastructure with components of substantially different materials and design, such as replacement of open ditches with pipeline or concrete-lined ditches, replacement of an existing gravel access road with a permanently paved road, or replacement of an earthen diversion structure with a rip-rap and concrete structure, and construction of new infrastructure or the movement of existing infrastructure to new locations, such as realignment of a ditch, building a new access road, or installation of new diversion works where none previously existed.

* * * * *

Dated: June 21, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–24633 Filed 9–30–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 020612146–2211–02 ; I.D. 042602F]

RIN 0648–AP90

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specifications and General Category Effort Controls

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

ACTION: Final initial 2002 quota specifications and General category effort controls.

SUMMARY: NMFS announces the final initial specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas and General category effort controls for the fishing year beginning June 1, 2002. The final initial quota specifications and effort controls are necessary to implement the 1998 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT), which established a rebuilding program for Western Atlantic BFT and is required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final initial quota specifications and General category effort controls are effective October 1, 2002, through May 31, 2003.

ADDRESSES: Copies of supporting documents, including the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), are available from the Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Brad McHale at (978) 281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of ICCAT. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the HMS FMP that was adopted and made available to the public in April 1999. The HMS FMP and its implementing regulations require that NMFS issue quota specifications and effort controls for the BFT fisheries on an annual basis in accordance with internationally set quotas and domestic allocations. Further background information and rationale for these final initial quota specifications and General category effort controls were contained in the proposed initial quota specifications and effort controls (67 FR 43266, June 27, 2002) and are not repeated here.

The final initial quota specifications are necessary to implement the 1998 ICCAT recommendation, which established a rebuilding program for Western Atlantic BFT and is required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. In accordance with the HMS FMP, the final initial quota specifications allocate the total ICCAT-recommended quota, including carryover of unharvested 2001 fishing year quota, among the established domestic fishing categories and are consistent with the BFT rebuilding program.

NMFS issues the 2002 fishing year (June 1, 2002—May 31, 2003) BFT final initial quota specifications under the annual and inseason adjustment procedures of the HMS FMP. Also, in accordance with the HMS FMP, NMFS announces the General category effort control schedule, including time-period subquotas and restricted fishing days (RFDs), for the 2002 fishing year. The final initial quota specifications may subsequently be adjusted during the course of the fishing year, consistent with the provisions of the HMS FMP. Notice of any such adjustments will be published in the **Federal Register**.

Changes From the Proposed Specifications

Based upon consideration of public comments received during the comment period, NMFS is revising the number of RFDs proposed for the 2002 fishing year. The revised schedule is indicted in the section addressing effort controls. Specifically, NMFS is not implementing the RFDs proposed for August, September, or early October, and is implementing RFDs for portions of October, and November. The intent of these revisions is to help spread out fishing effort, slow the pace of landings

only when catch rates are likely to be high, and extend the fishery. In addition, minor modifications have been made to the 2002 fishing year quotas based on revised landings for the 2001 fishing year.

Domestic Quota Allocation

The HMS FMP and its implementing regulations established baseline percentage quota shares of the ICCAT-recommended U.S. BFT quota for each of the domestic fishing categories. These percentage shares were based on allocation procedures that had been developed by NMFS over several years. The baseline percentage quota shares established in the HMS FMP for fishing years beginning June 1, 1999 are as follows: General category—47.1 percent; Harpoon category—3.9 percent; Purse Seine category—18.6 percent; Angling category—19.7 percent; Longline category—8.1 percent; Trap category—0.1 percent; and Reserve—2.5 percent.

The current ICCAT BFT quota recommendation allows, and U.S. regulations require, the addition or subtraction, as appropriate, of any underharvest or overharvest in a fishing year to the following fishing year, provided that such carryover does not result in overharvest of the total annual quota and is consistent with all applicable ICCAT recommendations, including restrictions on landings of school BFT. Therefore, NMFS adjusts the 2002 fishing year quota specifications for the BFT fishery to account for underharvest and overharvest in the 2001 fishing year.

In accordance with ICCAT recommendations and the regulations regarding BFT quota allocation at § 635.27(a), the total landings quota will be divided among domestic user groups based on these established percentage shares mentioned above. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to geographical areas. Based on these established procedures NMFS finalizes specifications for the 2002 fishing year that include carryover adjustments. The final initial quotas are: General category—647.0 mt; Harpoon category—75.9 mt; Purse Seine category—317.7 mt; Angling category—429.0 mt; Longline category—140.7 mt; and Trap category—2.3 mt. Additionally, 75.3 mt would be reserved for inseason allocations or to cover scientific research collection and potential overharvest in any category except the Purse Seine category. Regulations at 50 CFR 635.27(a)(9)(i) require Purse Seine category under or overharvests to be subtracted from or added to each individual vessel's quota allocation, as appropriate.

These final initial quotas include provisions for each category to carry forward any underharvest from 2001 to the 2002 fishing year. An exception is the unused school reserve (approximately 20.1 mt) from 2001, along with an additional 20.0 mt of unused Longline South subcategory quota, which are placed into the Reserve. This additional reserve quota will be allocated among the domestic fishing categories, as appropriate, during the 2002 fishing year, in accordance with the inseason transfer criteria in the HMS regulations.

As part of the BFT rebuilding program, ICCAT recommended an allowance for dead discards. The U.S. dead discard allowance is 68 mt. The 2000 calendar year preliminary estimate of U.S. dead discards, as reported in pelagic longline vessel logbooks, totaled 67.0 mt (U.S. National Report to ICCAT 2001). As estimates of BFT dead discards for the 2001 fishing year will not be available for some time, the estimate for the 2000 calendar year was used to calculate the amount to be added to, or subtracted from, the U.S. BFT landings quota for 2002 as a result of dead discards. Estimates of dead discards from other gear types and fishing sectors that do not use the pelagic longline vessel logbook are unavailable at this time and thus are not included in this calculation. As U.S. fishing activity is estimated to have resulted in less dead discards than its allowance, the ICCAT recommendation and U.S. regulations state that the U.S. may add one half of the difference between the amount of dead discards and the allowance (i.e., 68.0 mt– 67.0 mt = 1.0 mt, 1.0 mt/2 = 0.5 mt) to its total allowed landings for the following year, or to individual fishing categories or to the Reserve. NMFS allocates the 0.5 mt to the Reserve quota, which may then be allocated to individual fishing categories as necessary during the fishing year.

Based on the final initial specifications, the Angling category quota of 429.0 mt would be divided as follows: School BFT—175.1 mt, with 98.1 mt to the northern area (north of 39° 18′ N. lat.), 77.0 mt to the southern area (south of 39° 18′ N. lat.), plus 20.5 mt held in reserve; large school/small medium BFT—226.2 mt, with 120.5 mt to the northern area and 105.7 mt to the southern area; and large medium/giant BFT—7.2 mt, with 3.0 mt to the northern area and 4.2 mt to the southern area. These subquotas reflect the adjusted north-south dividing line (39° 18′ N. lat.) and percentage quota allocations in the northern and southern areas for the Angling category, as implemented by NMFS through a final rule on August 15, 2001 (66 FR 42801).

The Longline category quota of 140.7 mt would be subdivided as follows: 30.3 mt to longline vessels landing BFT north of 34° N. lat. and 110.4 mt to longline vessels landing BFT south of 34° N. lat.

General Category Effort Controls

For the last several years, NMFS has implemented General category time-period subquotas to increase the likelihood that fishing would continue throughout the entire fishing season. The subquotas are consistent with the objectives of the HMS FMP and are designed to address concerns regarding allocation of fishing opportunities, to assist with distribution and achievement of optimum yield, to allow for a late season fishery, and to improve market conditions and scientific monitoring.

The HMS FMP divides the annual General category quota into three time-period subquotas as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. These percentages would be applied to the adjusted 2002 coastwide quota for the General category of 637.0 mt, with the remaining 10.0 mt being reserved for the New York Bight fishery. Therefore, coastwide, 382.2 mt would be available in the period beginning June 1 and ending August 31; 191.1 mt would be available in the period beginning September 1 and ending September 30; and 63.7 mt would be available in the period beginning October 1 and ending December 31, 2002.

In addition to time-period subquotas, NMFS also has implemented General category RFDs to extend the fishing season throughout the entire General category BFT season. The RFDs are consistent with the objectives of the HMS FMP and are designed to address the same issues addressed by time-period subquotas. This year a substantial amount of General category quota carried over from the June–August time-period subquota to the September time-period subquota due to low catch rates. Catch rates of BFT in the General category appear to have shifted in recent years from a pattern of high catch rates in the summer (June–August time period) and lower catch rates in the fall/winter (September–December time period) to a pattern of low catch rates in the summer and higher catch rates in the fall/winter. NMFS has typically adjusted retention limits and scheduled RFDs in the summer to spread out

fishing effort, slow catch rates, and extend the fishery. In recent years, NMFS had not implemented many RFDs in the fall/winter since most of the available quota had already been caught. Given the shift in catch rate pattern, NMFS believes that higher retention limits and fewer RFDs (if any) in the summer and more RFDs (and possibly, lower retention limits) in the fall/winter are appropriate to meet the objectives of maximum utilization of available quotas and equitable fishing opportunities.

Due to this apparent shift in catch rates, NMFS announces the final 2002 fishing year RFD schedule. Persons aboard vessels permitted in the General category are prohibited from fishing, including tag-and-release fishing, for BFT of all sizes on the following days: October 13, 14, 16, 20, 21, 23, 27, 28, and 30; November 13, 17, 18, 20, 24, 25, and 27. These RFDs will improve distribution of fishing opportunities without increasing BFT mortality. The above RFD schedule may be adjusted upon consideration of actual catch rates relative to the available quota in each category.

Comments and Responses

Comment 1: Some commenters stated that NMFS should remove all RFDs because recent catch rates do not justify maintaining them as a management tool and they have impeded fishermen from having a reasonable opportunity to land the quotas previously established for particular time periods. Other commenters stated that NMFS should use its ability to institute RFDs during the season as necessary, based on some pre-determined sustained catch rate. Some comments received stated that the RFD schedule should remain as it was finalized last year to extend the season as long as possible. Many commented that NMFS should implement RFDs in the October through December time period subquota to ensure that the southern states have an equal opportunity to harvest the quota.

Response: NMFS has adjusted the RFD schedule from the schedule announced in the proposed specifications. NMFS had proposed three RFDs for the month of August. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that, for the months of August and September, the previously proposed RFDS should not be implemented. RFDs, in conjunction with the General category quota subdivision, help achieve HMS FMP objectives to achieve optimum yield and address allocation issues. In addition, maintaining the current pattern and schedule of RFDs provides some benefit to fishermen as it offers a certain level of predictability and, in particular, provides the South Atlantic states an opportunity to harvest General category quota. However, over the past several years, landings have been highest during the later portion of the season, exacerbating the derby nature of the fishery and contributing to market gluts. Implementing RFDs for the later portion of the season may help spread out fishing effort, slow the pace of landings, and extend the fishery. However, NMFS recognizes that the weather is unpredictable during this time period for the fishery, particularly in the later half of October and early November, and that poor weather conditions may limit participation without the need for additional RFDs during this part of the season. Should BFT landings and catch rates during the late season fishery merit the waiving of RFDs, NMFS could adjust the daily retention limits with a minimum 3–day notification to fisherman, and through publication of this adjustment in the **Federal Register**, under 50 CFR 635.23(a)(4).

Comment 2: NMFS should reinstate the incidental catch quota for herring purse seine vessels and include mid-water trawlers as well, which occasionally catch BFT incidental to their target species.

Response: NMFS evaluated gear types used in the Atlantic tuna fisheries during the development of the HMS FMP and determined that, in order to facilitate enforcement against unauthorized landings of BFT, only fixed ''trap'' gear types (i.e., pound nets and fish weirs) were eligible for incidentally caught BFT in the renamed Trap category. NMFS suggests that interested parties consult with their representatives on the HMS Advisory Panel (AP) to provide comments/guidance during the next HMS AP meeting.

Comment 3: NMFS received many comments that North Carolina (NC) should have its own General and Angling category set aside quotas. Some commenters stated that by not allowing NC a commercial fishery NMFS may be in violation of National Standard 4. These commenters also stated that the current General category allocation scheme discriminates between residents of different states and fails to provide equitable fishing opportunities across different geographical areas. Comments also requested that there be a December time-period subquota established for southern states. Other comments received stated that historical fisheries must be restored before any new fisheries, such as a commercial handgear fishery in NC, are created.

Response: NMFS maintains the current quota allocation scheme and has not implemented a specific set-aside quota for NC. Fishermen in the state of NC have the opportunity to fish recreationally under the Angling category bag limits, and NMFS has the ability to open and close the Angling category to ensure reasonable fishing opportunities in all areas, including NC. Thus, NMFS does not believe a set-aside of Angling category quota is necessary for NC or any other area. During FMP development, the issue of opening a southern commercial BFT fishery and establishing a set-aside for a NC General category fishery was extensively discussed by the HMS AP and the public. However, the HMS AP did not reach consensus on how to address the requests for a southern commercial fishery. NMFS maintains its position that allowing new gear types and/or increasing the scale of fisheries for BFT would not be consistent with the rebuilding plan currently in place. NMFS is currently assessing the magnitude and scope of the fishing activities, and is continuing to work with the HMS AP on issues associated with a NC General category BFT fishery. NMFS maintains the status quo time-period subquota breakdown in the 2002 final initial specifications. Long-term effort controls were addressed in the HMS FMP to achieve a variety of FMP objectives. Specifically, the status quo regime for the General category assists attainment of optimum yield, and addresses allocation issues by lengthening the season over time and space in a category with high participation and catch rates.

Pursuant to 50 CFR 635.27(a)(8), NMFS also has the authority to transfer quotas among categories, or, as appropriate, subcategories, of the fishery, after considering the following factors: (1) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; (2) the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded; (5) the effects of the transfer on BFT rebuilding and overfishing; and (6) the effects of the transfer on accomplishing the objectives of the

HMS FMP. If it is determined, based on the above factors and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the Reserve quota. Such transfers could address the concerns of those participants in the late season fisheries.

Comment 4: An incidental take allowance of Large school/Small medium BFT should be allowed for commercial handgear vessels. Historically, the Large school/Small medium size class BFT were caught by General category vessels and were sold or retained for personal use. Commenters asserted that, due to a change in 1991, there has been no fishery for that size class to speak of, resulting in a potential for unharvested quota and increased regulatory discards. Commenters stated NMFS should allow commercial handgear vessels an annual allowance of BFT below the commercial minimum size to alleviate some of this excess quota carryover and to minimize waste of the BFT resource.

Response: NMFS maintains the 73–inch (185–cm) commercial minimum size at this time. With the development of an international market in Japan for giant BFT and high ex-vessel prices, the distinction between U.S. recreational and commercial fisheries for BFT became blurred and much of the traditional recreational catch for medium and giant BFT was being sold for shipment to Japan. In 1992, NMFS responded by implementing the current commercial minimum size limit and this limit was maintained in the HMS FMP, as it is consistent with the objectives of the HMS FMP and achieving optimum yield in the fishery. By lowering the commercial minimum size to allow incidental takes, the number of BFT landed (hence, mortality) could increase, which may affect long-term rebuilding. Currently, all BFT less than 73 inches (185 cm) are allocated to the Angling category, and lowering the commercial minimum size to allow the sale of these fish by vessels in commercial permit categories would be considered a re-allocation of quota, which is beyond the scope of this rulemaking.

Comment 5: Some commenters stated that NMFS should use multiple fish retention limits in the General category to assure that time-period sub-quotas are harvested within their allotted time frame. Some stated that multiple fish retention limits should be implemented early in the season, while others stated that they should be implemented in the end of the season.

Response: NMFS maintains the authority to increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero to a maximum of three per vessel. NMFS may use this flexibility in the daily limit to provide fishermen a reasonable opportunity to achieve the General category quota. Starting the season with a multiple fish retention limit could work to the fishermen's disadvantage if the season has to be closed early in the fishing year. Starting at one large medium or giant per day should provide the greatest opportunity for a longer season, thus providing maximum fishing opportunities to the greatest number of fishery participants over the greatest geographic area.

Comment 6: NMFS should use the previous fishing year's final initial quota specifications as the proposed specification in the following year.

Response: Due to the varying and complex nature of the BFT fisheries from year to year, as well as the results of inseason transfers and adjustment due to underharvests and/or overharvests from one year to the next, domestic quota category allocations could significantly change. Thus, the specification from one year may not correspond well for a following year. NMFS suggests that interested parties consult with their representatives on the HMS AP to provide comments/guidance on the quota specification process during the next HMS AP meeting.

Comment 7: The General category fishery should not have a cap date of December 31, but should continue through March.

Response: Prior to implementation of the HMS FMP in 1999, the Atlantic tunas fishing year coincided with the calendar year, with the General category season ending December 31. These time-period subquotas were selected as the preferred alternative and final action in the HMS FMP. The FMP also established the Atlantic tunas fishing year as June through May 31 of the following year. As specified in the HMS FMP, the change to the new fishing year was not intended to authorize new fishing seasons or change fishing patterns. NMFS has stated its intent clearly in the HMS FMP and several other NMFS documents, including the 2000 final annual specifications published on July 12, 2000 (65 FR 42883), which indicate an end date of December 31 for the General category season. Adjustments to this end date would require a separate rulemaking. NMFS would need to assess the potential impacts and the order of magnitude of the fishing activities that would be associated with January through March General category BFT fishery. NMFS suggests that interested parties consult with their representatives on the HMS AP to provide comments/guidance on the season length during the next HMS AP meeting.

Subsequent Adjustments

The 2002 BFT fishing year runs from June 1, 2002 through May 31, 2003. Development of BFT quota specifications and effort controls is dependent upon landings information from the previous fishing season. However, final landings data are not available before the start of the new season. When the proposed rule for this action was issued on June 27, 2002, the 2001 BFT landings data upon which it relied were preliminary and subject to change. NMFS may receive further data on 2001 landings in the future, thus these final initial specifications may be adjusted later in the 2002 season. Notice of any such adjustments will be published in the **Federal Register**.

Classification

These final initial specifications and effort controls are published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq*., and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq*. The AA has determined that the final initial specifications and the effort controls are consistent with the HMS FMP, the Magnuson-Stevens Act, and the 1998 ICCAT BFT catch recommendation.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration when these initial quota specifications and General category effort controls were proposed that, if adopted, they would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification may be found in the proposed initial specifications (67 FR 43266). No comments were received regarding the differential economic impacts of these quota specifications on small entities. Accordingly, neither an Initial nor Final Regulatory Flexibility Analysis was prepared.

These final initial quota specifications and General category effort controls have been determined to be not significant for purposes of Executive Order 12866.

On September 7, 2000, NMFS reinitiated formal consultation for all

HMS commercial fisheries under section 7 of the Endangered Species Act. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. NMFS issued a final rule on July 9, 2002 (67 FR 45393), to implement the reasonable and prudent alternative required by the BiOp. These final initial quota specifications and effort controls would not have any additional impact on sea turtles as these actions would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No irreversible or irretrievable commitments of resources are expected from this action that would adversely affect the implementation of the requirements of the BiOp.

The area in which this final action is planned has been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the Highly Migratory Species Management Division of the Office of Sustainable Fisheries at NMFS. It is not anticipated that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

To ensure that the United States' actions are consistent with international obligations under ICCAT, and because the fishing season is underway, it is essential that these bluefin tuna (BFT) quota specifications and General category effort controls are effective upon publication. Therefore, pursuant to 5 U.S.C. 552 (d)(3), NMFS has determined that there is good cause to waive the 30–day delay of the effective date. NMFS will rapidly communicate these final initial specifications to affected fishermen through its FAX network.

Dated: September 25, 2002.

Rebecca Lent,

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

[FR Doc. 02–24946 Filed 9–30–02; 8:45 am]

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Proposed Rules

Federal Register
Vol. 67, No. 190
Tuesday, October 1, 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.

GENERAL ACCOUNTING OFFICE

4 CFR Part 21

General Accounting Office, Administrative Practice and Procedure, Bid Protest Regulations, Government Contracts

AGENCY: General Accounting Office.

ACTION: Proposed rule.

SUMMARY: The General Accounting Office (GAO) is proposing to revise its Bid Protest Regulations, promulgated in accordance with the Competition in Contracting Act of 1984, to conform the current regulation to current practice, and otherwise to improve the overall efficiency and effectiveness of the bid protest process at GAO. GAO has not revised Part 21 since 1996, and the proposed changes will clarify several aspects of the bid protest process that have evolved since that time.

DATES: Comments must be submitted on or before November 12, 2002.

ADDRESSES: Comments should be addressed to: John M. Melody, Assistant General Counsel, General Accounting Office. Comments should be submitted by e-mail at *BidProtestRegs@gao.gov*, or by facsimile at 202–512–9749.

FOR FURTHER INFORMATION CONTACT: John M. Melody (Assistant General Counsel) or David A. Ashen (Deputy Assistant General Counsel), 202–512–9732.

SUPPLEMENTARY INFORMATION: On February 25, 2002, the General Accounting Office (GAO) published an Advance Notice of Proposed Rulemaking (67 FR 8485) soliciting comments on several changes to its Bid Protest Regulations, promulgated in accordance with the Competition in Contracting Act of 1984, 31 U.S.C. 3551–3556. The advance notice was prompted by GAO's recognition that there have been legal developments and changes in practice that have occurred since the last revision, in 1996. Of particular note, since the 1996 revision to GAO's regulation, alternative dispute resolution has grown in use, electronic filing has become a reality, and the Court of Appeals for the Federal Circuit and Court of Federal Claims have issued significant decisions regarding review of affirmative responsibility determinations. The advance notice requested comments on changes already under consideration in these and other areas, and also solicited suggestions for other changes to the regulation that may enhance the efficiency and overall effectiveness of the bid protest process at GAO.

Interested persons were invited to submit comments on GAO's advance notice by April 1, 2002. We received written comments from four federal agencies, one industry association, one nonprofit institute, and two individual attorneys. In preparing this proposed rule, we have carefully considered all comments received.

As a result of comments received, GAO proposes to leave unchanged the timeliness rule under paragraph (a)(2) of Sec. 21.2, one of the areas identified in the advance notice as being considered for change. As explained in the advance notice, the paragraph currently provides that, where a debriefing is requested and required, any protest basis that is known or should have been known, either before or as a result of the debriefing, shall not be filed prior to the debriefing date offered to the protester. This rule permits protesters to delay—until after a debriefing—protesting certain matters that may arise during the procurement. We considered revising this rule because delays in filing protests are inconsistent with GAO's general view that prompt resolution of protests is beneficial to the procurement system. As one commenter pointed out, however, because many alleged improprieties that may occur during a procurement ultimately may have no effect on the award decision, revising the rule to promote earlier protests could result in an increased number of unnecessary protests. We agree with the commenter, and since the delayed filing has arisen in only a very few cases, while the number of unnecessary protests could be much greater, we believe it is advisable to leave this provision unchanged.

Explanations of significant proposed revisions to GAO's Bid Protest Regulations are set forth below.

Methods for Filing Documents

GAO proposes to revise paragraph (g) of Sec. 21.0 to clarify that protests and other documents may be filed by facsimile, and to provide also that, subject to restrictions where a protective order has been issued, all filings, including protests, may be filed by other electronic means, such as electronic mail (e-mail). This proposed change reflects recent efforts by GAO to make e-mailed protests feasible; for example, GAO has established a means for determining the time that an e-mailed protest was filed. Further, GAO proposes to revise the paragraph to make it clear that, regardless of the delivery method chosen, the filing party bears the risk that the document will not be timely received at GAO. Other paragraphs have been similarly revised to reflect GAO's openess towards electronic communications generally. In this regard, GAO proposes to revise paragraph (b) of Sec. 12.12 to make clear that decisions, when issued, may be transmitted to the parties by e-mail, and may be accessed by electronic means. Similarly, GAO proposes revising paragraph (c) of Sec. 21.7 to provide that GAO, in its discretion, may hold hearings by video or other electronic means.

Alternative Dispute Resolution (ADR)

Consistent with the advance notice and the suggestions of several commenters, GAO's proposed revision adds, as new paragraph (h) under Sec. 21.0, a definition of ADR. This definition clarifies that ADR consists of techniques—such as outcome prediction and negotiation assistance—designed to resolve cases expeditiously, without a written decision. The definition is limited in detail, consistent with the view of GAO and several commenters that ADR should remain as flexible as possible in order to ensure that it can be tailored to fit the circumstances and the parties' interests in a particular case. GAO also proposes to revise paragraph (e) of Sec. 21.10 to specifically provide that ADR is among the flexible alternative procedures GAO may use to promptly and fairly resolve a protest.

Comments on Agency Report

GAO proposes to revise paragraph (i) of Sec. 21.3 by eliminating certain language. Currently, the paragraph states that protesters may satisfy the

requirement that comments be filed within 10 days of receipt of the agency report by instead filing within 10 days a statement requesting that their protest be decided on the existing record, or requesting an extension of time. GAO believes this language may have led protesters to forgo filing substantive comments, believing them unnecessary for a successful protest. In fact, absent a substantive response to the agency's report, there often is no basis for GAO to question the agency's position. GAO therefore proposes to delete the reference to a request that the protest be decided on the existing record. Similarly, a protester's request for an extension of time for filing comments, where that request is not granted, does not provide a basis for the protester to delay its comments. GAO therefore proposes to add language to make it clear that comments may be delayed only where GAO grants an extension. Finally, since GAO also may establish a filing period shorter than 10 days where it adopts accelerated procedures (see Sec. 21.10(e)), GAO proposes adding language requiring that comments be filed in fewer than 10 days where GAO has established such a shorter period.

GAO Review of Small Business Certificate of Competency Program

GAO proposes to revise paragraph (b)(2) of Sec. 21.5. That paragraph currently provides that GAO generally will not consider protests challenging Certificate of Competency (COC) reviews unless there is a showing of possible bad faith by government officials, or a showing that vital responsibility information was not considered. GAO proposes to revise the paragraph, first, by adding SBA's alleged failure to follow its own regulations as an exception to the general rule that GAO will not review protests in this area. This change is intended to make the extent of GAO's review in the COC area consistent with that in the area of protests of procurements under section 8(a) of the Small Business Act (Sec. 21.5(b)(3)), and protests of affirmative determinations of responsibility (Sec. 21.5(c), as proposed herein to be revised). Second, the proposed revision makes it clear, consistent with GAO decisions, that GAO review of protests under another exception—where SBA allegedly failed to consider vital responsibility information—is limited to considering the manner in which the information was presented to or withheld from SBA by the contracting agency. Finally, the proposed revised language makes it clear that, in light of the deference accorded SBA in small business matters, GAO will interpret the exceptions to the general rule narrowly.

Affirmative Determinations of Responsibility

GAO proposes to revise paragraph (c) of Sec. 21.5. That paragraph provides that GAO will review affirmative determinations of responsibility only under very limited circumstances, reflecting GAO's view that such determinations generally do not lend themselves to reasoned review. As noted in the advance notice, in January 2001, the Court of Appeals for the Federal Circuit held in *Impresa Construzioni Geom. Domenico Garufi* v. *United States*, 238 F.3d 1324 (Fed. Cir. 2001), that affirmative determinations of responsibility are subject to review by the Court of Federal Claims under the ''arbitrary and capricious'' standard applicable under the Administrative Procedure Act. In light of that decision, and notwithstanding the fact that GAO is not applying the Administrative Procedure Act in its bid protest process, GAO proposes to revise the paragraph to expand its review of affirmative determinations of responsibility to include protests where there is evidence raising serious concerns as to whether the contracting officer unreasonably failed to consider available relevant information, or otherwise violated statute or regulation. While GAO recognizes that the revision to its regulation may expand review in the area, the proposed language is intended to limit any expanded review, in recognition of the agency's discretion, to protests where the protester proffers evidence supporting the allegation—that is, where the protest is not based on mere information and belief or speculation—and where the allegation is substantial enough to bring into question whether the affirmative determination could have any rational underpinning. The proposed revised language is designed to achieve a balance between GAO's desire to promote consistency with the rationale underlying the *Garufi* decision, and the possibility—a concern expressed by several agency commenters—that expanded review by GAO might unduly interfere with the normal contracting process. Finally, as reflected in the proposed language, GAO anticipates that allegations most commonly will be based on the alleged failure of the contracting officer to consider publicly-available relevant information (as in the *Garufi* case).

Suspension and Debarment Review

GAO proposes to add new paragraph 21.5(i) to set forth suspension and debarment actions as issue areas that GAO will not review. Currently, although GAO generally will not review protests of suspension and debarment actions, it will consider arguments that an offeror improperly has been suspended or debarred during the pendency of a procurement in which it was competing, in order to ensure that the agency did not act arbitrarily to avoid making award to an offeror otherwise entitled to award. GAO recently held in *Shinwa Elec.,* B–290603 *et al.,* Sept. 3, 2002, 2002 CPD ¶ __, that it no longer will review suspension and debarment actions even under this exception on the ground that the appropriate forum for such challenges is the agency taking the disputed action. This proposed new paragraph is intended to make the regulations consistent with this current case law.

Comments Where Hearing Is Held

GAO proposes revising paragraph 21.7(g) to delete language providing that, if a hearing is to be held, no separate comments on the agency report should be filed. In practice, GAO rarely calls a hearing until after the protester and intervenor have commented on the agency report, since GAO has found that such comments typically are helpful in determining whether issues can be resolved on the written record and, thus, whether a hearing is necessary.

Filing of Claim for Costs Following Agency Corrective Action

GAO proposes to revise paragraph (e) of Sec. 21.8 to clarify the time within which claims for costs must be filed with the procuring agency following corrective action by the agency on a GAO protest. The current regulation requires that such claims be filed within 15 days after the protester is ''advised that the contracting agency has decided to take corrective action.'' In a very few cases, following initial notice that an agency has decided to take corrective action, there has been a delay in the agency's finalizing the action to be taken, making it unclear when the 15 days begins to run. *See* DevTech Sys., Inc., B–284860.4, Aug. 23, 2002, 2002 CPD ____. The proposed revised language makes it clear that the 15-day period begins to run from the time the protester learned (or should have learned) that GAO has closed the protest in response to the proposed corrective action.

Cases Before Courts of Competent Jurisdiction

GAO proposes to revise paragraph (b) of section 21.11 to clarify that any case—not only bid protests—will be

dismissed where the matter involved is the subject of litigation, or has been decided on the merits, by a court of competent jurisdiction. This revision is necessary to make it clear that the provision extends to requests for costs, reconsideration requests, and other matters, not only bid protests.

Comments

Comments concerning the proposed rule may be submitted by e-mail at *BidProtestRegs@gao.gov,* or by facsimile at 202–512–9749.

List of Subjects in 4 CFR Part 21

Administrative practice and procedure, Bid protest regulations, Government contracts.

For the reasons set out in the preamble, Title 4, Chapter I, Subchapter B, of the Code of Federal Regulations is proposed to be amended as follows:

PART 21—BID PROTEST REGULATIONS

1. The authority citation for Part 21 continues to read as follows:

Authority: 31 U.S.C. 3551–3556.

2. Amend § 21.0 by revising paragraphs (f) and (g), and adding new paragraph (h) to read as follows:

§ 21.0 Definitions.

* * * * *

(f) *Adverse agency action* is any action or inaction by a contracting agency which is prejudicial to the position taken in a protest filed with the agency, including a decision on the merits of a protest; the opening of bids or receipt of proposals, the award of a contract, or the rejection of a bid or proposal despite a pending protest; or contracting agency acquiescence in continued and substantial contract performance.

(g) A document is *filed* on a particular day when it is received by GAO by 5:30 p.m., Eastern time, on that day. Protests and other documents may be filed by hand delivery, mail, commercial carrier, facsimile transmission, or other electronic means (but see §21.4(b) for restrictions on electronic filing where a protective order has been issued). Hand delivery and other means of delivery may not be practicable during certain periods due, for example, to security concerns or equipment failures. In all cases, the filing party is responsible for ensuring timely receipt at GAO.

(h) *Alternative dispute resolution* encompasses various means of resolving cases expeditiously, without a written decision, including techniques such as outcome prediction and negotiation assistance.

* * * * *

3. Amend § 21.1 by revising paragraph (c) introductorry text and (c)(1) to read as follows:

§ 21.1 Filing a protest.

* * * * *

(c) A protest filed with GAO shall:

(1) Include the name, street address, electronic mail address, and telephone and facsimile numbers of the protester,

* * * * *

4. Amend § 21.3 by revising paragraphs (a) and (i) to read as follows:

§ 21.3 Notice of protest, submission of agency report, and time for filing of comment on report.

(a) GAO shall notify the contracting agency by telephone within 1 day after the filing of a protest, and, unless the protest is dismissed under this part, shall promptly send a written confirmation to the contracting agency and an acknowledgment to the protester. The contracting agency shall immediately give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial prospect of receiving an award. The contracting agency shall furnish copies of the protest submissions to those parties, except where disclosure of the information is prohibited by law, with instructions to communicate further directly with GAO. All parties shall furnish copies of all protest communications to the contracting agency and to other participating parties. All protest communications shall be sent by means reasonably calculated to effect expeditious delivery.

* * * * *

(i) Comments on the agency report shall be filed with GAO within 10 days after receipt of the report, with a copy provided to the contracting agency and other participating parties. The protest shall be dismissed unless the protester files comments within the 10-day period, unless GAO grants an extension, or establishes a shorter period in accordance with § 21.10(e). Extensions will be granted on a case-by-case basis. Unless otherwise advised by the protester, GAO will assume the protester received the agency report by the due date specified in the acknowledgment of protest furnished by GAO.

* * * * *

5. Amend § 21.4 by revising paragraph (b) to read as follows:

§ 21.4 Protective orders.

* * * * *

(b) If no protective order has been issued, the agency may withhold from the parties those portions of the report which would ordinarily be subject to a protective order. GAO will review in camera all information not released to the parties. Where a protective order has been issued, documents may be filed by electronic means (other than facsimile transmission) only when specifically authorized by GAO.

* * * * *

6. Amend § 21.5 by revising the introductory text and paragraphs (b)(2), (c) and (d), and to add new paragraph (i), to read as follows:

§ 21.5 Protest issues not for consideration.

If no protective order has been issued, the agency may withhold from the parties those portions of the report which would ordinarily be subject to a protective order. GAO will review in camera all information not released to the parties. Where a protective order has been issued, documents may be filed by electronic means (other than facsimile transmission) only when specifically authorized by GAO.

* * * * *

(b) * * *

* * * * *

(2) *Small Business Certificate of Competency Program.* Referrals made to the Small Business Administration pursuant to sec. 8(b)(7) of the Small Business Act, or the issuance of, or refusal to issue, a certificate of competency under that section will generally not be reviewed by GAO. The exceptions, which GAO will interpret narrowly out of deference to the role of the Small Business Administration (SBA) in this area, are protests that show possible bad faith on the part of government officials, or that present allegations that the SBA failed to follow its own published regulations or failed to consider vital information bearing on the firm's responsibility due to the manner in which the information was presented to or withheld from the SBA by the procuring agency. 15 U.S.C. 637(b)(7).

* * * * *

(c) *Affirmative determination of responsibility by the contracting officer.* Because the determination that a bidder or offeror is capable of performing a contract is largely committed to the contracting officer's discretion, GAO will generally not consider a protest challenging such a determination. The exceptions are protests that allege that definitive responsibility criteria in the

solicitation were not met and those that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation.

(d) *Procurement integrity.* For any Federal procurement, GAO will not review an alleged violation of subsections (a), (b), (c), or (d) of sec. 27 of the Office of Federal Procurement Policy Act, 41 U.S.C. 423, as amended by sec. 4304 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, 110 Stat. 186, February 10, 1996, where the protester failed to report the information it believed constituted evidence of the offense to the Federal agency responsible for the procurement within 14 days after the protester first discovered the possible violation.

* * * * *

(i) *Suspensions and debarments.* Challenges to the suspension or debarment of contractors will not be reviewed by GAO. Such matters are for review by the contracting agency in accordance with the applicable provisions of the Federal Acquisition Regulation.

7. Amend § 21.7 by revising paragraphs (c) and (g) to read as follows:

§ 21.7 Hearings.

* * * * *

(c) Hearings generally will be conducted as soon as practicable after receipt by the parties of the agency report and relevant documents. Although hearings ordinarily will be conducted at GAO in Washington, DC, hearings may, at the discretion of GAO, be conducted at other locations, or by telephone or other electronic means.

* * * * *

(g) If a hearing is held, each party shall file comments with GAO within 5 days after the hearing was held or as specified by GAO. If the protester has not filed comments by the due date, GAO shall dismiss the protest.

* * * * *

8. Amend § 21.8 by revising paragraph (e) to read as follows:

§ 21.8 Remedies.

* * * * *

(e) The protester shall file any request that GAO recommend that costs be paid within 15 days of the date on which the protester learned (or should have learned, if that is earlier) that GAO had closed the protest based on the agency's decision to take corrective action.

* * * * *

9. Amend § 21.10 by removing paragraph (d)(3), and by revising paragraph (e) to read as follows:

§ 21.10 Express options, flexible alternative procedures, accelerated schedules, summary decisions, and status conferences.

* * * * *

(e) GAO may use flexible alternative procedures to promptly and fairly resolve a protest, including alternative dispute resolution, establishing an accelerated schedule and/or issuing a summary decision.

* * * * *

10. Amend § 21.11 by revising paragraph (b) to read as follows:

§ 21.11 Effect of judicial proceedings.

* * * * *

(b) GAO will dismiss any case where the matter involved is the subject of litigation before, or has been decided on the merits by, a court of competent jurisdiction. GAO may, at the request of a court, issue an advisory opinion on a bid protest issue that is before the court. In these cases, unless a different schedule is established, the times provided in this part for filing the agency report (§21.3(c)), filing comments on the report (§21.3(i)), holding a hearing and filing comments (§21.7), and issuing a decision (§21.9) shall apply.

11. Amend § 21.12 by revising paragraph (b) to read as follows:

§ 21.12 Distribution of decisions.

* * * * *

(b) Decisions may be distributed to the parties, and are available from GAO, by electronic means.

Anthony H. Gamboa,

General Counsel.

[FR Doc. 02–24803 Filed 9–30–02; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 97

[Doc. # ST–02–01]

RIN # 0581–AC22

Plant Variety Protection Office, Fee Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase Plant Variety Protection (PVP) Office application, search, and certificate issuance fees by approximately 35 percent. The last fee increase in September 2000 is no longer adequate to cover current program obligations for administrative and information technology needs. The PVP Act of 1970 requires that reasonable fees be collected from applicants seeking certificates of protection in order to maintain the program.

DATES: Comments must be received on or before October 31, 2002.

ADDRESSES: Interested persons are invited to submit comments concerning this proposed rule. Comments should be sent in triplicate to Dr. Paul Zankowski, Commissioner, PVP Office, Room 401, NAL Building, 10301 Baltimore Boulevard., Beltsville, MD 20705, telephone 301–504–7475, fax 301–504–5291, and should refer to the docket title and number located in the heading of this document. Comments received will be available for public inspection at the same location, between the hours of 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Fabian Q. Generao, USDA, AMS, Science and Technology, 14th & Independence Avenue, SW., P.O. Box 96456, Room 3521-South Bldg., Washington, DC 20090–6456, Tel. 202/720–0195, Fax. 202/720–1631.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12866

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

II. Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small business entities. There are more than 800 users of the PVPO's variety protection service, of whom about 100 may file applications in a given year. Some of these users are small business entities under the criteria established by the Small Business Administration (13 CFR 121.201). The AMS has determined that this action would not have a significant economic impact on a substantial number of these small business entities.

The Plant Variety Protection (PVP) Office administers the PVP Act of 1970, as amended (7 U.S.C. 2321 *et seq.*), and

issues Certificates of Protection that provide intellectual property rights to developers of new varieties of plants. A Certificate of Protection is awarded to an owner of a variety after examination indicates that it is new, distinct from other varieties, genetically uniform, and stable through successive generations. This action will raise the fee charged to users of plant variety protection. The AMS estimates that the proposed rule will yield an additional $270,000 during fiscal year (FY) 2003. The costs to private and public business entities will be proportional to their use of the service, and shared equitably. The costs to individual users will be approximately $1,059.00 per PVP Certificate issued or by 35 percent per application. Plant Variety Protection is a voluntary service. Any decision by developers to discontinue the use of plant variety protection will not hinder private and public entities from marketing their varieties in commercial markets.

Every year, AMS reviews it user fee financed program to determine their fiscal condition. In the most recent review of the PVP program, the cost analysis indicated that the existing fee schedule will not generate sufficient revenues to cover program services and obligations while maintaining an adequate program reserve balance. From 1995 and through 2002, the PVP Office absorbed accumulated national and locality salary increases for Federal employees totaling 36 and 19 percent, respectively. These costs were offset by a fee increase of only 10 percent in September 2000.

AMS calculated the new fee schedule by projecting FY 2002 revenues of $903,000 and program obligations of $1,231,000. This indicates projected a loss to the program of $328,000 for the FY. At this rate, the trust fund balance would be nearly depleted by the end of FY 2004. With a fee increase of 35 percent, FY 2003 revenues and expenditures are projected to be $1,041,000 and $1,189,000, respectively. The trust fund balance is expected to be maintained at the FY 2003 level of $853,000, which satisfies Agency requirements.

III. Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect, nor will it preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of the proposed rule.

IV. Paperwork Reduction Act

This proposed rule does not contain any information collection or record keeping requirements that are subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Background Information and Proposed Changes

The PVP Program is a voluntary, user fee-funded service, conducted under the Authority of the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*) of 1970, as amended. The Act authorizes the Secretary of Agriculture to provide intellectual property rights that facilitate marketing of new varieties of seed-propagated crops and potatoes. The act also requires that reasonable fees be collected from the users of the services to cover the costs of maintaining the program.

In September 2000, AMS published a rule in the **Federal Register** (60 FR 17188) that increased Plant Variety Protection Office fees pursuant to amendments to the Plant Variety Protection Act that became effective September 2000.

In its analysis of projected costs for fiscal year (FY) 2002, AMS identified administrative and information technology support as well as a 10 percent decrease in the number of applications submitted to the office. For FY 2002, user fee revenues and program obligations are projected to be $903,000 and $1,231,000, respectively, resulting in an estimated $328,000 program deficit. With a fee increase, FY 2003 revenues and expenditures are projected to be $1,041,000 and $1,189,000, respectively. We estimate this proposed rule would yield an additional $270,000 during FY 2003 that will offset increased program operating costs. The program will take additional cost cutting measures to eliminate the remaining deficit.

AMS used the fees currently charged as a base for calculating the new fee schedule for FY 2003. The fees set forth in Sec. 97.175 would be increased. The application fee will be increased from $320 to $432, the search fee from $2,385 to $3,220, and the issuance fee from $320 to $432. The fees for reviving an abandoned application, correcting or re-issuance of a certificate are increased from $320 to $432. The charge for granting an extension for responding to a request is increased from $55 to $74. The hourly charge for any other service not specified will increase from $66 to $89. The fee for appeal to the Secretary (refundable if appeal overturns the Commissioner's decision) is increased from $3,050 to $4,118. Reproduction of records, drawings, certificates, exhibits or printed materials, late payment, and replenishment of seeds will increase by 35%. These fee increases are necessary to recover the costs of this fee-funded program.

The Plant Variety Protection Advisory Board has been informed of cost increases, including anticipated salary increases, and consulted on a fee increase in November 2001. The Board recommended that fees be increased. This proposed rule makes the minimum changes in the regulations to implement the recommended increased fees to maintain the program as a fee-funded program.

A 30-day comment period is provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impact of this action on small businesses. Thirty days is deemed appropriate because present fees are inadequate to properly cover program costs and additional revenues need to be generated to effectively operate the program.

List of Subjects in 7 CFR Part 97

Plants, seeds.

For reasons set forth in the preamble, it is proposed that 7 CFR part 97 be amended as follows.

PART 97—PLANT VARIETY AND PROTECTION

1. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2321 *et seq.*

2. Section 97.175 is revised to read as follows:

§ 97.175 Fees and charges.

The following fees and charges apply to the services and actions specified below:

(a) Filing the application and notifying the public of filing—$432.00.

(b) Search or examination—$3,220.00.

(c) Allowance and issuance of certificate and notifying public of issuance—$432.00.

(d) Revive an abandoned application—$432.00.

(e) Reproduction of records, drawings, certificates, exhibits, or pointed material (copy per page of material)—$1.50.

(f) Authentication (each page)—$1.50.

(g) Correcting or re-issuance of a certificate—$432.00.

(h) Recording assignments (per certificate/application)—$38.00.

(i) Copies of 8 x 10 photographs in color—$38.00.

(j) Additional fee for reconsideration—$432.00.

(k) Additional fee for late payment—$38.00.

(l) Additional fee for late replenishment of seed—$38.00.

(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)—$4,118.00.

(n) Granting of extensions for responding to a request—$74.00.

(o) Field inspections by a representative of the Plant Variety Protection Office, made at the request of the applicant, shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulation.

(p) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $89.00 per employee-hour.

Dated: September 25, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–24903 Filed 9–30–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 02–026–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to treatment at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables would be required to be treated or meet other special conditions. This action would provide the United States with additional types and sources of fruits and vegetables while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

We are also proposing to recognize areas in several countries as free from certain fruit flies; amend the packing requirements for certain commodities; expand locations in the northeastern United States where cold treatment can be conducted; update and clarify restrictions on the entry of fruits and vegetables; update and clarify permit procedures, including amendment, denial, or withdrawal of permits; require full disclosure of fruits and vegetables at the port of first arrival and clarify the conditions under which they may be released for movement; and make other miscellaneous changes.

DATES: We will consider all comments that we receive on or before December 2, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–026–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–026–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–026–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) currently prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

We propose to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under certain conditions, for importation into the United States. We are proposing this action at the request of various importers and foreign ministries of agriculture.

In accordance with the Animal and Plant Health Inspection Service (APHIS) notice, ''Procedures and Standards Governing the Consideration of Import Requests,'' published in the **Federal Register** on June 19, 2001 (66 FR 32923–32928, Docket No. 00–082–1), we have conducted pest risk assessments for commodities that have not been imported previously under the regulations. For citrus from the Republic of South Africa and for peppers and tomatoes from Spain, where we are proposing to extend the area from which these commodities may be imported, we have reviewed data that demonstrates that the pest risk assessment prepared for the currently eligible areas is applicable to the new areas as well. Information on these pest risk assessments and data referred to in this document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.** Some of the pest risk assessments are also available on the Internet at *http://www.aphis.usda.gov/ppq/pra/.*

The fruits and vegetables referred to in this document would have to be imported under permit and would be subject to the requirements in § 319.56–6 of the regulations. Under § 319.56–6, all imported fruits and vegetables, as a condition of entry into the United States, must be inspected; they are also subject to disinfection at the port of first arrival if a U.S. Department of Agriculture (USDA) inspector requires it. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with quarantine pests that an inspector determines that it cannot be cleaned or treated.

Some of the fruits and vegetables proposed for importation would have to meet other special conditions. The proposed conditions of entry, which are discussed below, appear adequate to prevent the introduction and spread of quarantine pests through the importation of these fruits and vegetables.

We are proposing to make several other amendments to update and clarify the regulations and improve their effectiveness. Our proposed

amendments are discussed below by topic.

Changes in Terminology

We propose to update the regulations to replace the term ''injurious insects'' wherever it appears with the term ''quarantine pests.'' We would define *quarantine pest* in § 319.56–1 as ''A pest of potential economic importance to the area endangered by it and not yet present there, or present but not widely distributed there and being officially controlled,'' which is consistent with the definition provided in the standards of the International Plant Protection Convention (IPPC) of the United Nations' Food and Agriculture Organization. ''Quarantine pests'' is a more accurate term because the regulations address not only insects, but other pests of quarantine significance as well. In addition, the APHIS, other plant protection organizations throughout the world, and the regulated community use the term ''quarantine pests.'' Therefore, in the remainder of this proposed rule, we use the term ''quarantine pests'' and, in the regulatory portion of this document, we will propose to replace the term ''injurious insects'' with the term ''quarantine pests.''

Our regulations currently refer to ''fruit-fly proof'' cartons or coverings. However, ''insect-proof'' is a more inclusive term and would clarify the intent of the regulations that the cartons or coverings must be adequate to exclude insects generally rather than just fruit flies. Therefore, we propose to replace the term ''fruit-fly proof'' wherever it appears in the regulations with the term ''insect-proof.''

Definitions

In addition to adding the definition for *quarantine pest* discussed above, we would amend § 319.56–1 by adding the following terms and definitions.

Under the current regulations, the importation of fruits or vegetables must be authorized by a permit; however the term ''permit'' is not specifically defined in the regulations. Therefore, we would add a definition for *permit* to read, ''A written or oral authorization, including by electronic methods, to import fruits or vegetables in accordance with the regulations in this subpart.'' As a permit could be either a general permit or a specific permit, we would add definitions for these terms as well.

General permit would be defined as ''An authorization contained in § 319.56–2(b), (c), or (d) for any person to import the articles named by the general permit, in accordance with the requirements specified by the general permit, without being issued a specific permit.''

Specific permit would be defined as ''An authorization issued by APHIS to a person to import a particular fruit or vegetable from a specified country in accordance with the requirements of this subpart and any additional conditions that may be assigned.''

Restrictions on Entry of Fruits and Vegetables

Section 319.56–2 currently provides restrictions on the entry of fruits and vegetables imported into the United States. Paragraph (e) of § 319.56–2 provides conditions under which fruits and vegetables may be imported into the United States, but that paragraph does not necessarily apply to all fruits and vegetables that may be imported under the regulations. In other sections of the regulations, specific conditions are prescribed for specific commodities that may be imported into the United States from a particular country or locality (*e.g.*, in § 319.56–2w, papayas from Brazil and in § 319.56–2dd, tomatoes from Spain, France, Morocco, and Chile). We propose to amend § 319.56–2(e) to clarify that fruits and vegetables from designated countries or localities that are subject to specific import requirements prescribed elsewhere in the regulations are not subject to the general requirements specified in § 319.56–2(e). We would, however, add the provision that the general requirements of § 319.56–2(e) will apply if so indicated in the specific section, as is the case for apples and pears from Australia and New Zealand in § 319.56–2j.

The regulations in § 319.56–2(e)(3) and (e)(4) currently specify that certain fruits and vegetables may be imported from a definite area or district if that area or district is free of all or certain injurious insects and the importation of the fruits and vegetables can be authorized ''without risk.'' To prevent the introduction of quarantine pests through the importation of fruits and vegetables into the United States, the regulations currently stipulate inspection, treatment, and other conditions to mitigate the risk of introducing quarantine pests. Even with strict adherence to the preventive measures that the regulations prescribe, there will always be some risk—however slight—that a fruit or vegetable could harbor quarantine pests, which makes the ''without risk'' criterion a standard that, in practical terms, is impossible to satisfy. Therefore, in § 319.56–2(e)(3) and (e)(4), we propose to amend the regulations by removing the criterion of importation without risk. Even with the removal of that criterion from § 319.56–2(e)(3) and (e)(4), those paragraphs would continue to provide appropriate conditions for the importation of fruits and vegetables from pest-free areas.

Section 319.56–2(f) currently lists criteria that must be met before APHIS will authorize the importation of certain fruits or vegetables from a definite area or district under § 319.56–2(e)(3) or (e)(4). Specifically, prior to the importation of a fruit or vegetable, the Administrator must determine that surveys conducted by the country of origin support the absence of certain injurious insects, the country of origin has adopted and is enforcing requirements to prevent the introduction of certain insects, and that the country of origin has submitted written detailed procedures for the conduct of surveys and the enforcement of requirements employed to prevent the introduction of injurious insects.

We propose to replace the specific criteria in § 319.56–2(f) with a standard requiring that the area from which the fruit or vegetable is being imported meets the requirements of the IPPC's International Standard for Phytosanitary Measures (ISPM) No. 4, ''Requirements for the establishment of pest free areas.'' ISPM No. 4 is available by writing to USDA, APHIS, PPQ, Phytosanitary Issues Management, 4700 River Road Unit 140, Riverdale, MD 20737, or on the Internet at: *http://www.aphis.usda.gov/ppq/pim/standards/*.

The IPPC, of which the United States is a member, establishes international standards to achieve international harmonization of phytosanitary measures. ISPM No. 4 requires that for an area to be considered as free, it must have a system to establish freedom, phytosanitary measures to maintain freedom, and a system for the verification of the maintenance of freedom. We believe that incorporating this standard by reference into our regulations would prevent the introduction of quarantine pests into the United States and provide requirements that are consistent with the IPPC.

Fruit-Fly-Free Areas in Mexico

The regulations in § 319.56–2(h) currently list the municipalities in Mexico that APHIS has determined meet the criteria of § 319.56–2(e) and (f) with regard to freedom from the plant pests Mediterranean fruit fly (*Ceratitis capitata*) (Medfly), Mexican fruit fly (*Anastrepha ludens*), dark fruit fly (*A. serpentina*), West Indian fruit fly (*A. obliqua*), and South American fruit fly (*A. fraterculus*). Apples, apricots,

grapefruit, mangoes, oranges, peaches, persimmons, pomegranates, and tangerines may be imported from these municipalities without treatment for the listed fruit flies.

Mexico recently provided APHIS with fruit fly survey data that demonstrate that the municipalities of La Paz and Los Cabos in the State of Baja California Sur and Ahome, Choix, El Fuerte, Guasave, and Sinaloa de Leyva in the State of Sinaloa meet the criteria of § 319.56–2(e) and (f) for area freedom from the fruit flies listed above. These municipalities also meet the requirements under ISPM No. 4, which, as discussed above, we are proposing to use as the requirements for the establishment of pest-free areas. Therefore, we are proposing to include those municipalities in the list of fruit-fly-free areas of Mexico in § 319.56–2(h).

Medfly Area in Chile

Under § 319.56–2(j), all Districts in Belize, all Provinces in Chile, and the Department of Petén in Guatemala are recognized, in accordance with § 319.56–2(e) and (f), as free of Medfly. However, because Medfly was detected in the Chilean Province of Arica, we are proposing to amend § 319.56–2(j) to replace ''all Provinces of Chile'' with the words ''all Provinces of Chile except Arica.''

Cold Treatment Locations

Currently, § 319.56–2d(b)(1) lists the following ports where cold treatment may be conducted if it was not conducted in transit to the United States: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; the maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Baltimore-Washington International and Dulles International airports, Washington, DC. We propose to specify that cold treatment may also be applied at storage warehouses approved by the Administrator that are located in the area north of 39° longitude and east of 104° latitude and at specified maritime ports and airports that are located outside of that area (*i.e.,* the maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Washington Dulles International Airport, Chantilly, VA). This proposed change would eliminate the need to specifically list Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and Baltimore-Washington International Airport, as these locations fall within the area north of 39° longitude and east of 104° latitude. This proposed change would allow cold treatment to be conducted at additional locations in the northeastern United States, while continuing to provide protection against quarantine pests. We also propose to replace the current reference to Dulles International Airport, Washington, DC, with a reference to Washington Dulles International Airport, Chantilly, VA.

We also propose to amend § 319.56–2d(b)(1) to indicate that cold treatment may occur in containers, as well as in compartments or rooms. The last sentence of that paragraph would read ''Refrigeration must be completed in the compartment, container, or room in which it was begun.''

Inspected and Subject to Disinfection

We propose to amend § 319.56–2t to add the following to the list of fruits and vegetables from certain countries or localities that are eligible for importation into the United States in accordance with § 319.56–6 and all other applicable requirements of the regulations:

Country/locality	Commodity	Plant part(s)
Belize	Rambutan	Fruit.
Chile	Pepper	Fruit.
Costa Rica	Rambutan	Fruit.
El Salvador	Fennel	Leaf and stem.
	German chamomile	Flower and leaf.
	Loroco	Flower, leaf, and stem.
	Oregano or sweet marjoram	Leaf and stem.
	Parsley	Leaf and stem.
	Rambutan	Fruit.
	Rosemary	Leaf and stem.
	Waterlily or lotus	Roots without soil.
	Yam-bean or Jicama root	Roots without soil.
Guatemala	Fennel	Leaf and stem.
	German chamomile	Flower and leaf.
	Rambutan	Fruit.
	Waterlily or lotus	Roots without soil.
Honduras	Basil	Leaf and stem.
	German chamomile	Flower and leaf.
	Loroco	Flower and leaf.
	Oregano or sweet marjoram	Leaf and stem.
	Rambutan	Fruit.
	Waterlily or lotus	Roots without soil.
	Yam-bean or Jicama root	Roots without soil.
Mexico	Fig	Fruit.
	Rambutan	Fruit.
Nicaragua	Fennel	Leaf and stem.
	German chamomile	Flower and leaf.
	Loroco	Leaf and stem.
	Rambutan	Fruit.
	Waterlily or lotus	Roots without soil.
	Yam-bean or Jicama root	Roots without soil.
Panama	Rambutan	Fruit.

We have determined that any quarantine pests that might be carried by any of the fruits and vegetables listed above would be readily detectable by a USDA inspector. Therefore, the provisions at § 319.56–6 for inspection and any disinfection at the U.S. port of first arrival appear adequate to prevent the introduction into the United States of quarantine pests by the importation of these fruits and vegetables.

The pest risk assessments identified pests associated with these commodities and evaluated the consequences and likelihood of their introduction. However, for most of the commodities listed above, the pest risk assessments were limited to the continental United States. Therefore, we would require that shipments of those commodities be shipped in boxes labeled ''Not for distribution in HI, PR, VI, and Guam.'' The only commodities listed above to which those proposed shipping restrictions would not apply are pepper from Chile and loroco from El Salvador, Honduras, and Nicaragua.

We are also proposing to amend the current entries in § 319.56–2t for rosemary and loroco from Guatemala to be consistent with the pest risk assessments prepared for those commodities. The entry for rosemary would be amended to change the enterable plant parts from ''above ground parts'' to ''leaf and stem'' and to add the requirement for shipping in boxes labeled ''Not for distribution in HI, PR, VI, and Guam.'' The entry for loroco would be amended to change the enterable plant parts from ''above ground parts'' to ''flower and leaf.''

The following commodities would also be required to be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin that contains specific additional declarations, *i.e.:*

- Basil from Honduras (freedom from *Planococcus minor*);
- Fig from Mexico (fruit originated in a fruit-fly-free area listed in § 319.56–2(h));
- Pepper from Chile (fruit originated in a fruit-fly-free area listed in § 319.56–2(j)); and
- Rambutan from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, or Panama (freedom from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor, Psedococcus landoi*, and all damaged fruit was removed from the shipment prior to export under the supervision of the national plant protection organization).

We believe these additional declarations would be necessary to give us assurance that the product was inspected and found free of specified pests or originated in a pest-free area and, in the case of rambutan from the countries named above, that the shipment is free from damaged fruit, which can be more susceptible to infestation by pests than intact fruit.

Treatment Required

Section 319.56–2x currently lists fruits and vegetables that may be imported into the United States only if they have been treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual. We require treatment for these commodities because they may be infested with quarantine pests that cannot be detected by visual inspection. We are proposing to amend the list in § 319.56–2x to allow the following fruits and vegetables to be imported into the United States from certain countries or localities if they have been treated for quarantine pests in accordance with the PPQ Treatment Manual:

Country/locality	Commodity (plant part)	Quarantine pests	Treatment (see table below)
China	Longan (fruit)	*Bactrocera dorsalis* and Bactrocera curcubitae.	Cold treatment.
Colombia	Cape gooseberry (fruit)	Ceratitis capitata	Cold treatment.
Colombia	Yellow pitaya (fruit)	*Ceratitis capitata* and Anastrepha fraterculus.	Vapor heat treatment.
Nicaragua	Yard-long-bean (pod)	*Cydia fabivora, Epinotia aporema,* and *Maruca testulalis*.	Methyl bromide.
Spain	Persimmon (fruit)	*Ceratitis capitata*	Cold treatment.

We would amend the PPQ Treatment Manual to show the treatments that would be required for the above commodities. Based on research that we have evaluated and approved (for cold treatment for Medfly, we also considered the results of a cold treatment evaluation and quantitative analysis and the findings of USDA technical experts), we have determined that the treatments described below are effective against the specified pests. (The research data and findings may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. The cold treatment evaluation and the quantitative analysis may be viewed on the Internet at *http://www.aphis.usda.gov/oa/clementine/index.html*.) Therefore, the following treatments would be added to the PPQ Treatment Manual and incorporated by reference into 7 CFR 300.1 for the specified commodity, country, and quarantine pest combination:

Treatments

Cold treatment of cape gooseberries from Colombia and persimmons from Spain for *Ceratitis capitata*

Temperature	Exposure period (days)
34 °F (1.11 °C) or below	14
35 °F (1.67 °C) or below	16
36 °F (2.22 °C) or below	18

Cold treatment of longan from China for *Bactrocera dorsalis* and *Bactrocera curcubitae*

Temperature	Exposure period (days)
33.8 °F (1 °C) or below	13
34.5 °F (1.39 °C) or below	18

Vapor heat treatment of yellow pitaya from Colombia for *Ceratitis capitata* and *Anastrepha fraterculus*

1. Raise temperature of the fruit using saturated water vapor at 116.6 °F until the approximate center of the fruit reaches 114.8 °F within a minimum time period of 4 hours.

2. Hold fruit temperature at 114.8 °F or above for 20 minutes.

If post-treatment cooling is conducted, wait 30 minutes after the treatment to start the forced cooling process.

Methyl bromide fumigation in 15″ vacuum chamber of yard-long-bean from Nicaragua for *Cydia fabivora, Epinotia aporema,* and *Maruca testulalis*

Temperature	Dosage rate (lb/1,000 ft^3)	Exposure period (in hours)
90 °F (32.22 °C) or above	0.5	1.5
80–89 °F (26.67–31.67 °C)	1	1.5
70–79 °F (21.11–26.11 °C)	1.5	1.5
60–69 °F (15.56–20.56 °C)	2	1.5
50–59 °F (10–15 °C)	2.5	1.5
40–49 °F (4.44–9.44 °C)	3	1.5

or

Methyl bromide at normal atmospheric pressure (NAP)-tarpaulin or chamber—of yard-long-bean from Nicaragua for *Cydia fabivora, Epinotia aporema,* and *Maruca testulalis*

Temperature	Dosage rate (lb/1,000 ft^3)	Minimum concentration readings (ounces) at:	
		0.5 hours	2 hours
80 °F or above	1.5	19	14
70–79 °F (1.11 °C)	2	26	19
60–69 °F (1.67 °C)	2.5	32	24
50–59 °F (2.22 °C)	3	38	29

Okra From Haiti

Under § 319.56–2p, okra may currently be imported under certain conditions into the United States from Mexico, the West Indies, and certain countries in South America. West Indies is defined in § 319.56–2p(a)(3)(i) as the foreign islands lying between North and South America, the Caribbean Sea, and the Atlantic Ocean, divided into the Bahamas, the Greater Antilles, and the Lesser Antilles (including the Leeward Islands, the Windward Islands, and the islands north of Venezuela). Although we currently allow the importation of okra from Haiti under the regulations in § 319.56–2p, the Haitian Government has requested that we make it clear that we consider Haiti as part of the West Indies. Therefore, we are proposing to amend § 319.56–2p(a)(3)(i) by adding the words ''(including Hispaniola)'' immediately after the words ''Greater Antilles.'' (Hispaniola includes Haiti and the Dominican Republic.)

Citrus From South Africa

Under § 319.56–2q, clementines, grapefruits, lemons, minneolas, navel oranges, satsumas, and valencia oranges may currently be imported into the United States from the Western Cape Province of South Africa if they are cold treated and accompanied by a phytosanitary certificate completed by the South African Ministry of Agriculture. The Western Cape Province is free of citrus black spot, and the required cold treatment addresses the risk presented by other pests of concern; *i.e.*, the false codling moth and fruit flies of the genera *Ceratitis* and *Pterandrus.* The South African Government provided APHIS with data that demonstrate that the Hartswater magisterial district in the Northern Cape Province of South Africa is also free of citrus black spot. In addition, we have determined that the other pests of concern in the Western Cape Province—the false codling moth and fruit flies of the genera *Ceratitis* and *Pterandrus*—are also the only other pests of concern in the Hartswater magisterial district. Therefore, we propose to allow citrus that is grown in, packed in, and shipped from the Hartswater magisterial district in the Northern Cape Province of South Africa to be imported into the United States under the conditions prescribed in § 319.56–2q. We would also correct the spelling of *Ceratitis* in paragraph (b) of that section.

Peppers From Israel

Section 319.56–2u contains the current requirements that apply to the importation into the United States of lettuce and peppers from Israel. Under paragraph (b) of that section, peppers imported from Israel must, among other things, be packed in insect-proof containers prior to movement from approved screenhouses in the Arava Valley to safeguard them from quarantine pests and hitchhikers. Although this requirement ensures that the peppers are appropriately safeguarded before they leave the approved screenhouses in which they were grown, sorted, and packed, the regulations currently do not address the integrity of that packaging during the peppers' movement through Israel for export and during transit to the United States. Therefore, we are proposing to add a new paragraph (b)(8) to § 319.56–2u to require that the insect-proof containers remain intact during transit and be intact upon arrival in the United States. While the regulations currently specify the use of insect-proof containers, we believe that standard containers (*i.e.*, non-insect-proof boxes) could be used to package the peppers if those boxes were completely covered by insect-proof mesh or a plastic tarpaulin and then placed inside a shipping container for transit to the United States. We are, therefore, proposing to amend the regulations to provide for the use of this option as an alternative to individual insect-proof containers. As an added precaution, however, we would require the shipping containers to be secured with a numbered seal applied by the Israeli Department of Plant Protection and Inspection (DPPI) if those containers will be moved through any fruit-fly-supporting areas during transit. The seal number would have to be recorded on the phytosanitary certificate that is discussed in the next paragraph. These proposed requirements would ensure that the peppers are protected from pests during all phases of their movement from the approved screenhouses.

While the regulations in paragraph (a) of § 319.56–2u currently require that lettuce from Israel be accompanied by a phytosanitary certificate issued by the Israeli Ministry of Agriculture, paragraph (b) of that section does not contain a similar phytosanitary certificate requirement for peppers. To

improve our ability to verify that peppers from Israel were grown in accordance with the conditions of § 319.56–2u(b), we are proposing to add a new paragraph (b)(9) that would require that peppers from Israel be accompanied by a phytosanitary certificate issued by the Israeli Ministry of Agriculture that states that the peppers were grown, packed, and shipped in accordance with the requirements of § 319.56–2u(b).

Citrus From Australia

Currently, the regulations in § 319.56–2v list areas in Australia that APHIS has determined meet the criteria of the regulations for freedom from Medfly, the Queensland fruit fly (*Dacus tryoni* [Frogg]), and other fruit flies that attack citrus in Australia, and provide that certain citrus, including oranges, lemons, limes, mandarins (including satsumas, tangerines, and tangors), and grapefruit may be imported into the United States from those areas without treatment under certain conditions. The Government of Australia has submitted data from surveys showing that the following additional geographical subdivisions of the Riverland District of South Australia, called ''hundreds,'' meet the criteria of the regulations and ISPM No. 4 for freedom from destructive fruit flies: Eba, Fisher, Forster, Hay, Murbko, Nildottie, Paisley, Ridley, Skurray, and the Parish of Onley in the Shire of Mildura, Victoria. Therefore, we propose to amend § 319.56–2v(a)(1) by adding these hundreds to the list of areas from which citrus may be imported into the United States without treatment for fruit flies.

Tomatoes From Spain

The regulations in § 319.56–2dd currently prescribe certain conditions under which pink or red tomatoes can be imported into the United States from certain locations in Spain. These provisions are designed to ensure that the tomatoes are free of Medfly. Currently, pink or red tomatoes grown in greenhouses that are registered and inspected by the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF) may be imported from the Almeria Province of Spain under a systems approach that stipulates that:

- The tomatoes may be shipped only from December 1 through April 30, inclusive;
- Two months prior to shipping, and continuing through April 30, MAFF must set and maintain Medfly traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In all areas outside the greenhouses and within 8 kilometers, including urban and residential areas, MAFF must place Medfly traps at a rate of four traps per square kilometer. All traps must be checked once every 7 days;
- Capture of a single Medfly in a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the source of infestation is determined, the Medfly infestation is eradicated, and measures are taken to preclude any future infestation. Capture of a single Medfly within 2 kilometers of a registered greenhouse will necessitate increasing trap density in order to determine whether there is a reproducing population in the area. Capture of two Medflies within 2 kilometers of a registered greenhouse and within a 1-month time period will result in cancellation of exports from all registered greenhouses within 2 kilometers of the find until the source of infestation is determined and the Medfly infestation is eradicated;
- MAFF must maintain records of trap placement, checking of traps, and any Medfly captures, and must make the records available to APHIS upon request;
- The tomatoes must be packed within 24 hours of harvest. They must be safeguarded by a fruit-fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packed in fruit-fly-proof containers for transit to the airport and subsequent shipping to the United States. Transit through other fruit fly-supporting areas is prohibited unless the fruit-fly-proof containers are sealed by MAFF before shipment and the official seal number is recorded on the phytosanitary certificate; and
- MAFF is responsible for export certification inspection and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by MAFF and bearing the declaration, ''These tomatoes were grown in registered greenhouses in Almeria Province in Spain.''

The Government of Spain has provided APHIS with data that demonstrate that the Murcia Province and the municipalities of Albuñol and Carchuna in the Granada Province of Spain meet the criteria of the regulations and ISPM No. 4 for freedom from Medfly. In addition, the Government of Spain has stated that pink or red tomatoes from these areas would be produced, packed, and shipped in accordance with the systems approach described above. Therefore, we propose to amend §§ 319.56–2t and 319.56–2dd(a)(1) and (a)(7) to allow the importation of pink or red tomatoes grown in greenhouses in the Murcia Province and the municipalities of Albuñol and Carchuna in the Province of Granada in Spain.

Packaging Requirements for Tomatoes From Spain, France, Morocco, and Chile

Under § 319.56–2dd, tomatoes from Spain, France, Morocco, and Chile must currently be shipped in fruit-fly-proof containers to safeguard the commodities from quarantine pests and hitchhikers. The regulations currently require that the tomatoes be safeguarded by fruit-fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packed in fruit-fly-proof containers for transit to the airport and subsequent shipping to the United States. We propose to add the requirement that the insect-proof containers must be intact upon arrival in the United States to § 319.56–2dd(a)(6) for Spain, (b)(5) for France, (c)(6) for Morocco, and (d)(2) for Chile. This requirement would enable us to verify that the imported tomatoes were packed in accordance with the regulations to prevent infestation by quarantine pests or hitchhikers. We would also make minor changes in these paragraphs, such as replacing references to ''fruit-fly proof'' with ''insect-proof.''

Tomatoes From Australia

At the request of the Australian Government, we propose to amend § 319.56–2dd to allow tomatoes from Australia to be imported into the United States. To prevent the introduction of *Bactrocera aquilonis* (Northern Territory fruit fly), *B. cucumis* (cucumber fly), *B. jarvis* (Jarvis's fruit fly), *B. neohumeralis* (lesser Queensland fruit fly), *B. tryoni* (Queensland fruit fly), Medfly, *Chrysodeixis argentifera* (tobacco looper), *C. erisoma* (green garden looper), *Helicoverpa armigera* (corn earworm, cotton bollworm, tobacco budworm, or tomato grub), *H. punctigera* (Australian budworm), *Lamprolonchaea brouniana* (metallic-green tomato fly), *Sceliodes cordalis* (eggfruit caterpillar), and *Spodoptera litura* (cluster caterpillar), we would allow the importation of tomatoes from Australia under certain conditions that are similar to the conditions under which pink or red tomatoes from other countries, such as Spain, may be imported into the United States. These proposed conditions include the trapping and other fruit-fly-specific measures that are included in the conditions under which pink or red tomatoes may be imported from other countries. In addition, the risk

presented by the non-fruit fly pests of concern (*e.g.*, the loopers, worms, and caterpillars identified above) would be mitigated by the requirement that the tomatoes be grown in a greenhouse. The Australian Quarantine Inspection Service (AQIS) would inspect the greenhouse to ensure its freedom from all pests of concern, and the greenhouse itself would serve as a barrier to the entry of those pests. Therefore, we believe that the following requirements would be adequate to prevent the introduction of quarantine pests into the United States with tomatoes imported from Australia:

- The tomatoes must be grown in greenhouses registered with and inspected by AQIS;
- Two months prior to shipping, AQIS must inspect the greenhouses to establish their freedom from all pests of concern and set and maintain fruit fly traps inside the greenhouses and around the perimeter of the greenhouses. Inside the greenhouses, the traps must be McPhail traps, and they must be set at the rate of six per hectare. In all areas outside the greenhouse and within 8 kilometers of the greenhouse, fruit fly traps must be placed at the rate of at least four per square kilometer. All traps must be checked at least every 7 days;
- Within a registered greenhouse, capture of a single fruit fly or other quarantine pest will result in immediate cancellation of exports from that greenhouse until the source of the infestation is determined, the infestation has been eradicated, and measures are taken to preclude any future infestation;
- Outside of a registered greenhouse, if one fruit fly of any type is found within 2 kilometers, trap density and frequency of trap inspection must be increased to detect a reproducing colony. Capture of two Medflies or three of the same species of *Bactrocera* within 1 month will result in the cancellation of exports from all registered greenhouses within 2 kilometers of the find until the source of the infestation is determined and the fruit fly infestation is eradicated;
- AQIS must maintain records of trap placement, checking of traps, and any fruit fly captures, and must make the records available to APHIS upon request; and
- The tomatoes must be packed within 24 hours of harvest. They must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packing house or while awaiting packing. They must be placed in insect-proof cartons or securely covered with insect-proof mesh or plastic tarpaulin for transport to the airport or other shipping point. These safeguards must be intact upon arrival in the United States. Transit through other fruit-fly-supporting areas is prohibited unless the shipping container is sealed by AQIS prior to shipping and the official seal number is recorded on the phytosanitary certificate.

To verify that these requirements are being met, we would require tomatoes from Australia to be accompanied by a phytosanitary certificate issued by AQIS stating that the tomatoes were grown, packed, and shipped in accordance with the requirements described above.

Peppers From Spain

Section 319.56–2gg currently allows the importation of peppers from the Almeria Province of Spain under certain conditions to prevent the introduction of Medfly into the United States. Data provided by the Spanish Government show that the Alicante Province of Spain meets the criteria of the regulations and ISPM No. 4 for freedom from Medfly. We believe that the following conditions, which are the same as those contained in the current regulations for peppers from Almeria Province, would be adequate to prevent the introduction of Medfly into the United States with peppers imported from the Alicante Province of Spain:

- The peppers may be shipped only from December 1 through April 30, inclusive;
- Beginning October 1, and continuing through April 30, the Ministry of Agriculture, Fisheries, and Food (MAFF) must set and maintain Medfly traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In all outside areas, including urban and residential areas, within 8 kilometers of the greenhouses, MAFF must set and maintain Medfly traps baited with trimedlure at a rate of four traps per square kilometer. All traps must be checked every 7 days;
- Capture of a single Medfly in a registered greenhouse will immediately halt exports from that greenhouse until the Deputy Administrator of Plant Protection and Quarantine, APHIS, determines that the source of infestation has been identified, that all Medflies have been eradicated, and that measures have been taken to preclude any future infestation. Capture of a single Medfly within 2 kilometers of a registered greenhouse will necessitate increased trap density in order to determine whether there is a reproducing population in the area. Capture of two Medflies within 2 kilometers of a registered greenhouse during a 1-month period will halt exports from all registered greenhouses within 2 kilometers of the capture until the source of infestation is determined and all Medflies are eradicated;
- The peppers must be safeguarded against fruit fly infestation from harvest to export. Such safeguarding includes covering newly harvested peppers with fruit-fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packing the peppers in fruit-fly-proof cartons, or cartons covered with fruit-fly-proof mesh or plastic tarpaulin, and placing those cartons in enclosed shipping containers for transit to the airport and subsequent shipment to the United States;
- The peppers must be packed for shipment within 24 hours of harvest;
- During shipment, the peppers may not transit other fruit-fly-supporting areas unless shipping containers are sealed by MAFF with an official seal whose number is noted on the phytosanitary certificate; and
- A phytosanitary certificate issued by MAFF and bearing the declaration, ''These peppers were grown in registered greenhouses in the Alicante or Almeria Province in Spain,'' must accompany the shipment.

Therefore, we propose to amend § 319.56–2gg(a) by adding the Alicante Province of Spain to the areas of Spain from which peppers may be imported into the United States.

Paragraph (e) of § 319.56–2gg currently requires that the peppers be safeguarded by fruit-fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packed in fruit-fly-proof containers for transit to the airport and subsequent shipping to the United States. We propose to add to § 319.56–2gg(e) the requirement that the fruit-fly-proof containers must be intact upon arrival in the United States. This requirement will enable us to verify that the imported peppers were packed in accordance with the regulations to prevent infestation by quarantine pests or hitchhikers. We would also make minor changes in this paragraph, such as replacing references to ''fruit-fly proof'' with ''insect-proof,'' to improve clarity.

Persimmons From the Republic of Korea

We propose to allow persimmons to be imported into the United States from the Republic of Korea under certain conditions, which would be set forth in a new § 319.56–2kk. Persimmons can be the host of several quarantine pests that can be detected upon inspection, including *Conogethes punctiferalis* (yellow peach moth), *Planococcus*

kraunhiae (Japanese wisteria cottony mealybug), *Stathmopoda masinissa* (persimmon fruit moth), and *Tenuipalpus zhizhilashiviliae* (persimmon false spider mite). Data from the Republic of Korea indicate that the orchards meet the criteria of the regulations and ISPM No. 4 for freedom from these pests. If any of these pests are detected in an orchard, exports from that orchard would be canceled until the source of infestation is determined and the infestation is eradicated. We would require that the orchard where persimmons are grown be inspected for quarantine pests by the Korean national plant quarantine service (NPQS) at least once during the growing season and before harvest. We would also require that after harvest, the Korean NPQS inspect the persimmons for quarantine pests before the persimmons are packed for shipment to the United States. In order for us to verify that the persimmons are free of quarantine pests, we would require the persimmons to be accompanied by a phytosanitary certificate issued by the Korean NPQS stating that the fruit has been inspected and is free of quarantine pests. We would require shipping boxes to be labeled ''Not for distribution in HI, PR, VI, and Guam.''

We believe that the proposed inspection, phytosanitary certificate, and labeling requirements described above would be adequate to prevent the introduction of quarantine pests into the United States with persimmons imported from the Republic of Korea.

Permits

Currently, § 319.56–3, ''Applications for permits for importation of fruits and vegetables,'' and § 319.56–4, ''Issuance of permits,'' explain the permit procedures for importing fruits and vegetables. We are proposing to combine and revise these sections to clarify and update our permit procedures. These provisions would be placed in a new § 319.56–3 ''Applications for permits for importation of fruits and vegetables; issuance of permits.''

The current regulations provide the option that applications may be made by telegraph. To update the regulations, we would provide the public an option to apply for and obtain permits electronically. We would issue electronic permits if the importer applied electronically, and written permits if the importer applied in writing. We would also add a provision that oral permits may be issued in cases where no other importations are considered and the commodity is admissible with only inspection. We would clarify the permit application and issuance process, explaining that permits can be either general or specific. General permits are provided for specified items in § 319.56–2(b), (c), and (d), and specific permits are required for all other fruits and vegetables that are enterable under the regulations.

We propose to add a new section § 319.56–4, ''Amendment, denial, or withdrawal of permits.'' Section 319.56–4 would provide that the Administrator may amend, deny, or withdraw a permit at any time if he or she has determined that it was necessary to do so due to the risk of introducing quarantine pests into the United States. This change would provide APHIS with additional flexibility to prevent the introduction of quarantine pests into the United States. In addition, this section would also provide procedures for appealing or requesting hearings concerning the amendment, denial, or withdrawal of permits. This section would be similar to the provisions in § 319.8–3 for foreign cotton and covers and § 319.40–4 for logs, lumber, and other unmanufactured wood.

Inspection and Other Requirements at the Port of First Arrival

Section 319.56–6 of the current regulations contains requirements for the inspection and disinfection of imported fruits and vegetables at the port of first arrival. This section provides, among other things, that all imported fruits and vegetables, as a condition of entry, must be subject to inspection, disinfection, or both, at the port of first arrival, as may be required by an inspector. Paragraph (b), ''Assembly for inspection,'' currently reads, ''The owner or agent of the owner shall assemble imported fruits and vegetables for inspection at the port of first arrival, or at any other place prescribed by an inspector, at a place and time and in a manner designated by an inspector.'' This requirement is necessary so that an inspector can examine the fruits and vegetables to determine if they are free of pests and otherwise eligible for entry or if they require treatment as a condition of entry.

To improve compliance with and enforcement of the regulations, we propose to amend paragraph (b) to specify that imported fruits and vegetables must be fully disclosed at the port of first arrival. The owner or agent would have to disclose the type, quantity, and country of origin of all fruits and vegetables contained in a shipment on an invoice or similar document and provide that document to an inspector prior to moving the fruit or vegetable from the port. We would also make nonsubstantive amendments to the paragraph to improve readability.

Currently, paragraph (d) of § 319.56–6, ''Release for movement,'' provides that imported fruits and vegetables may not be moved from the port of first arrival until an inspector has released them, has determined that they need to be reinspected, cleaned, or treated at the port of first arrival or at another place, or has determined that they must be exported from the United States. We propose to amend the paragraph to make it clear that a fruit or vegetable may not be moved from the port of arrival until an inspector has authorized its movement. We also propose to specify additional alternatives under which an inspector may authorize the movement of a fruit or vegetable (*i.e.*, after an inspector has waived inspection of a fruit or vegetable or determined that it needs to be destroyed at another location). The amended paragraph would provide that a fruit or vegetable may only be moved from a port of arrival after an inspector has:

- Inspected the fruit or vegetable and released it;
- Ordered treatment at the port of first arrival and, after treatment, released it;
- Authorized movement to another location for treatment, further inspection, or destruction;
- Ordered the fruit or vegetable to be re-exported; or
- Waived the inspection.

We believe these changes would improve compliance with and enforcement of the regulations.

Miscellaneous Changes

The treatment schedule for fumigating apples and pears from Australia and New Zealand with methyl bromide in § 319.56–2j(a)(2) incorrectly lists the exposure period to methyl bromide as 2½ hours. The correct 2-hour exposure period is contained in the PPQ Treatment Manual, which is incorporated by reference in § 300.1. Given that the treatment schedule is in the PPQ Treatment Manual, we propose to remove the treatment schedule from § 319.56–2j(a)(2) and refer to the PPQ Treatment Manual. This would eliminate duplication of the treatment procedures and eliminate the error contained in § 319.56–2j(a)(2). We would replace references to the treatment in § 319.56–2j(a)(2) with references to the PPQ Treatment Manual and make other nonsubstantive changes in § 319.56–2j.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this proposed rule on small entities. Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.

We are proposing to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to such disinfection at the port of first arrival as may be required by a USDA inspector. In addition, some of the fruits and vegetables would be required to meet other special conditions. This action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and spread of quarantine pests.

We are also proposing to recognize areas in several countries as free from certain fruit flies; remove the Province of Arica in Chile as an area free from Medfly; amend the packing requirements for certain commodities; expand locations in the northeastern United States where cold treatment can be conducted; update and clarify restrictions on entry of fruits and vegetables; update and clarify permit procedures including amendment, denial, or withdrawal of permits; require full disclosure of fruits and vegetables at the port of first arrival and clarify the conditions under which they are released for movement; and make other miscellaneous changes.

Availability of Data

For some of the commodities proposed for importation into the United States in this document, data on the levels of production are unavailable for a number of reasons. Some of these commodities are not produced in significant quantities either in the United States or in the country that would be exporting the commodity to the United States. In fact, many of the fruits and vegetables that could be eligible for importation are produced mainly in a noncommercial setting. Generally, statistical data are less available for commodities produced in small quantities when compared to a country's more widely or commercially produced commodities. The uncertainty surrounding the cost and availability of transportation and the demand for the commodity in the United States increases the difficulty in obtaining estimates of the potential volume of commodities exported from foreign countries to the United States.

Effects on Small Entities

Data on the number and size of U.S. producers of the various commodities proposed for importation into the United States in this document are not available. However, since most fruit and vegetable farms are small by Small Business Administration standards, it is likely that the majority of U.S. farms producing the commodities discussed below are small. Potential economic effects that could occur if this proposal is adopted are discussed below by commodity and country of origin.

Citrus From Australia

The regulations contain provisions for the importation of citrus from certain areas in Australia. In this document, we are proposing to add new areas in Australia from which citrus may be imported into the United States. In 2001, the United States produced almost 15 million metric tons of citrus, exported 28,012 metric tons, and imported 98,065 metric tons. Australia produced 604,000 metric tons of citrus, which is 4 percent of the total U.S. production, and imported 512 metric tons in 2001. While the volume of Australian citrus exports is unknown, the value of citrus exports is $37,000, as compared to the U.S. export value of citrus in 2001 of over $16.5 million. Because the U.S. production of citrus is supplemented with citrus imports in order to satisfy the domestic demand, we do not believe that allowing the importation of citrus from additional areas in Australia would have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers of citrus would benefit from the increase in its supply and availability.

Tomatoes From Australia

In 2000, the United States produced over 11 million metric tons of tomatoes, exported 208,564 metric tons, and imported 730,063 metric tons. Australia produced 413,617 metric tons of tomatoes, which is less than the U.S. total imports, and exported 3,807 metric tons in 2000. Because the U.S. production of tomatoes is supplemented with tomato imports in order to satisfy the domestic demand, we do not believe that allowing the importation of tomatoes from Australia would have a significant effect on either U.S. consumers or producers.

Peppers From Chile

From 1997 to 2000, the United States production of peppers (*Capsicum annuum*) increased 30 percent, from 678,000 metric tons to 885,000 metric tons. However, the U.S. demand for imports of peppers increased by 70 percent during the same time period. Although no trade data on peppers from Chile are available, we do not believe that peppers imported from Chile would have a significant impact on U.S. producers or other small entities.

Fennel From El Salvador

While no data are available on the production of fennel in the United States or in El Salvador, in 2000, the United States imported fennel seeds valued at a total of $3,762,000 and exported fennel seed valued at a total of $80,000, indicating a demand for fennel in the United States. Therefore, we believe that fennel imported into the United States from El Salvador would not have a significant impact on U.S. producers of fennel or on other small entities. We also believe that U.S. consumers of fennel seed would benefit from the increase in supply and availability.

Rambutan From Guatemala

There are no data available regarding production of rambutan by the United States. In Guatemala, only one 280,000 square-meter farm commercially produces rambutan. Recent production data for rambutan in Guatemala indicate about 117 metric tons are produced per year. We believe any exports to the

United States would be minimal and would not have any significant economic effect on U.S. producers, whether small or large, or consumers.

Figs From Mexico

According to the Food and Agriculture Organization of the United Nations, from 1997 to 2000, the United States produced an average of 47,000 metric tons of fresh figs per year. The U.S. production of fresh figs remained stable for those 4 years, but U.S. imports of fresh figs increased from 221 metric tons in 1997 to 427 metric tons in 2000, indicating an increase in the demand for fresh figs in the United States. From 1997 to 2000, Mexico produced an average of 3,000 metric tons of fresh figs per year. If this proposed rule is adopted and importation of figs from Mexico commences, we do not expect a significant economic effect on U.S. producers, whether small or large, or consumers, because the U.S. demand for figs appears to be exceeding the U.S. production of fresh figs.

Citrus From South Africa

The regulations contain provisions for the importation of citrus from the Western Cape Province of South Africa. In this document, we are proposing to add the Hartswater magisterial district in the Northern Cape Province of South Africa to the areas from which citrus can be imported into the United States. In 2001, the United States produced almost 15 million metric tons of citrus, exported 28,012 metric tons, and imported 98,065 metric tons. South Africa produced 1,420,614 metric tons of citrus, which is 9 percent of the total U.S. production, with no imports or exports in 2001. Because the U.S. production of citrus is supplemented with citrus imports in order to satisfy the domestic demand, we do not believe that expanding the areas from which the United States may import citrus from South Africa would have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers of citrus would benefit from the increase in its supply and availability.

Peppers From Spain

From 1997 to 2000, the United States production of peppers (*Capsicum annuum*) increased 30 percent, from 678,000 metric tons to 885,000 metric tons. However, the U.S. demand for imports of peppers increased by 70 percent during the same time period. In 2000, the United States produced 885,630 metric tons of peppers and exported 71,478 metric tons. Of the 346,654 metric tons of peppers that the United States imported in 2000, 2,269 metric tons, or less than 1 percent, were imported from the Almeria Province of Spain. If this proposed rule is adopted, then the United States could accept imports of peppers from the additional province of Alicante in Spain. Considering that the U.S. production of peppers is supplemented with imports of peppers in order to satisfy the domestic demand, we do not believe that allowing the importation of tomatoes from an additional province in Spain would have a significant effect on either U.S. consumers or producers.

Tomatoes From Spain

In 2000, the United States produced over 11 million metric tons of tomatoes, exported 208,564 metric tons, and imported 730,063 metric tons. Of the tomatoes imported into the United States, 5,650 metric tons, or less than 1 percent, were imported from Spain. Considering that the U.S. production of tomatoes is supplemented with imports of tomatoes in order to satisfy the domestic demand, we do not believe that allowing the importation of pink or red tomatoes from the municipalities of Albuñol and Carchuna in the Granada Province in Spain would have a significant effect on either U.S. consumers or producers.

Request for Data

Due to the unavailability of data, we are unable to determine the effect this proposed rule would have on U.S. producers or consumers of several commodities. Therefore, we are requesting the public to provide APHIS with any available data regarding the production of the following commodities in the United States and in the following countries:

- Rambutan from Belize.
- Longan from China.
- Cape gooseberries and yellow pitaya from Colombia.
- Rambutan from Costa Rica.
- German chamomile, loroco, oregano or sweet marjoram, parsley, rambutan, rosemary, waterlily or lotus, and yam-bean or Jicama root from El Salvador.
- Waterlily or lotus, fennel, and German chamomile from Guatemala.
- Rambutan, German chamomile, loroco, waterlily or lotus, yam-bean, basil, and oregano from Honduras.
- Rambutan from Mexico.
- Rambutan, German chamomile, loroco, waterlily or lotus, fennel, and yard-long bean from Nicaragua.
- Rambutan from Panama.
- Persimmons from Spain.

Persimmons From the Republic of Korea

In the United States, persimmons are a specialty crop produced on a small scale mainly in California and Texas; thus, no data on the U.S. production of persimmons are available. Therefore, we are unable to determine the effect this proposed rule would have on U.S. producers or consumers of persimmons. We are requesting the public to provide APHIS with any available data regarding production of persimmons in the United States. In 2000, Korea produced 288,000 metric tons of persimmons, imported 2 metric tons, and exported 4,258 metric tons.

Yam-bean From Nicaragua

There are no data available regarding production of yam-bean or Jicama root in the United States. While the production of yam-bean or Jicama root in Nicaragua has remained stable for the past 3 years at approximately 133,000 metric tons per year, we are unable to determine the effect any potential imports of yam-bean would have on U.S. producers or consumers. We are requesting the public to provide APHIS with any available data regarding production of yam-bean in the United States.

This proposed rule contains information collection requirements, which have been submitted for approval to the Office of Management and Budget (see ''Paperwork Reduction Act'' below).

Executive Order 12988

This proposed rule would allow certain fruits and vegetables to be imported into the United States from certain parts of the world. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments

to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–026–1. Please send a copy of your comments to: (1) Docket No. 02–026–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we are proposing to allow a number of fruits and vegetables from certain countries of the world to be imported into the United States, under specified conditions. Before entering the United States, all of the fruits and vegetables would be subject to inspection and disinfection at the port of first arrival in the United States to ensure that no plant pests are inadvertently brought into the United States. These precautions, along with other requirements, would ensure that these items can be imported into the United States with a minimal risk of introducing exotic plant pests such as fruit flies.

Allowing these fruits and vegetables to be imported will necessitate the use of certain information collection activities, including the completion of import permits, phytosanitary certificates, and fruit fly monitoring records.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.1248 hours per response.

Respondents: U.S. importers of fruits and vegetables; plant health officials of exporting countries.

Estimated annual number of respondents: 626.

Estimated annual number of responses per respondent: 2.7635.

Estimated annual number of responses: 1,730.

Estimated total annual burden on respondents: 216 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR parts 300 and 319 as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, paragraph (a) would be amended as follows:

a. In paragraph (a)(3), by removing the word ''and.''

b. In paragraph (a)(4), by removing the period and adding the word ''; and'' in its place.

c. By adding a new paragraph (a)(5) to read as follows:

§ 300.1 Plant Protection and Quarantine Treatment Manual.

(a) * * *

(5) Treatments T101–k–2, T101–k–2–1, T106–e, T107–a, and T107–j dated _____.

* * * * *

3. A new § 300.5 would be added to read as follows:

§ 300.5 International Standards for Phytosanitary Measures.

(a) The International Standards for Phytosanitary Measures No. 4, ''Requirements for the establishment of pest free areas,'' which was published February 1996 by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) *Availability.* Copies of International Standards for Phytosanitary Measures No. 4:

(1) Are available for inspection at the Office of the Federal Register Library, 800 North Capitol Street NW., Suite 700, Washington, DC; or

(2) May be obtained by writing to Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; or

(3) May be viewed on the APHIS Web site at *http://www.aphis.usda.gov/ppq/pim/standards/.*

PART 319—FOREIGN QUARANTINE NOTICES

4. The authority citation for part 319 would be revised to read as follows:

Authority: 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, 7751–7754, and 7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.56 [Amended]

5. In § 319.56, paragraph(a)(2), the words ''injurious insects, including fruit and melon flies (Tephritidae)'' would be removed and the words ''quarantine pests'' would be added in their place.

6. Section 319.56–1 would be amended by adding, in alphabetical order, new definitions for *general permit, permit, quarantine pest,* and *specific permit* to read as follows:

§ 319.56–1 Definitions.

* * * * *

General permit. An authorization contained in § 319.56–2(b), (c), or (d) for any person to import the articles named by the general permit, in accordance with the requirements specified by the general permit, without being issued a specific permit.

* * * * *

Permit. A written or oral authorization, including by electronic methods, to import fruits or vegetables in accordance with the regulations in this subpart.

* * * * *

Quarantine pest. A pest of potential economic importance to the area endangered by it and not yet present there, or present but not widely distributed there and being officially controlled.

Specific permit. An authorization issued by APHIS to a person to import a particular fruit or vegetable from a specified country in accordance with the requirements of this subpart and any additional conditions that may be assigned.

7. Section 319.56–2 would be amended as follows:

a. In paragraph (e), by revising the introductory text to read as set forth below.

b. In paragraph (e)(1), by removing the words ''injurious insects, including fruit and melon flies (Tephritidae)'' and adding the words ''quarantine pests'' in their place.

c. In paragraph (e)(2), by removing the words ''injurious insects that attack it'' and adding the words ''quarantine pests'' in their place.

d. In paragraph (e)(3), by removing the words '', its importation can be authorized without risk, ''; and by removing the words ''injurious insects'' and adding the words ''quarantine pests'' in their place.

e. In paragraph (e)(4), by removing the words '', its importation can be authorized without risk,''; by removing the words ''certain injurious insects'', ''injurious insects'', and ''certain insects'' and adding the words ''quarantine pests'' in their place.

f. By revising paragraphs (f) and (h) to read as set forth below.

g. In paragraph (j), by adding the words ''except Arica'' immediately after the words ''all Provinces in Chile''.

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(e) Any other fruit or vegetable, except those restricted to certain countries and districts by special quarantine,[1] other orders, or provisions of the regulations in this subpart [2] now in force, and by any restrictive order or regulation as may hereafter be promulgated, may be imported from any country under a permit issued in accordance with this subpart and upon compliance with the regulations in this subpart, at the ports authorized in the permit, if the U.S. Department of Agriculture, after reviewing evidence presented to it, is satisfied that the fruit or vegetable either:

* * * * *

(f) Before the Administrator may authorize importation of a fruit or vegetable under § 319.56–2(e)(3) or (4), he or she must determine that the fruit or vegetable is being imported from an area that meets the requirements of International Standard for Phytosanitary Measures No. 4, ''Requirements for the establishment of pest free areas.'' The international standard was established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference in § 300.5 of this chapter. ISPM No. 4 is available by writing to USDA, APHIS, PPQ, Phytosanitary Issues Management, 4700 River Road Unit 140, Riverdale, MD 20737–1236, or on the Internet at: *http://www.aphis.usda.gov/ppq/pim/standards/.*

* * * * *

(h) The Administrator has determined that the following areas in Mexico meet the criteria of paragraphs (e) and (f) of this section with regard to the plant pests *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus:* Comondu, La Paz, Loreto, Los Cabos, and Mulegé in the State of Baja California Sur; the municipalities of Bachiniva, Casas Grandes, Cuahutemoc, Guerrero, Namiquipa, and Nuevo Casas Grandes in the State of Chihuahua; the municipalities of Ahome, Choix, El Fuerte, Guasave, and Sinaloa de Leyva in the State of Sinaloa; and the municipalities of Altar, Atil, Bacum, Benito Juarez, Caborca, Cajeme, Carbo, Empalme, Etchojoa, Guaymas, Hermosillo, Huatabampo, Navojoa, Pitiquito, Plutarco Elias Calles, Puerto Penasco, San Luis Rio Colorado, San Miguel, and San Ignacio Rio Muerto in the State of Sonora. Fruits and vegetables otherwise eligible for importation under this subpart may be imported from these areas without treatment for the pests named in this paragraph.

* * * * *

8. In § 319.56–2d, paragraph (b)(1) would be revised to read as follows:

§ 319.56–2d Administrative instructions for cold treatments of certain imported fruits.

* * * * *

(b) * * *

(1) *Places of precooling and refrigeration.* Refrigeration may be conducted while the fruit is on shipboard in transit to the United States. If not so refrigerated, the fruit must be both precooled and refrigerated after arrival only in cold storage warehouses approved by the Administrator and located in the area north of 39° longitude and east of 104° latitude or at one of the following ports: The maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Washington Dulles International Airport, Chantilly, VA. Fruit that is to be refrigerated in transit must be precooled either at a dockside refrigeration plant prior to loading aboard the carrying vessel, or aboard the carrying vessel. Refrigeration must be completed in the container, compartment, or room in which it is begun.

* * * * *

9. Section § 319–56–2j would be amended as follows:

a. By revising paragraph (a)(2) to read as set forth below.

b. In paragraph (a)(4), by removing the words ''this section'' and ''paragraph (a)(2) of this section'' and adding the words ''the PPQ Treatment Manual'' in their place; by adding the words ''or she'' immediately after the word ''he''; and by removing the word ''insect'' and adding the word ''quarantine'' in its place.

c. In paragraph (a)(5), by adding the words ''or her'' immediately after the word ''his''.

d. In paragraph (a)(6), by removing the words ''paragraph (a)(2) of this section'' and adding the words ''the PPQ Treatment Manual'' in their place.

§ 319.56–2j Conditions governing the entry of apples and pears from Australia (including Tasmania) and New Zealand.[3]

(a) * * *

(2) *Approved fumigation.* Fumigation with methyl bromide must be in accordance with the PPQ Treatment Manual, which is incorporated by reference in § 300.1 of this chapter.

* * * * *

§ 319.56–2p [Amended]

10. Section 319.56–2p would be amended as follows:

a. In paragraph (a)(3)(i), by adding the words ''(including Hispaniola)'' immediately after the words ''the Greater Antilles''.

b. In paragraph (f), by removing the words ''injurious insects'' and adding the words ''quarantine pests'' in their place.

[1] The importation of citrus fruits into the United States from eastern and southeastern Asia and certain other areas is restricted by the Citrus Fruit Quarantine, § 319.28.

[2] Fruits and vegetables from designated countries or localities that are subject to specific import requirements prescribed elsewhere in this subpart are not subject to the regulations in this section unless specified otherwise. Such fruits and vegetables are, however, subject to all other general requirements contained in other sections of this subpart.

[3] Apples and pears from Australia (excluding Tasmania) where certain tropical fruit flies occur are also subject to the cold treatment requirements of § 319.56–2d.

§ 319.56–2q [Amended]

11. Section 319.56–2q would be amended as follows:

a. In the introductory text and paragraph (a), by adding the words ''the Hartswater magisterial district in the Northern Cape Province or'' immediately before the words ''the Western Cape Province''.

b. In paragraph (b), by removing the words ''genus *Ceritatis*'' and adding the words ''genera *Ceratitis*'' in their place.

12. In § 319.56–2t, the table would be amended as follows:

a. By adding entries, in alphabetical order, under Belize, for rambutan; under Chile, for pepper; under Costa Rica, for rambutan; under El Salvador, for fennel, German chamomile, loroco, oregano or sweet marjoram, parsley, rambutan, rosemary, waterlily or lotus, and yam-bean or Jicama root; under Guatemala, for fennel, German chamomile, rambutan, and waterlily or lotus; under Honduras, for basil, German chamomile, loroco, oregano or sweet marjoram, rambutan, waterlily or lotus, and yam-bean or Jicama root; under Mexico, for fig and rambutan; under Nicaragua, for fennel, German chamomile, loroco, rambutan, waterlily or lotus, yam-bean or Jicama root; and under Panama, for rambutan to read as set forth below.

b. Under Guatemala, by placing the entry for ''Jicama'' in alphabetical order.

c. By revising, under Guatemala, the entries for loroco and rosemary, and, under Spain, the entry for tomatoes, to read as set forth below.

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	*
Belize			
*	*	*	*
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Belizean department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor, and Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Belizean department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
*	*	*	*
Chile			
*	*	*	*
	Pepper	*Capsicum annuum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Chilean department of agriculture stating that the fruit originated in a fruit- fly-free area-see § 319.56–2(j).)
*	*	*	*
Costa Rica			
*	*	*	*
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Costa Rican department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Costa Rican department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
*	*	*	*
El Salvador			
*	*	*	*
	Fennel	*Foeniculum vulgare*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
	German chamomile	*Matricaria recutita* and *Matricaria chamomilla*.	Flower and leaf. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
	Loroco	*Fernaldia spp.*	Flower, leaf, and stem.
	Oregano or sweet marjoram.	*Origanum spp.*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
	Parsley	*Petroselinum crispum*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')

Country/locality	Common name	Botanical name	Plant part(s)
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by El Salvador's department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi*; and (2) all damaged fruit was removed from the shipment prior to export under the supervision of El Salvador's department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'')
	Rosemary	*Rosmarinus officinalis*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
	Yam-bean or Jicama root	*Pachyrhizus spp*.	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
*	* *	*	* * *
Guatemala			
*	* *	*	* * *
	Fennel	*Foeniculum vulgare*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
	German chamomile	*Matricaria chamomilla* and *Matricaria recutita*.	Flower and leaf. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
	Loroco	*Fernaldia* spp.	Flower and leaf.
*	* *	*	* * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Guatemalan department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor*, and *Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Guatemalan department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
*	* *	*	* * *
	Rosemary	*Rosmarinus officinalis*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
*	* *	*	* * *
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
*	* *	*	* * *
Honduras			
*	* *	*	* * *
	Basil	*Ocimum basilicum*	Leaf and stem. (Must be accompanied by a phytosanitary certificate issued by the Honduran department of agriculture stating that the fruit is free from *Planococcus minor.* Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
*	* *	*	* * *
	German chamomile	*Matricaria chamomilla and Matricaria recutita*.	Flower and leaf. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
	Loroco	*Fernaldia* spp	Flower and leaf.
	Oregano or sweet marjoram.	*Origanum* spp	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').

Country/locality	Common name	Botanical name	Plant part(s)
*	* * *	*	* * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the Honduran department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor, and Psedococcus landoi;* and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Honduran department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
	Yam-bean or Jicama root	*Pachyrhizus* spp	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI and Guam.'').
*	* * *	*	* * *
Mexico			
*	* * *	*	* * *
	Fig	*Ficus carica*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of Mexico stating that the fruit originated in a fruit-fly-free area-see §319.56–2(h). Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
*	* * *	*	* * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of Mexico stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus P. minor,* and *Pseudococcus landoi* and; (2) all damaged fruit were removed from the shipment prior to export under the supervision of the national plant protection organization of Mexico. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
*	* * *	*	* * *
Nicaragua			
*	* * *	*	* * *
	Fennel	*Foeniculum vulgare*	Leaf and stem. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
	German chamomile	*Matricaria chamomilla* and *Matricaria recuita*.	Flower and leaf. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
	Loroco	*Fernaldia spp.*	Leaf and stem.
*	* * *	*	* * *
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be lappaceum accompanied by a phytosanitary certificate issued by the Nicaraguan department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi*; and (2) all damaged fruit was removed from the shipment prior to export under the supervision of the Nicaraguan department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
*	* * *	*	* * *
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
	Yam-bean or Jicama root	*Pachyrhizus spp.*	Roots without soil. (Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
Panama			

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	*
	Rambutan	*Nephelium lappaceum*	Fruit. (Must be accompanied by a phytosanitary certificate issued by Panama's department of agriculture stating that (1) the fruit is free from *Coccus moestus, C. viridis,* Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor, *and* Psedococcus landoi; and (2) all damaged fruit was removed from the shipment prior to export under the supervision of Panama's department of agriculture. Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.'').
*	*	*	*
Spain			
*	*	*	*
	Tomato	*Lycopersicon esculentum*	Fruit, only if it is green upon arrival in the United States (pink or red fruit may only be imported from Almeria Province, Murcia Province, or the municipalities of Albunol and Carchuna in Granada Province and only in accordance with § 319.56–2dd of this subpart).
*	*	*	*

* * * * *

13. In § 319.56–2u, paragraph (b)(7) would be revised and new paragraphs (b)(8) and (b)(9) would be added to read as follows:

§ 319.56–2u Conditions governing the entry of lettuce and peppers from Israel.

(b) * * *

(7) Prior to movement from approved insect-proof screenhouses in the Arava Valley, the peppers must be packed in either individual insect-proof cartons or in non-insect-proof cartons that are covered by insect-proof mesh or plastic tarpaulins; covered non-insect-proof cartons must be placed in shipping containers. If the shipping containers will be moved through any fruit-fly-supporting areas during transit, the shipping containers must be secured with a numbered seal applied by DPPI and the seal number recorded on the phytosanitary certificate required by paragraph (b)(9) of this section.

(8) The packaging safeguards required by paragraph (b)(7) of this section must remain intact at all times during the movement of the peppers to the United States and must be intact upon arrival of the peppers in the United States.

(9) Each shipment of peppers must be accompanied by a phytosanitary certificate issued by the Israeli Ministry of Agriculture stating that the conditions of paragraphs (b)(1) through (b)(7) of this section have been met.

14. In § 319.56–2v, paragraph (a)(1) would be revised to read as follows:

§ 319.56–2v Conditions governing the entry of citrus from Australia.

(a) * * *

(1) The Riverland district of South Australia, defined as the county of Hamley and the geographical subdivisions, called ''hundreds,'' of Bookpurnong, Cadell, Eba, Fisher, Forster, Gordon, Hay, Holder, Katarapko, Loveday, Markaranka, Morook, Murbko, Murtho, Nildottie, Paisley, Parcoola, Paringa, Pooginook, Pyap, Ridley, Skurray, Stuart, and Waikerie and the Parish of Onley in the Shire of Mildura, Victoria;

* * * * *

15. In § 319.56–2x, the table would be amended by adding, in alphabetical order, under China, an entry for longan; a new entry for Colombia; under Nicaragua, an entry for yard-long-bean; and under Spain, an entry for persimmon, to read as follows:

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	*
China			
*	*	*	*
	Longan	*Dimocarpus longan*	Fruit.
Colombia	Cape gooseberries	*Physalis peruviana*	Fruit.
	Yellow pitaya	*Selenicereus megalanthus*	Fruit.
*	*	*	*
Nicaragua			
*	*	*	*
	Yard-long-bean	*Vigna unguiculata*	Pod.
*	*	*	*
Spain			

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	*
	Persimmons	*Diospyros khaki*	Fruit.
*	*	*	*

16. Section 319.56–2dd would be amended as follows:

a. In paragraphs (a)(1) and (a)(7), by adding the words ''Province, the Murcia Province, or the municipalities of Albuñol and Carchuna in the Granada'' immediately after the word ''Almeria''.

b. By revising paragraphs (a)(6), (b)(5), (c)(6), and (d)(2) to read as set forth below.

c. By adding a new paragraph (e) to read as set forth below.

§ 319.56–2dd Administrative instructions: conditions governing the entry of tomatoes.

* * * * *

(a) * * *

(6) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded from harvest to export by insect-proof mesh screens or plastic tarpaulins, including while in transit to the packing house and while awaiting packaging. They must be packed in insect-proof cartons or covered by insect-proof mesh or plastic tarpaulins for transit to the airport and subsequent export to the United States. These safeguards must be intact upon arrival in the United States. Transit through other fruit fly supporting areas is prohibited unless the shipping containers are sealed by MAFF before shipment and the official seal number is recorded on the phytosanitary certificate; and

* * * * *

(b) * * *

(5) From June 1 through September 30, the tomatoes must be packed within 24 hours of harvest. They must be safeguarded by insect-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing. They must be packed in insect-proof cartons or covered by insect-proof mesh screen or plastic tarpaulin. These safeguards must be intact upon arrival in the United States. At all times of the year, transit through other fruit fly supporting areas is prohibited unless the insect-proof containers are sealed by SRPV before shipment and the official seal numbers are recorded on the phytosanitary certificate; and

* * * * *

(c) * * *

(6) The tomatoes must be packed within 24 hours of harvest and must be pink at the time of packing. They must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing. They must be packed in insect-proof cartons or covered by insect-proof mesh or plastic tarpaulin for transit to the airport and export to the United States. These safeguards must be intact upon arrival in the United States. Transit through other fruit fly supporting areas is prohibited unless the containers are sealed by the Moroccan Ministry of Agriculture, Fresh Product Export (EACCE), before shipment and the official seal is recorded on the phytosanitary certificate; and

* * * * *

(d) * * *

(2) The tomatoes must be treated and packed within 24 hours of harvest. Once treated, the tomatoes must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packing house and awaiting packing. They must be packed in insect-proof cartons or insect-proof mesh or plastic tarpaulin under APHIS monitoring for transit to the airport and subsequent export to the United States. These safeguards must be intact upon arrival in the United States; and

* * * * *

(e) *Tomatoes from Australia.* Tomatoes (fruit) (*Lycopersicon esculentum*) may be imported into the United States from Australia only under the following conditions:

(1) The tomatoes must be grown in greenhouses registered with, and inspected by, the Australian Quarantine Inspection Service (AQIS);

(2) Two months prior to shipping, AQIS must inspect the greenhouse to establish its freedom from the following quarantine pests: *Bactrocera aquilonis, B. cucumis, B. jarvis, B. neohumeralis, B. tryoni, Ceratitis capitata, Chrysodeixis argentifera, C. erisoma, Helicoverpa armigera, H. punctigera, Lamprolonchaea brouniana, Sceliodes cordalis,* and *Spodoptera litura.* AQIS must also set and maintain fruit fly traps inside the greenhouses and around the perimeter of the greenhouses. Inside the greenhouses, the traps must be McPhail traps, and they must be set at the rate of six per hectare. In all areas outside the greenhouse and within 8 kilometers of the greenhouse, fruit fly traps must be placed at the rate of at least four per square kilometer. All traps must be checked at least every 7 days;

(3) Within a registered greenhouse, capture of a single fruit fly or other quarantine pest will result in immediate cancellation of exports from that greenhouse until the source of the infestation is determined, the infestation has been eradicated, and measures are taken to preclude any future infestation;

(4) Outside of a registered greenhouse, if one fruit fly of any type is found within 2 kilometers, trap density and frequency of trap inspection must be increased to detect a reproducing colony. Capture of two Medflies or three of the same species of *Bactrocera* within 1 month will result in the cancellation of exports from all registered greenhouses within 2 kilometers of the find until the source of the infestation is determined and the fruit fly infestation is eradicated;

(5) AQIS must maintain records of trap placement, checking of traps, and any fruit fly captures, and must make the records available to APHIS upon request;

(6) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packing house or while awaiting packing. They must be placed in insect-proof cartons or securely covered with insect-proof mesh or plastic tarpaulin for transport to the airport or other shipping point. These safeguards must be intact upon arrival in the United States. Transit through other fruit-fly-supporting areas is prohibited unless the shipping container is sealed prior to shipping by AQIS and the official seal is recorded on the phytosanitary certificate; and

(7) Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by AQIS stating ''These tomatoes were grown, packed, and shipped in accordance with the requirements of § 319.56–2dd(e) of 7 CFR.''

* * * * *

17. Section 319.56–2gg would be amended as follows:

a. In paragraphs (a) and (h), by adding the words ''Alicante or'' before the words ''Almeria Province''.

b. By revising paragraph (e) to read as set forth below.

§ 319.56–2gg Administrative instructions; conditions governing the entry of peppers from Spain.

* * * * *

(e) The peppers must be safeguarded from harvest to export by insect-proof mesh or plastic tarpaulin, including while in transit to the packing house and while awaiting packing. They must be packed in insect-proof cartons or covered by insect-proof mesh or plastic tarpaulin for transit to the airport and subsequent export to the United States. These safeguards must be intact upon arrival in the United States;

* * * * *

18. A new § 319.56–2kk would be added to read as follows:

§ 319.56–2kk Persimmons from the Republic of Korea.

Persimmons (fruit) (*Disopyros khaki*) may be imported into the United States from the Republic of Korea only under the following conditions:

(a) The orchard where the persimmons are grown must have been inspected at least once during the growing season and before harvest for the following pests: *Conogethes punctiferalis, Planococcus kraunhiae, Stathmopoda masinissa,* and *Tenuipalpus zhizhilashiviliae;*

(b) After harvest, the persimmons must be inspected by the Korean national plant quarantine service (NPQS) and found free of the pests listed in paragraph (a) of this section before the persimmons may be shipped to the United States;

(c) Each shipment of persimmons must be accompanied by a phytosanitary certificate issued by the Korean NPQS stating that the fruit is free of *Conogethes punctiferalis, Planococcus kraunhiae, Stathmopoda masinissa,* and *Tenuipalpus zhizhilashiviliae.*

(d) Shipping boxes must be labeled ''Not for distribution in HI, PR, VI, and Guam.''

(e) If any of the pests listed in paragraph (a) of this section are detected in an orchard, exports from that orchard will be canceled until the source of infestation is determined and the infestation is eradicated.

19. Section 319.56–3 would be revised to read as follows:

§ 9.56–3 Applications for permits for importation of fruits and vegetables; issuance of permits.

(a) *Permit required.* Except for fruits or vegetables that may be imported under the general permit provided in § 319.56–2(b), (c), and (d), no fruits or vegetables may be imported unless a specific permit has been issued for the fruits or vegetables and unless the fruits or vegetables meet all other applicable requirements of this subpart and any other requirements specified by APHIS in the specific permit.

(b) *Applying for a permit.* Applications must be submitted in writing or electronically and should be made in advance of the proposed shipment and provided to the Plant Protection and Quarantine program.[1] Applications must include the country or locality of origin of the fruits or vegetables, the port of first arrival, the name and address of the importer in the United States, and the identity and quantity of the fruit or vegetable.

(c) *Issuance of permits.* If APHIS approves the application, APHIS will issue a permit specifying the conditions applicable to the importation of the fruit or vegetable.

(d) Oral permits may be issued in cases where no other importations are considered and the commodity is admissible with only inspection. Fruits and vegetables arriving in the United States without a permit may be allowed to enter the United States if all applicable entry requirements are met and proof of application for a permit has been supplied to an inspector.(Approved by the Office of Management and Budget under control number 0579–0049)

20. Section 319.56–4 would be revised to read as follows:

§ 319.56–4 Amendment, denial, or withdrawal of permits.

(a) The Administrator may amend, deny, or withdraw a permit at any time if he or she has determined that conditions exist that present an unacceptable risk of the fruit or vegetable introducing quarantine pests into the United States. If the withdrawal is oral, the withdrawal of the permit and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances permit.

(b) Any person whose permit has been amended, denied, or withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the decision. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully amended, denied, or withdrawn. The Administrator will grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal as promptly as circumstances permit. If there is a conflict as to any material fact and the person who has filed an appeal requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. A permit withdrawal will remain in effect pending resolution of the appeal or the hearing.

21. In § 319.56–6, paragraphs (b) and (d) would be revised to read as follows:

§ 319.56–6 Inspection and other requirements at the port of first arrival.

* * * * *

(b) *Assembly for inspection.* Any person moving fresh fruits and vegetables into the United States must offer those agricultural products for entry at the U.S. port of first arrival. The owner or the agent must make full disclosure of the type, quantity, and country of origin of all fruits and vegetables in the shipment on an invoice or similar document and present that document to an inspector prior to moving the fruits or vegetables from the port. All fruits and vegetables must be accurately invoiced and made available to an inspector for examination. The owner or agent must assemble the fruits and vegetables for inspection at the port of first arrival, or at any other place designated by an inspector, and in a manner designated by the inspector.

* * * * *

(d) *Release for movement.* No person may move a fruit or vegetable from the U.S. port of first arrival unless an inspector has:

(1) Inspected the fruit or vegetable and released it;

(2) Ordered treatment at the port of first arrival and, after treatment, released it;

(3) Authorized movement to another location for treatment, further inspection, or destruction;

(4) Ordered the fruit or vegetable to be re-exported; or

(5) Waived the inspection.

* * * * *

Done in Washington, DC, this 26th day of September, 2002.

Peter Fernandez,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–24847 Filed 9–27–02; 10:34 am]

BILLING CODE 3410–34–P

[1] Application for permits to import fruit and vegetables under this subpart may be submitted to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road, Unit 136, Riverdale, MD 20737–1236; online on the APHIS Import Authorization System, *https://Web01.aphis.usda.gov/IAS.nsf/;* or by fax (301) 734–5786.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1424

RIN 0560–AG84

Bioenergy Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) is proposing to amend its Bioenergy Program (program) regulations to bring them into compliance with changes made by the Farm Security and Rural Investment Act of 2002. Changes include modifying the definitions for biodiesel, conversion factor, eligible commodities and ethanol, extending the program beyond Fiscal Year (FY) 2002, and allowing producers to enter into multi-year contracts for program payments. Also, the payment calculations are being revised for eligible commodities. CCC's new authorizing legislation requires these changes and will result in an overall improvement of the program by benefitting more participants.

DATES: Comments on this rule must be received on or before October 31, 2002 to be assured of consideration.

ADDRESSES: Comments should be sent to James Goff, Commodity Operations, FSA, United States Department of Agriculture (USDA), STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553. Telephone (202) 720–5396 or e-mail address, *BioenergyProgram@wdc.fsa.usda.gov.* Persons with disabilities who require alternative means for communication for regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: James Goff at telephone number (202) 720–5396.

Comments Requested: Public comments (submitted to the address above) are requested on any aspect of the Program. However, specific comments are requested on how CCC makes payments under the Program and how those payments are calculated under section 1424.8 of the regulation proposed in this rule. Comments received may be viewed during regular business hours by calling the information contact for an appointment. All comments, including names and addresses, will become a matter of public record.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this proposed rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for this rule.

Executive Order 12372

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

Environmental Assessment

The environmental impacts of this proposed rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has completed a draft environmental assessment which will be made available to the public for comment.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule does not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12612

This proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The changes proposed in this rule will affect the paperwork burden that is currently approved by OMB. Thus, in this rule the Agencies are requesting public comment in accordance with 5 CFR 1320.8(d)(1), and welcome suggestions from the public on reducing the requirements in 7 CFR part 1424 proposed herein. An estimate of the paperwork burden of the regulations as affected by this proposed rule are as follows:

Title: Bioenergy Program.

OMB Control Number: 0560–0207.

Expiration Date: November 30, 2003.

Type of Request: Request for a revision and extension of a currently approved information collection.

Abstract: USDA will collect information from bioenergy producers that request payments under the Bioenergy Program as the Secretary may require to ensure the benefits are paid only to eligible bioenergy producers for eligible commodities. Bioenergy producers seeking program payments will have to meet minimum requirements by providing information concerning the production of bioenergy. Applicants must certify that they will abide by the Bioenergy Program Agreement's provisions.

Estimate of Respondent Burden: Public reporting burden for the collection of information is estimated to average 1 hour and 10 minutes per response.

Respondents: U.S. bioenergy producers who use agricultural commodities to make bioenergy are eligible to receive payments.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 11 responses per year.

Estimated Total Annual Burden Hours on Respondents: 1,286 hours.

Proposed topics include the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information technology; or (d) minimizing the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, and to Jim Goff, USDA, FSA, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553. Copies of the information collection package may be obtained from Jim Goff at the address listed above.

Background

In November of 2000, using discretionary authority contained in Section 5 of the CCC Charter Act, 15 U.S.C. 714c, the Department of Agriculture implemented, by rules codified in 7 CFR part 1424, a bioenergy program. Rules for the program were published at 65 FR 67608 (November 13, 2000). Recently, in section 9010 of the 2002 Act, Public Law 107–171, Congress extended authorization of the program.

Section 9010 of the 2002 Act provided that, for purposes of that section, the term ''bioenergy'' would mean both biodiesel and fuel grade ethanol. In turn, it specified that ''biodiesel'' would mean a ''monoalkyl ester that meets the requirements of an appropriate American Society for Testing and Materials standard.'' ''Eligible commodity'' for purposes of that section was defined to mean (A) wheat, corn, grain sorghum, barley, oats, rice, soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard, crambe, sesame seed, and cottonseed; (B) a cellulosic commodity (such as hybrid poplar and switch grass); (C) fats, oils, and greases (including recycled fats, oils, and greases) derived from an agricultural product; and (D) any animal byproduct (in addition to oils, fats, and greases) that may be used to produce bioenergy, as determined by the Secretary. ''Eligible producer'' was defined to mean a producer that uses an eligible commodity to produce bioenergy. With those definitions set out, section 9010 went on to specify that the Secretary would continue the bioenergy program of part 1424 under which the Secretary makes payments to eligible producers to encourage increased purchases of eligible commodities for the purpose of expanding production of such bioenergy and supporting new production capacity for such bioenergy. Section 9010 specified, too, that to be eligible to receive a payment, a producer would be required to (a) enter into a contract with the Secretary to increase bioenergy production for 1 or more fiscal years; and (b) submit to the Secretary such records as the Secretary may require as evidence of increased purchase and use of eligible commodities for the production of bioenergy. With respect to payment, the law specified that the Secretary would make payments to eligible producers, based on the quantity of bioenergy produced by the eligible producer during a fiscal year that exceeds the quantity of bioenergy produced by the eligible producer during the preceding fiscal year. And, the statute specified that the payment rate to an eligible producer that produces less than 65,000,000 gallons of bioenergy would be such as to provide reimbursement for 1 feedstock unit for every 2.5 feedstock units of eligible commodity used for increased production. For the producers of 65,000,000 or more gallons the law specified that the producer would be reimbursed 1 feedstock unit for every 3.5 feedstock units of eligible commodity used for increased production. Too, section 9010 specified that the Secretary would make payments to an eligible producer for each quarter of the fiscal year. The new law also addresses the possibility that the amount made available for a fiscal year under section 9010 might not be sufficient to allow full payment to all producers. If so, the Secretary was directed to prorate the funds among eligible producers.

Also, the statute specified that if the total amount of payments that an eligible producer receives for a fiscal year exceeds the amount that the producer should have received, they must repay the excess with interest. Further, the legislation provided that no producer could receive more than 5 percent of the total amount made available for a fiscal year. And, it was specified that, to be eligible to receive a payment, a producer had to meet all other requirements of Federal law (including regulations) applicable to the production of bioenergy.

Finally, with respect to funding, the new law provided that of the funds of the Commodity Credit Corporation, the Secretary would be directed to use not more than $150,000,000 for each of FY 2003 through FY 2006. The statute explicitly provided no funding for 2007.

Many of the provisions of the new law reiterate provisions of the existing regulations. This proposed rule would implement the provision of the new law to the extent that the provisions of the new law are different than those that are contained in the current regulations in part 1424. Accordingly, the proposed rule would: (1) Add cotton seed as an eligible commodity; (2) expand the definition of eligible cellulosic commodities by removing the requirement that cellulosic crops had to be grown on farms for the purpose of bioenergy production; (3) specify that animal fats and oils, including recycled fats, oils and greases, are eligible commodities; and (4) add that ''any animal byproduct (in addition to oils, fats and greases) that may be used to produce bioenergy, as determined by the Secretary'' may be an eligible commodity for the production of bioenergy under the program. The definitions for biodiesel and ethanol are also being amended to indicate that biodiesel and ethanol produced in the United States' territories are eligible for program payments when made from eligible commodities. Also, clarifying changes are made in the regulations to reflect that multi-year contracts will be entertained. However, as to compliance, the rule provides that such compliance will be determined on a fiscal-year by fiscal-year basis. This would mean, for example, that if a producer with a multi-year contact produced more energy in FY 2004 than in FY 2003 (as measured under the regulations), the producer could receive a FY 2004 payment. If the producer's production in 2005 was under that for FY 2004, then the producer would not receive a FY 2005 payment but could retain the FY 2004 payment. Also, the rule, to allow maximum flexibility, proposes removing explicit conversion factors which translate additional energy into amounts of those commodities used to make it. Such a translation is part of the payment formula. This flexibility will allow for fine tuning the program without additional rulemaking. The conversion factors that will apply to a particular FY program would, under the proposal, be announced in a press release and otherwise made known to producers wanting to participate in the program. Also, an amendment is proposed with respect to the appeal of determinations made under part 1424. The new language would add a reference to 7 CFR part 11 which allows for appeals to the Department's National Appeals Division (NAD). The amendment would also eliminate an explicit requirement for a prior appeal to the Deputy Administrator overseeing the operation of the program. To the extent that such a pre-NAD appeal would be required would be subject to the same rules that apply to other cases within NAD's jurisdiction.

Encouraging bioenergy producers to expand bioenergy (ethanol and biodiesel) production by reimbursing them for part of their input commodity costs reduces reliance on foreign imports and improves agricultural markets. The bioenergy program began

in FY 2001 in accordance with Executive Order 13134. Expenditures of up to $150 million of funding were apportioned in FY 2001 and FY 2002. In FY 2002 the announced eligible commodity listing was expanded to include biodiesel production from animal fats and oils. Program payments for FY 2001 totaled $40.7 million on 147.7 million gallons of increased bioenergy production. For the first two quarters of FY 2002, payments totaled $32.0 million on 107.0 million gallons of increased bioenergy production.

Cost Benefit Assessment

As required under Executive Order 12866, a regulatory impact analysis (cost benefit assessment) is available. Funding is authorized for FY 2003 through 2006 at $150 million per year from the Commodity Credit Corporation (CCC). Thus the additional cost from this change is a maximum of $600 million. The program was first implemented in 2001 and funded for FY 2001 and FY 2002 at $150 million per year. Payments have been well under the annual funding levels—FY 2001 payments totaled $40.7 million, and for the first half of FY 2002 they were $32 million. The list of eligible commodities is expanded to include cottonseed and any animal byproduct (in addition to oils, fats, and greases) that may be used to produce bioenergy. However, because payments have been made on only corn, grain sorghum, wheat, soybeans, and animal fats and oils, it is difficult to forecast additional payments on the newly eligible commodities. Assuming that some of the new commodities do enter the program, the volume is likely to be small, and the outlay effects negligible.

The primary economic effects of the rule results from revising the payment calculations for biodiesel from a soybean basis to soybean oil basis. This will reduce the payment rate and outlays for biodiesel payments. Soybeans have predominated commodity biodiesel payments to date. Had payments made so far in FY 2002 for soybeans been calculated instead on soybean oil, outlays would have been $3.1 million lower for this period—about a 60 percent reduction. Future savings on biodiesel will depend on the prevailing market prices and volume of participation. Biodiesel savings could result in reduced total program costs provided available funding is sufficient to allow full payments to all producers (no proration). The switch to a soybean oil payment basis will reduce producer incentives and likely participation. The increased cost from more eligible commodities will only slightly offset these savings.

List of Subjects in 7 CFR Part 1424

Administrative practice and procedure, Application process, Payment amounts, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Credit Corporation proposes to amend 7 CFR Part 1424 as follows:

PART 1424—BIOENERGY PROGRAM

1. Revise the authority citation for part 1424 to read as follows:

Authority: 7 U.S.C. 8108.

2. Amend § 1424.3 by removing the definition of ''Gallon Conversion factor'', revising the definitions of ''Biodiesel'', ''Eligible commodity'', and ''Ethanol'', and adding a new definition of ''Conversion factor'' as follows:

§ 1424.3 Definitions.

* * * * *

Biodiesel is a mono alkyl ester manufactured in the United States and its territories that meets the requirements of an appropriate American Society for Testing and Materials Standard.

* * * * *

Conversion factor is the number of bioenergy gallons produced per commodity unit or the number of commodity units used per gallon of bioenergy produced, as applicable. Example: In FY 2002, the conversion factor for corn used in ethanol production was 2.5 gallons of ethanol produced per bushel of corn and from animal fats and oils it was 7.7 pounds of animal fats and oils per gallon of biodiesel produced.

Eligible commodity means barley; corn; grain sorghum; oats; rice; wheat; soybeans; cotton seed; sunflower seed; canola; crambe; rapeseed; safflower; sesame seed; flaxseed; mustard seed; cellulosic crops, such as switchgrass and hybrid poplars; fats, oils, and greases (including recycled fats, oils and greases) derived from an agricultural product; and any animal byproduct (in addition to oils, fats and greases) that may be used to produce bioenergy, as the Secretary determines, which is produced in the United States and its territories.

* * * * *

Ethanol is anhydrous ethyl alcohol manufactured in the United States and its territories and sold:

(1) For fuel use and which has been rendered unfit for beverage use in a manner and which is produced at a facility approved by the ATF for the production of ethanol for fuel, or

(2) As denatured ethanol used by blenders and refiners which has been rendered unfit for beverage use.

* * * * *

3. Amend § 1424.4 by removing paragraph (a), redesignating paragraphs (b) through (j) as paragraphs (a) through (i) respectively, and revising the introductory text and newly designated paragraph (a) to read as follows:

§ 1424.4 General eligibility rules.

To obtain program payments, a producer must do all of the following:

(a) During the sign-up period as CCC announces for the applicable FY, submit a completed Agreement on a form as prescribed by CCC.

* * * * *

4. Amend § 1424.5 by revising paragraph (b) to read as follows:

§ 1424.5 Application process.

* * * * *

(b) Obtain an Application from FSA;

* * * * *

5. Amend § 1424.8 by revising paragraphs (a), (b), (d), (e) introductory text, and (e)(1) through (e)(4), and adding paragraph (f) to read as follows:

§ 1424.8 Payment amounts.

(a) Eligible producers may be paid the amount specified in this section, subject to funds availability. Available funds shall be $150 million each FY for 2003 through 2006.

(b) To participate, an eligible producer must submit a signed Agreement during the announced time period that Agreements will be accepted (sign-up period). Agreements may be for single or multiple FY's. However, multiple FY Agreements require annual production estimate reports be submitted during each applicable FY sign-up period. Such reports must comply with the terms of the Agreement and these regulations. In all cases, the accounting for compliance will be made on a per FY basis.

* * * * *

(d) The submitted agreements filed during the sign-up period will require that the applicant set out the expected increase in production and other information as CCC or FSA may demand. Based on expected commodity prices, following the formula set out in this section, all such submissions will be assigned an expected value. Should the total expected value of all such agreements exceed available funding, then a proration factor may, at CCC's discretion, be developed to factor the agreements down to funding CCC makes available.

(e) Subject to the provisions of this section and conditions specified in the Agreement, a producer's payment eligibility shall be adjusted at the end of each quarter, and figured as follows:

(1) Unless CCC otherwise determines, the extra production in energy from eligible inputs will be converted to gross payable units by:

(i) If, as measured under paragraph (f) of this section, a units per gallon conversion factor is applicable, multiplying the applicable conversion factor times the number of gallons of increased bioenergy; or

(ii) If, as measured under paragraph (f) of this section, a gallons per unit conversion factor is applicable, dividing the gallons of increased bioenergy by the applicable conversion factor.

(2) Gross payable units, calculated using paragraph (e)(1) of this section, shall then be converted to net payable units by dividing the gross payable units, for producers whose annual bioenergy production is:

(i) Less than 65 million gallons, by 2.5;

(ii) Equal to or more than 65 million gallons, by 3.5;

(3) The net payable unit amount calculated under paragraph (e)(2) of this section, shall be then converted to a gross payment by multiplying that commodity amount by the per unit value for the commodity determined as follows:

(i) For those agricultural commodities with established terminal market prices, CCC will use the applicable terminal market price for the last day of the program quarter that KCCO, FSA announces daily, adjusted by the county average differential for the county in which the plant is located and the applicable quality factors CCC determines. For this purpose the terminal market and county average differential CCC uses wording for different locations will, to the extent practicable, be the same as that CCC uses under other major CCC commodity programs for determining marketing loan gains and other matters.

(ii) For those agricultural commodities that do not, as CCC determines, have acceptable established terminal prices, the price shall be as CCC determines, based on such market data as appears to be appropriate for a fair evaluation.

(4) The gross payment calculated under paragraph (e)(3) of this section may, when CCC determines it necessary, be reduced to a net payment by multiplying the gross payment figure by the proration factor determined under paragraph (d) of this section.

* * * * *

(f) *Announcing conversion factors.* When the commodity's conversion factor has been established, that factor will be announced in the annual sign-up announcement for the FY. If the commodity's conversion factor is not determined when the sign-up is announced, the conversion factor will be provided in the cover letter that accompanies accepted Agreements sent to producers. Also, the announcement will indicate commodities which use a units per gallon versus a gallons per unit conversion factor for purposes of the calculations required in paragraph (e) of this section.

6. Amend § 1424.12 by revising paragraphs (a) and (b) to read as follows:

§ 1424.12 Appeals.

(a) Any participant who is subject to an adverse determination made under this part may appeal the determination by filing a written request with the Deputy Administrator at the following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, DC 20250–0550. To receive consideration, the participant must file the appeal within 30 days after written notice of the decision which is the subject of the appeal is mailed or otherwise made available to the participant. An appeal shall be considered to have been filed when personally delivered in writing to the Deputy Administrator or when the properly addressed request, postage paid, is postmarked. The Deputy Administrator may accept and act upon an appeal even though it is not timely filed if, in the judgement of the Deputy Administrator, circumstances warrant such action.

(b) The regulations at 7 CFR part 11 apply to decisions made under this part.

* * * * *

Signed in Washington, DC, on September 20, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–24539 Filed 9–30–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 214, 248 and 264

[INS No. 2059]

RIN 1115–AF29

Procedures for Processing Temporary Agricultural Worker (H–2A) Petitions by the Secretary of Labor

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Withdrawal of proposed rule.

SUMMARY: On July 13, 2000, the Immigration and Naturalization Service (Service) published a final rule in the **Federal Register** to delegate to the Department of Labor (DOL) the authority to adjudicate petitions for temporary agricultural workers (H–2A). On the same date, in conjunction with that action, the Service published a proposed rule in the **Federal Register**, at 65 FR 43535, providing additional instructions and information on how to petition for agricultural workers (H–2A) once the delegation of authority became effective.

In a separate final rule published elsewhere in this issue of the **Federal Register**, the Service is withdrawing that final rule delegating authority to DOL. Accordingly, for the same reasons, the Service is withdrawing this related proposed rule.

DATES: The proposed rule amending 8 CFR parts 103, 214, 248 and 264 published in the **Federal Register** at 65 FR 43535 is withdrawn as of October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mari F. Johnson, Adjudications Officer, Business and Trade Services Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION:

Purpose of Delegating Adjudication of Certain H–2A Petitions to the DOL

In an attempt to streamline the processing of petitions filed for agricultural workers, the Service, in consultation with the DOL, decided to delegate its authority to adjudicate certain H–2A petitions to the DOL. It was estimated that the delegation of authority would shorten the processing time of H–2A petitions by as much as 10 days.

Regulations Delegating H–2A Authority to DOL and Extensions of the Effective Date

On July 13, 2000, the Service published a final rule in the **Federal Register** at 65 FR 43528–43534 delegating the authority to adjudicate certain H–2A petitions for the temporary employment of nonimmigrant aliens in agriculture in the United States to the DOL. The final rule, which amended 8 CFR parts 103 and 214, was to take effect on November 13, 2000. The Service subsequently published final rules to delay the effective date of this transfer of H–2A authority until October 1, 2002. 65 FR 67616 (Nov. 13, 2000); 66 FR 49514 (Sept. 28, 2001).

Proposed Regulations Regarding Procedures for Processing H–2A Petitions

On July 13, 2000, and concurrently with the H–2A final delegation of authority rule, the Service published a proposed rule for comment proposing among other things, that all petition requests, extensions of stay, and change of status petitions must be filed with DOL and that the current Service petition fee would be collected by DOL as part of the combined fee.

Concurrently with publication of Service's proposed rule the DOL published at 65 FR 43545 a companion notice of proposed rulemaking (NPRM) setting forth implementation measures necessary for the successful implementation of the delegation of authority to adjudicate petitions.

On August 17, 2000, at 65 FR 50166 the Service reopened and extended the comment period for the proposed rule. Also on August 17, 2000, at 65 FR 50170 the DOL reopened and extended the comment period on its NPRM. In order to obtain additional information from the public relating to the delegation such as the consolidation of forms and the appropriate fees as well as other issues.

Changes Contained in the Proposed Rule

The Service's proposed rule required that alien workers sign a petition request for change of status or extension of stay. The Service also proposed that all petition requests including extension of stay and change of status petitions be filed with the DOL. Finally, the rule proposed that the Service's petition filing fee will be collected by DOL.

Comments Received on the Proposed Rule

The Service received 20 comments on the proposed rule. The majority of the commenters expressed dissatisfaction with the Service's delegation of authority to DOL and requested that the Service grant additional time for comments from the public on the delegation. The commenters also expressed concern that it would be difficult for alien beneficiaries to sign the petition.

Events Necessitating the Withdrawal of the Proposed and Final Rule

For the reasons explained in the final rule, published elsewhere in this issue of the **Federal Register**, the Service has withdrawn the delegation of H–2A authority contained in the final rule published on July 13, 2000, at 65 FR 43528–45534. Because the delegation of authority will not take place, the Service is also withdrawing this proposed rule which was published in the **Federal Register** on July 13, 2000, at 65 FR 43535.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is administrative in nature and merely withdraws a proposed rule published in the **Federal Register**.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a proposed rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

Accordingly, the proposed rule amending 8 CFR parts 103, 214, 248 and 264 published in the **Federal Register** at 65 FR 43535 is withdrawn.

Dated: September 13, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–24845 Filed 9–27–02; 1:00 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–172–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes. This proposal would require a one-time inspection of the single-phase remote control circuit breaker(s) (RCCBs) in a certain area of the electrical/electronic (E/E) compartment to determine the part number and serial number of the RCCB(s), and replacement of certain RCCBs with new or serviceable RCCBs, if necessary. This action is necessary to prevent failure of an RCCB to trip during an overload condition due to a defective braze joint in the RCCB latch assembly, which could result in overheating of the RCCB load wire, and consequent smoke and possible fire in the E/E compartment of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–172–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–172–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report from the airplane manufacturer that the latch assemblies on certain single-phase remote control circuit breakers (RCCBs) installed on certain McDonnell Douglas Model MD–90–30 airplanes have a defective braze joint. The defective braze joint is located between the bimetal assembly and the latch. The defective braze joints are limited to two lots of RCCBs, which have specific part numbers and serial numbers. Such defective braze joints could lead to failure of the RCCB to trip during an overload condition, which could result in overheating of the RCCB load wire, and consequent smoke and possible fire in the electrical/electronic (E/E) compartment of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved McDonnell Douglas Alert Service Bulletin MD90–24A053, Revision 01, dated February 23, 2001. That service bulletin describes procedures for performing a one-time inspection of the RCCB or RCCBs, as applicable, at station Y=120.050 in the E/E compartment of the airplane to determine the part number and serial number of the installed RCCB(s). For airplanes with an affected RCCB, the service bulletin also describes procedures for replacing the RCCB with a new or serviceable RCCB. The replacement RCCB should be of the same part number as the existing part with a serial number that is not from the affected lots. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin specify to

complete a form to report inspection findings to Boeing, this proposed AD would not require this action. The FAA does not need this information from operators.

Cost Impact

There are approximately 86 airplanes of the affected design in the worldwide fleet. We estimate that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $1,260, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. For affected airplanes within the period under the warranty agreement, we have been advised that manufacturer warranty remedies may be available for labor costs associated with accomplishing the inspection required by this proposed AD. Therefore, the future economic cost impact of this AD may be less than the cost impact figure indicated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–172–AD.

Applicability: Model MD–90–30 airplanes as listed in McDonnell Douglas Alert Service Bulletin MD90–24A053, Revision 01, dated February 23, 2001; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a remote control circuit breaker (RCCB) to trip during an overload condition due to a defective braze joint in the RCCB latch assembly, which could result in overheating of the RCCB load wire, and consequent smoke and possible fire in the electrical/electronic (E/E) compartment of the airplane, accomplish the following:

Inspection and Replacement, If Necessary

(a) Within 6 months after the effective date of this AD, perform a one-time inspection of the single-phase RCCB or RCCBs, as applicable, at station Y=120.050 in the E/E compartment of the airplane to determine the part number and serial number of the RCCB(s), per the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD90–24A053, Revision 01, dated February 23, 2001.

(1) If an RCCB has a part number that is not listed in Table 1, Figure 1, or Table 2, Figure 2, of the service bulletin, as applicable: No further action is required by this AD for that RCCB. It is not necessary to report findings to Boeing by completing the form in the Appendix of the service bulletin.

(2) If an RCCB has a part number that is listed in Table 1, Figure 1, or Table 2, Figure 2, of the service bulletin, as applicable, and the corresponding serial number is not identified in that table: No further action is required by this AD for that RCCB. It is not necessary to report findings to Boeing by completing the form in the Appendix of the service bulletin.

(3) If an RCCB has a part number that is listed in Table 1, Figure 1, or Table 2, Figure 2, of the service bulletin, as applicable; and the corresponding serial number is identified in that table: Before further flight, replace the RCCB with a new or serviceable RCCB per the Accomplishment Instructions of the service bulletin. The replacement RCCB must have the same part number as the part being replaced, and a serial number that is not identified in Table 1, Figure 1, or Table 2, Figure 2, of the service bulletin, as applicable. It is not necessary to report findings to Boeing by completing the form in the Appendix of the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Issued in Renton, Washington, on September 23, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–24689 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2286, MB Docket No. 02–281, RM–10563]

Digital Television Broadcast Service; Macon, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Macon Urban Ministries, Inc., d/b/a Good News Television, licensee of station WGNM, requesting the substitution of DTV channel 45 for DTV channel 50 at Macon, Georgia. DTV Channel 45 can be allotted to Macon at reference coordinates 32–45–51 N. and 83–33–32 W. with a power of 1000, a height above average terrain HAAT of 223 meters.

DATES: Comments must be filed on or before November 14, 2002, and reply comments on or before November 29, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making *(except in broadcast allotment proceedings). See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J. Geoffrey Bentley, Bentley Law Office, P.O. Box 710207, Herndon, Virginia 20171 (Counsel for Macon Urban Ministries, Inc., d/b/a Good News Television).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–281, adopted September 16, 2002, and released September 23, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Georgia is amended by removing DTV channel 50 and adding DTV channel 45 at Macon.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–24898 Filed 9–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2287, MB Docket No. 02–282, RM–10523]

Digital Television Broadcast Service; Minot, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Prairie Public Broadcasting, licensee of noncommercial station KSRE(TV), Minot, North Dakota, requesting the substitution of DTV channel *40 for station KSRE(TV)'s assigned DTV channel *57. DTV Channel *40 can be allotted to Minot at reference coordinates 48–03–02 N. and 101–23–25 W. with a power of 1000, a height above average terrain HAAT of 253 meters. Since the community of Minot is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before November 14, 2002, and reply comments on or before November 29, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making *(except in broadcast allotment proceedings). See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal

Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Todd D. Gray, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036 (Counsel for Prairie Public Broadcasting).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–282, adopted September 16, 2002, and released September 23, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under North Dakota is amended by removing DTV channel *57 and adding DTV channel *40 at Minot.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–24897 Filed 9–30–02; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 67, No. 190

Tuesday, October 1, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Final Information Quality Guidelines

AGENCY: U.S. Agency for International Development (USAID).

ACTION: Notice.

SUMMARY: USAID's Final Information Quality Guidelines is available on the USAID Web site *http://www.usaid.gov/about/info_quality/*.

DATES: October 1, 2002.

ADDRESSES: Margaret A. Miller, M/AA, USAID, Room 2.12.036 RRB, 1300 Pennsylvania Ave., NW., Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: Margaret Alter Miller; telephone 202–712–1054; telefax (202) 216–3053; e-mail *mamiller@usaid.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies, USAID's final information quality guidelines, which have been reviewed by the Office of Management and Budget, are available to the public on the USAID Web site: *http://www.usaid.gov/about/info_quality*.

Dated: September 24, 2002.

Richard C. Nygard,

Deputy CIO for Policy.

[FR Doc. 02–24806 Filed 9–30–02; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. # CN–02–004]

Recommendations of Advisory Committee on Universal Cotton Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) held a meeting of the Universal Cotton Standards Advisory Committee in Memphis, Tennessee on June 13 and 14, 2002. This notice announces that the Advisory Committee recommended the creation and addition of two Universal Micronaire Cotton Standards that represent the high and low ends of the American Upland micronaire range. Also, the Advisory Committee recommended that ''Guidelines for HVI Testing'' should be referenced to provide accepted procedures for standardized HVI testing. These guidelines can be obtained on the Internet from the USDA, AMS, Cotton Program's Web site at *http://www.ams.usda.gov/cotton/cnpubs*.

DATES: Comments must be received on or before December 2, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning the Advisory Committee's recommendations to Norma McDill, Deputy Administrator, Cotton Program, Agricultural Marketing Service, USDA, Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically to: *cottoncomments@usda.gov*. All comments should reference the docket number and the date and page number of the issue of the **Federal Register**. All comments received will be made available for public inspection at Cotton Program, AMS, USDA, Room 2641–S, 1400 Independence Ave., SW., Washington, DC 20250–0224 during regular business hours. A copy of this notice may be found at: *www.ams.usda.gov/cotton/rulemaking.htm*.

FOR FURTHER INFORMATION CONTACT: Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Washington, DC 20250–0224, telephone (202) 720–3193, facsimile (202) 690–1718, or e-mail at *Norma.McDill@usda.gov*.

SUPPLEMENTARY INFORMATION: The Universal Cotton Standards Advisory Committee meets triennially to consider any necessary changes to the Universal Cotton Standards and to review freshly prepared sets of Universal Cotton Standards for conformity with the existing standards.

At its June 13–14, 2002 meeting, the committee recommended the creation and addition of two Universal Micronaire Calibration Cotton Standards that represent the high and low ends of the American Upland micronaire range. The committee also recommended that ''HVI Guidelines for HVI Testing'' should be referenced to provide accepted procedures and practices for standardized HVI testing. These guidelines can be obtained on the Internet at *http://www.ams.usda.gov/cotton/cnpubs*.

High Volume Instrument (HVI) Classing of cotton has been available on an optional basis since 1980. Since 1991, HVI classification has been provided on all cotton classed by USDA along with the classer color grade and leaf grade, which conform to the Universal Grade Standards. HVI systems provide the most scientific and reliable sources of cotton quality information available. The advisory committee includes representatives of all segments of the U.S. cotton industry and the 23 overseas cotton associations that are signatories to the Universal Cotton Standards Agreement. Adoption of these recommendations will continue to facilitate establishing a universal language for the marketing of U.S. cotton under the HVI classification system.

Authority: 7 U.S.C. 51–65.

Dated: September 25, 2002

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–24904 Filed 9–30–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–054–1]

General Conference Committee of the National Poultry Improvement Plan; Reestablish

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reestablishment.

SUMMARY: We are giving notice that the Secretary of Agriculture has reestablished the General Conference Committee of the National Poultry

Improvement Plan for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1498 Klondike Road, Suite 200, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The purpose of the General Conference Committee of the National Poultry Improvement Plan (Committee) is to maintain and ensure industry involvement in Federal administration of matters pertaining to poultry health.

The Committee Chairperson and the Vice Chairperson shall be elected by the Committee from among its members. There are seven members on the Committee. This Committee differs somewhat from other advisory committees in the selection process and composition of its membership. The poultry industry elects the members of the Committee. The members represent six geographic areas with one member-at-large. The membership is not subject to the U.S. Department of Agriculture's review. A formal request for nominations for membership is published in the **Federal Register**.

Done in Washington, DC, this 18th day of September 2002.

John Surina,

Acting Assistant Secretary for Administration.

[FR Doc. 02–24829 Filed 9–30–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Province Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet in Salem, Oregon. The purpose of the meeting is to discuss issues pertinent to the implementation of the Northwest Forest Plan and to provide advice to federal land managers in the Province. The specific topics to be covered at the meeting include young stand management and development of late successional habitat, results of Province implementation monitoring, and information sharing.

DATES: The meeting will be held October 17, 2002.

ADDRESSES: The meeting will be held at the Salem District Office of the Bureau of Land Management, 1717 Fabry Road, Salem, Oregon. Send written comments to Neal Forrester, Willamette Province Advisory Committee, c/o Willamette National Forest, PO Box 10607, Eugene, Oregon 97440, (541) 225–6436 or electronically to *nforrester@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Neal Forrester, Willamette National Forest, (541) 225–6436.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to PAC members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the PAC staff before or after the meeting. A public forum will be provided and individuals will have the opportunity to address the PAC. Oral comments will be limited to three minutes.

Dated: September 25, 2002.

Y. Robert Iwamoto,

Acting Forest Supervisor, Willamette National Forest.

[FR Doc. 02–24853 Filed 9–30–02; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. 02–2]

Information Quality Guidelines

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of availability of final information quality guidelines.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has placed final information quality guidelines on its web site. The purpose of the information quality guidelines is to ensure the quality, objectivity, utility, and integrity of certain information disseminated by the Access Board to the public. The guidelines also provide an administrative mechanism for requests for correction of information publicly disseminated by the Access Board.

DATES: The guidelines are effective October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Stewart, Deputy General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington DC 20004–1111. Telephone number (202) 272–0042 (voice); (202) 272–0082 (TTY). Electronic mail address: *stewart@access-board.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Public Law 106–554), the Office of Management and Budget (OMB) issued implementing guidelines entitled ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies.''[1] OMB's implementing guidelines directed each agency to post final information quality guidelines on their web site no later than October 1, 2002.

The purpose of the information quality guidelines is to ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by the Access Board. The guidelines also establish administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with these guidelines. Pursuant to the implementing guidelines issued by OMB, the Access Board must report annually to the Director of OMB, beginning January 1, 2004, on the number and nature of complaints regarding the Access Board's compliance with the information quality guidelines and how such complaints were resolved.

On August 27, 2002, the Access Board published a notice of availability of its draft information quality guidelines and requested comment by September 10, 2002. (67 FR 55000). The Board received one comment on the draft guidelines from the Paralyzed Veterans of America. That comment was supportive in general of the draft guidelines, and, in particular of the manner in which the guidelines addressed the issue of complaints filed during rulemaking proceedings.

The Board has substantively modified the final guidelines in one respect. Section 13 of the final guidelines was amended to provide for an administrative review of the decision on the initial complaint. Section 13 provides that within 15 days of receipt of the decision issued by the Deputy General Counsel, the complainant may file a request for reconsideration of that decision with the General Counsel. There are no other substantive changes to the information quality guidelines.

The Office of Management and Budget has reviewed the Board's final guidelines. The Access Board has made its final information quality guidelines

[1] Published by OMB on September 28, 2001 (66 FR 49718), updated January 3, 2002 (67 FR 369), and corrected February 22, 2002 (67 FR 8452).

available on its web site at *http://www.access-board.gov/infoquality.htm*.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 02–24832 Filed 9–30–02; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 020920219–2219–01]

Annual Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the Annual Trade Survey. The Census Bureau has determined that it needs to collect data covering annual sales, e-commerce sales, year-end inventories, and purchases.

FOR FURTHER INFORMATION CONTACT: John Trimble, Service Sector Statistics Division, on (301) 763–7223.

SUPPLEMENTARY INFORMATION: The Annual Trade Survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides, on a comparable classification basis, annual sales, e-commerce sales (including Electronic Data Interchange or EDI), and purchases for 2002 and year-end inventories for 2001 and 2002. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require a selected sample of firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 2002 Annual Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subject specified above.

The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code, Sections 182, 224 and 225. This survey provides continuing and timely national statistical data on wholesale trade for the period between the economic census. For 2002, the economic census year, the survey will, as it has in the past, operate as a separate sample of wholesale companies. The data collected in this survey will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the economic census. These data will provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 United States Code, Chapter 35, the OMB approved the Annual Trade Survey under OMB Control Number 0607–0195. We will furnish report forms to organizations included in the survey. Additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: September 26, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–24861 Filed 9–30–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD AUGUST 17, 2002–SEPTEMBER 24, 2002

Firm name	Address	Date petition accepted	Product
Walker Machine & Foundry Corp.	2415 Russell Ave. S.W., Roanoke, VA 24015.	08/27/02	Ductile iron castings for industrial use.
Deweyl Tool Company, Inc	959 Transport Way, Petaluma, CA 94954.	08/30/02	Precision metal bonding tools used in the semiconductor industry.
Ashley Lighting, Inc	405 Industrial Dr. Trumann, AR 72472.	08/30/02	Electric lamps and fittings.
Jess Munos d.b.a. Pear-A-Dice Orchards.	2600 Riverview Dr., Hood River, OR 50423.	09/04/02	Pears.
Celeste Industries, Inc	7978 Industrial Dr. Easton, MD 21601.	09/09/02	Non-woven sanitary items.
Lapp Insulator Company	130 Gilbert Street, Le Roy, NY 14482.	09/10/02	Electrical ceramic insulators, bushings, other porcelain housings which are incorporated into circuit breakers.
Guadalupe Ranch House Meat Company.	303 San Saba Menard, TX 76859.	09/12/02	Smoked meat products including pork.
Dixon Automatic Tool, Inc	2300 23rd Avenue, Rockford, IL 61104.	09/13/02	Automated screw and nut drivers with motors, controls, sensors and metal framing.
Encorp, Inc.	9351 Eastman Park Dr., Windsor, CO 80550.	09/17/02	Switchboards, switchgears, panel boards and distributor boards.
Rio Grande Plastic Products, Inc.	105 North Tower Road, Alamo, TX 78516.	09/17/02	Plastic injection molds used in the automotive industry.
Majestic Wood Carving Company.	3000 St. Charles Road, Bellwood, IL 60104.	09/17/02	Wooden kitchen, bedroom and livingroom furniture.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD AUGUST 17, 2002–SEPTEMBER 24, 2002—Continued

Firm name	Address	Date petition accepted	Product
Master Industries, Inc	1712 Commerce Dr., Piqua, OH 45356.	09/17/02	Plastic injection molds used in the automotive industry.
Mountain Optech, Inc	4775 Walnut Street, Boulder, CO 80301.	09/18/02	Wire harnesses used in the electronics industry.
Custom Interface, Inc	115 West Steuben, Bingen, WA 98605.	09/18/02	Wire harnesses used in the electronics industry.
Alloy Construction Services, Inc	401 Balsam, Carrollton, MI 48724.	09/20/02	Wire harnesses used in the electronics industry.
Seajay Manufacturing Corporation.	1111 State Highway 33, Neptune, NJ 07753.	09/20/02	Extrusion blow molds for plastic containers.
ELBRO, Inc	12691 Monarch St., Garden Grove, CA 92841.	09/24/02	Cable wiring and harness sets.
John Crowley, Inc	703 Airline Drive, Jackson, MI 49204.	09/24/02	Fabricated metal products, i.e. bases, tables and frames for machinery.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: September 23, 2002.

Brenda A. Johnson,

Technical Assistance Specialist, Planning and Development Assistance Division.

[FR Doc. 02–24852 Filed 9–30–02; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five Year (Sunset) Review of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year (''sunset'') review of antidumping duty orders.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* covering these same antidumping duty orders.

FOR FURTHER INFORMATION CONTACT: James P. Maeder or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–3330 or (202) 482–5050, respectively, or Mary Messer, Office of Investigations, U.S. International Trade Commission, at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the ''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (2002). Pursuant to sections 751(c) and 752 of the Act, an antidumping (''AD'') or countervailing duty (''CVD'') order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Background

Initiation of Reviews

In accordance with 19 CFR 351.218 of the Department's regulations we are initiating sunset reviews of the following antidumping duty orders:

DOC Case No.	ITC Case No.	Country	Product
A–570–850	731–TA–757	China	Collated Roofing Nails.
A–583–826	731–TA–759	Taiwan	Collated Roofing Nails.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/*.

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic interested parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c) of the Department's regulations.

Dated: September 25, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–24929 Filed 9–30–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Certain Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Preliminary Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of changed circumstances antidumping duty administrative review.

SUMMARY: On June 16, 2002, the Department of Commerce published a notice of initiation in the changed circumstances review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea. As a result of this review, the Department of Commerce preliminarily finds, for the purposes of this proceeding, that Husteel Company, Ltd. is the successor-in-interest to Shinho Steel Company, Ltd.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Scott Holland, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0176 and (202) 482–1279, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the ''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are to 19 CFR part 351 (2002).

SUPPLEMENTARY INFORMATION:

Background:

Since the initiation of this changed circumstances review (*Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review* (*''Initiation''*), 67 FR 41394, June 16, 2002) the following events have occurred:

On July 12, 2002, we issued a changed circumstances questionnaire to Husteel requesting additional information regarding successorship. We received a response to the questionnaire from Husteel on August 9, 2002.

Scope of the Review

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation, 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela,* 61 FR 11608, (March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following *Harmonized Tariff Schedule of the United States* (''HTSUS'') subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and Customs Service purposes, the written description of the scope of this proceeding is dispositive.

Preliminary Results

In making successor-in-interest determinations, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460–61 (May 13, 1992). While no single factor, or combination of factors, will necessarily prove dispositive, the Department will generally consider the new company to be the successor to its predecessor company if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Id.* and *Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review,* 59 FR 6944, 6945 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as its predecessor, the Department will assign the new company the cash-deposit rate of its predecessor.

Based on the information submitted by Husteel in its August 9, 2002, questionnaire response (''questionnaire response''), we preliminarily determine that Husteel is the successor-in-interest to Shinho.

Husteel previously provided documentation to support the name change, including the minutes of the shareholders' meeting where the name change was approved, the corporate articles before and after the name change, court certification of the name change, and the new business registration certificate issued by tax authorities. *See Initiation.*

Subsequent to initiation, Husteel provided further documentation to support its statement that the company's management structure, production facilities, supplier relationships and customer base remain unchanged. The Company organizational charts and Board of Directors did not change. The company continues to operate two production facilities, one at Inchon and in Daebul, Korea. Furthermore, we noted that the product code lists for each facility, the monthly purchase transactions by vendor, the monthly home market sales transactions by customer, for the period of January 2002, through June 2002, were unchanged.

Based on the evidence on the record, we preliminarily find that Husteel operates as the same business entity as Shinho. Consequently, we preliminarily determine that Husteel should receive the same antidumping duty cash-deposit rate (*i.e.*, a 2.99 percent antidumping duty cash-deposit rate) with respect to the subject merchandise as the predecessor company, Shinho. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Amended Final Results of Antidumping Administrative Review,* 66 FR 28422, (May 23, 2001).

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments 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.

Consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

This notice is in accordance with section 751(b) of the Act.

Dated: September 25, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–24927 Filed 9–30–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–815]

Suspension of Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has suspended the antidumping duty investigation involving certain cold-rolled carbon steel flat products (''cold-rolled steel'') from the Russian Federation (''Russia''). The basis for this action is an agreement between the Department and the Russian cold-rolled steel producers accounting for substantially all imports of cold-rolled steel from Russia, wherein each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement.

EFFECTIVE DATE: September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Jean Kemp, Jonathan Herzog or Aishe Allen at (202) 482–4037, (202) 482–4271, and (202) 482–0172 respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 2002, the Department published its preliminary determination

in the above-captioned antidumping duty investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From the Russian Federation,* 67 FR 31241 (May 9, 2002) (*''Preliminary Determination''*). This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 54198 (October 26, 2001).

On May 13, 2002, the Russian Ministry of Economic Development and Trade submitted to the Department a proposed draft of a suspension agreement between them and the Department. On May 30, 2002, the Russian government requested an extension of the final determination in order to have time to negotiate an agreement to suspend this investigation. On August 23, 2002, in Washington, DC, representatives from JSC Severstal, Novolipetsk Iron and Steel Corporation, and JSC Magnitogorsk Iron and Steel Works (collectively the '' Russian cold-rolled steel producers'') initialed a proposed suspension agreement. We invited comments on the proposed agreement. On September 16, 2002, we received comments from petitioners, represented by Dewey Ballantine LLP, Skadden, Arps, Slate, Meagher and Flom LLP, Wiley Rein and Fielding LLP, Thompson Coburn, and the Russian cold-rolled steel producers submitted by Sidley, Austin Brown and Wood LLP.

On September 23, 2002, the final suspension agreement was signed by the Russian cold-rolled steel producers and the Department, the effective date being September 23, 2002.

Scope of Investigation

For a complete description of the scope of the investigation, *see Agreement Suspending the Antidumping Investigation on Cold-Rolled Carbon Steel Flat Products from the Russian Federation,* Appendix B, signed September 23, 2002, attached hereto.

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, Inc., Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. Based on our review of these comments, we have made changes to the agreement. In accordance with section 734(b) of the Act, we have determined that the agreement will eliminate completely sales at less than fair value of imported subject merchandise. Moreover, in accordance with section 734(d) of the Act, we have determined that the agreement is in the public interest, and that the agreement can be monitored effectively. We find, therefore, that the criteria for suspension of an investigation pursuant to sections 734(b) and (d) of the Act have been met. The terms and conditions of this agreement, signed September 23, 2002, are set forth in appendix I to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of cold-rolled steel from Russia entered, or withdrawn from warehouse, for consumption, as directed in our notice of *Preliminary Determination,* is hereby terminated.

Any cash deposits on entries of cold-rolled steel from Russia pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

Notwithstanding the suspension agreements, the Department will continue the investigation if it receives such a request in accordance with section 734(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: September 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Agreement Suspending the Antidumping Investigation on Cold-Rolled Carbon Steel Flat Products From the Russian Federation (A–821–815)

Pursuant to section 734(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(c)(b)) (the ''Act''), and 19 CFR 351.208 (the ''Regulations''), the U.S. Department of Commerce (the ''Department'') and the signatory producers/exporters of Cold-Rolled Carbon Steel Flat Products from the Russian Federation (the ''Signatories'') enter into this suspension agreement (the ''Agreement''). On the basis of this Agreement, the Department shall suspend its antidumping investigation initiated on October 26, 2001 (66 FR 54198), with respect to cold-rolled carbon steel flat products from the Russian Federation, subject to the terms and provisions set forth below.

(A) Product Coverage

For purposes of this Agreement, the products covered are certain cold-rolled (cold-reduced), flat-rolled carbon-quality steel products, as described in appendix B.

(B) U.S. Import Coverage

The signatory producers/exporters collectively are the producers and exporters in the Russian Federation that, during the antidumping investigation on the merchandise subject to the Agreement, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States, as provided in the Department's regulations. The Department may at anytime during the period of the Agreement require additional producers/exporters in the Russian Federation to sign the Agreement in order to ensure that not less than substantially all imports into the United States are covered by the Agreement.

In reviewing the operation of the Agreement for the purpose of determining whether this Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in Section A of the Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: volume of trade, pattern of trade, whether or not the reseller is an original equipment manufacturer, and the reseller's export price (EP).

(C) Basis of the Agreement

On and after the effective date of the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement. For this purpose, the Department will determine the NV in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act.

(1) For the period from September 23, 2002, the date of signing the agreement, through March 31, 2003 (the interim period), each signatory producer/exporter agrees not to sell its merchandise subject to the Agreement in the United States.

(2) For all sales occurring on and after April 1, 2003, each producer/exporter agrees not to sell its merchandise subject to the Agreement to any unaffiliated purchaser in the United States at prices that are less than the NV of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in section D of the Agreement and provided to the parties not later than March 20 and September 20 of each year.[1] This NV shall apply to sales

[1] For the first sales period only, April 1 through September 30, 2003, the issuance of the normal value may be delayed in order to resolve issues raised in comments from interested parties or by the Department and for the purpose of allowing sufficient time for signatories to respond to the Department's request for cost data. Some of the these issues may arise due to Russia's new status as a market economy with respect to the

occurring during the semiannual period beginning on the first day of the month following the date the Department provides the NV, as stated in this paragraph.

(D) Monitoring

Each signatory producer/exporter will supply to the Department all information that the Department decides is necessary to ensure that the producer/exporter is in full compliance with the terms of the Agreement. As explained below, the Department will provide each signatory producer/exporter a detailed request for information and prescribe a required format and method of data compilation, not later than the beginning of each reporting period.

(1) Sales Information

The Department will require each producer/exporter to report, on computer tape in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to the Agreement, either directly or indirectly to unaffiliated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

The first report of sales data shall be submitted to the Department, on computer tape in the prescribed format and using the prescribed method of data compilation, not later than October 31, 2003, and shall contain the specified sales information covering the period April 1, 2003 to September 30, 2003. Subsequent reports of sales data shall be submitted to the Department not later than April 30 and October 31 of each year, and each report shall contain the specified sales information for the semiannual period ending one month prior to the due date, except that if the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data on a monthly, rather than semiannual basis.

(2) Cost Information

Producer/exporters must request NVs for all subject merchandise that will be sold in the United States. For those products which the producer/exporter is requesting NVs, the Department will require each producer/exporter to report: Their actual cost of manufacturing; selling, general and administrative (SG&A) expenses; and profit data on a semiannual basis, in the prescribed format and using the prescribed method of data compilation. As indicated in Appendix A, profit will be reported by the producers/exporters on a semiannual basis. Each such producer/exporter also must report anticipated increases in production costs in the semiannual period in which the information is submitted resulting from factors such as anticipated changes in production yield, changes in production process, changes in production quantities or changes in production facilities.

The first report of cost data shall be submitted to the Department not later than November 14, 2002, and shall contain the specified cost data covering the period April 1, 2002 through September 30, 2002. Each subsequent report shall be submitted to the Department not later than May 15 and November 14 of each year, and each report shall contain specified information for the semiannual period ending 45 days prior to the due date.

(3) Special Adjustment of Normal Value

If the Department determines that the NV it determined for a previous semiannual period was erroneous because the reported costs for that period were inaccurate or incomplete, or for any other reason, the Department may adjust NV in a subsequent period or periods, unless the Department determines that Section F of the Agreement applies.

(4) Verification

Each producer/exporter agrees to permit full verification of all cost and sales information annually, or more frequently, as the Department deems necessary.

(5) Bundling or Other Arrangements

Producers/exporters agree not to circumvent the Agreement. In accordance with the dates set forth in section D(1) of this Agreement, producers/exporters will submit a written statement to the Department certifying that the sales reported herein were not, or are not part of or related to, any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap or other exchange where such arrangement is designed to circumvent the basis of the Agreement.

Where there is reason to believe that such an arrangement does circumvent the basis of the Agreement, the Department will request producers/exporters to provide within 15 days all particulars regarding any such arrangement, including, but not limited to, sales information pertaining to covered and non-covered merchandise that is manufactured or sold by producers/exporters. The Department will accept written comments, not to exceed 30 pages, from all parties no later than 15 days after the date of receipt of such producer/exporter information.

If the Department, after reviewing all submissions, determines that such arrangement circumvents the basis of the Agreement, it may, as it deems most appropriate, utilize one of two options: (1) The amount of the effective price discount resulting from such arrangement shall be reflected in the NV in accordance with section D(3) of this Agreement, or (2) the Department shall determine that the Agreement has been violated and take action according to the provisions under section F of this Agreement.

(6) Rejection of Submissions

The Department may reject any information submitted after the deadlines set forth in this section or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate normal value (NV), and/or U.S. price based on facts otherwise available, as it determines appropriate, unless the Department determines that section F of this Agreement applies.

(E) Disclosure and Comment

(1) The Department may make available to representatives of each domestic party to the proceeding, under appropriately drawn administrative protective orders, business proprietary information submitted to the Department during the reporting period as well as results of its analysis under section 777 of the Act.

(2) For the first sales period, beginning April 1, 2003, the Department will disclose to each producer/exporter the preliminary results and methodology of the Department's calculations of its NV no later that February 20, 2003. At that time, the Department may also make available such information to the domestic parties to the proceeding in accordance with this section.

(3) Not later than February 20 and August 20 of each ensuing sales period, the Department will disclose to each producer/exporter the preliminary results and methodology of the Department's calculations of its NV. At that time, the Department may also make available such information to the domestic parties to the proceeding, in accordance with this section.

(4) Not later than 7 days after the date of disclosure under section E(2) and E(3) of this Agreement, the parties to the proceeding may submit written comments to the Department, not to exceed 15 pages. After reviewing these submissions, the Department will provide to each producer/exporter its NV as provided in section C(2) of this Agreement. In addition, the Department may provide such information to domestic interested parties as specified in this section.

(F) Violations of the Agreement

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 734(b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the regulations.

(G) Other Provisions

In entering into the Agreement, the signatory producers/exporters do not admit that any sales of merchandise subject to the Agreement have been made at less than fair value.

(H) Termination or Withdrawal

The Department will not consider requests for termination of this suspended investigation prior to September 2007. Termination of the suspended investigation will be considered in accordance with the five-year review provisions of § 351.222 of the Department's regulations.

Department's proceedings. In accordance with section 773(f) of the Act, the Department will examine prices and costs within Russia and, for any sales period, may disregard particular prices or costs when the prices are not in the ordinary course of trade, the costs are not in accordance with the generally accepted accounting principles, the costs do not reasonably reflect the costs associated with the production and sale of the merchandise, or in other situations provided for the Act or the Department's regulations. Examples of possible areas in which adjustments may be necessary include, but are not limited to, costs related to energy, depreciation, transactions among affiliates, barters, as well as items that are not recognized by the Russian Accounting System.

Any producer/exporter may withdraw from the Agreement at any time upon notice to the Department. Withdrawal shall be effective 60 days after such notice is given to the Department. Upon withdrawal, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

(I) Definitions

For purposes of the Agreement, the following definitions apply:

(1) U.S. price means the export price or constructed export price at which merchandise is sold by the producer or exporter to the first unaffiliated person in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unaffiliated purchaser, as determined by the Department under section 772 of the Act.

(2) Normal Value means the constructed value (CV) of the merchandise, as determined by the Department under section 773 of the Act and the corresponding sections of the Department's regulations, and as adjusted in accordance with Appendix A to this Agreement.

(3) Producer/Exporter-means (1) the foreign manufacturer or producer, (2) the foreign producer or reseller which also exports, and (3) the affiliated person by whom or for whose account the merchandise is imported into the United States, as defined in section 771(28) of the Act.

(4) Date of sale means the date of the invoice as recorded in the exporter or producer's records kept in the ordinary course of business, unless the Department determines that a different date better reflects the date on which the exporter or producer establishes the material terms of sale, as determined by the Department under its regulations.

The effective date of this Agreement is September 23, 2002.

For the Russian Federation Producers/ Exporters

_____

Neil R. Ellis for JSC Severstal

_____

Date

_____

Stanimir A. Alexandrov for Novolipetsk Iron & Steel Corporation

_____

Date

_____

Vasily A. Varenov for Magnitogorsk Iron & Steel Works

_____

Date

_____

For U.S. Department of Commerce:

_____

Faryar Shirzad, Assistant Secretary for Import Administration

_____

Date

Appendix A—Principles of Cost

General Framework

The cost information reported to the Department that will form the basis of the NV calculations for purposes of the Agreement must be [2]:

- Comprehensive in nature and based on a reliable accounting system (*i.e.,* a system based on well-established standards that can be tied to the audited financial statements);
- Representative of the company's costs incurred for the general class of merchandise;
- Calculated on a semiannual weighted-average basis of the plants or cost centers manufacturing the product;
- Based on fully-absorbed costs of production, including any downtime;
- Valued in accordance with generally accepted accounting principles;
- Reflective of appropriately allocated common costs so that the costs necessary for the manufacturing of the product are not absorbed by other products; and
- Reflective of the actual cost of producing the product.

Additionally, a single figure should be reported for each cost component.

Cost of Manufacturing (COM)

Costs of manufacturing are reported by major cost category and for major stages of production. Weighted-average costs are used for a product that is produced at more than one facility, based on the cost at each facility.

Direct materials is the cost of those materials which are input into the production process and physically become part of the final product.

Direct labor are the costs identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary, bonus and overtime pay, training expenses, and all fringe benefits. Any contracted-labor expense should reflect the actual billed cost or the actual costs incurred by the subcontractor when the corporation has influence over the contractor.

Factory overhead is the overhead costs including indirect materials, indirect labor, depreciation, and other fixed and variable expenses attributable to a production line or factory. Because overhead costs are typically incurred for an entire production line. Acceptable cost allocation can be based on labor hours or machine hours. Overhead costs should reflect any idle or downtime and be fully absorbed by the products.

Cost of Production (COP)

COP is equal to the sum of materials, labor, and overhead (COM) plus SG&A expense in the home market (HM).

SG&A expense are those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses, and general research and development expenses. Additionally, direct and indirect selling expenses incurred in the HM for sales of the product under investigation are included. Such expenses are allocated over cost of goods sold.

Constructed Value

Is equal to the sum of materials, labor and overhead (COM) and SG&A expenses plus profit in the comparison market and the cost of packing for exportation to the United States.

Calculation of Suspension Agreement NVs

NVs (for purposes of the Agreement) are calculated by adjusting the CV and are provided for both EP and CEP transactions. In effect, any expenses uniquely associated with the covered products sold in the HM are subtracted from the CV, and any such expenses which are uniquely associated with the covered products sold in the United States are added to the CV to calculate the NV.

Export Price—Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States. In cases where the foreign manufacturer knows or has reason to believe that the merchandise is ultimately destined for the United States, the manufacturer's sales is the sale subject to review. If, on the other hand, the manufacturer sold the merchandise to a foreign trader without knowledge of the trader's intention to export the merchandise to the United States, then the trader's first sale to an unaffiliated person is the sale subject to review. For EP NVs, the CV is adjusted for movement costs and differences in direct selling expenses such as commissions, credit, warranties, technical expenses such as commissions, credit, warranties, technical services, advertising, and sales promotion.

Constructed Export Price—Generally, a U.S. sales is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sales to an unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation, unless the U.S. affiliate performs only clerical functions in connection with the sale. For CEP NVs, the CV is adjusted similar to EP sales, with differences for adjustment to U.S. and HM indirect-selling expenses.

Home market direct-selling expenses are expenses that are incurred as a direct result of a sale. These include such expenses as commissions, advertising, discounts and rebates, credit, warranty expenses, freight costs, *etc.* Certain direct-selling expenses are treated individually. They include:

Commission expenses are payments to unaffiliated parties for sales in the HM.

Credit expenses are expenses incurred for the extension of credit to HM customers.

Movement expenses are freight, brokerage and handling, and insurance expenses.

U.S. direct-selling expenses are the same as HM direct-selling expenses except that they are incurred for sales in the United States.

Movement expenses are additional expenses incidental to importation into the United States. These typically include U.S.

[2] *See* footnote 1 in Section C(2) of the Agreement.

inland freight, insurance, brokerage and handling expenses, U.S. Customs duties, and international freight.

U.S. indirect-selling expenses include general fixed expenses incurred by the U.S. sales subsidiary or affiliated exporter for sales to the United States. They may also include a portion of indirect expenses incurred in the HM for export sales.

For EP transactions

+ Direct Materials
+ Direct Labor
+ Factory Overhead
= Cost of Manufacturing (COM)
+ Home Market SG&A
= Cost of Production (COP)
+ U.S. Packing
+ Profit
= Constructed Value
+ U.S. Direct-Selling Expense
+ U.S. Commission Expense
+ U.S. Movement Expense
+ U.S. Credit Expense
– HM Direct-Selling Expense
– HM Commission Expense [1]
– HM Credit Expense
= NV for EP Sales

[1] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. Commissions.

For CEP transactions

+ Direct Materials
+ Direct Labor
+ Factory Overhead
= Cost of Manufacturing (COM)
+ Home Market SG&A
= Cost of Production (COP)
+ U.S. Packing
+ Profit
= Constructed Value
+ U.S. Direct-selling Expense
+ U.S. Indirect-selling Expense
+ U.S. Commission Expense
+ U.S. Movement Expense
+ U.S. Credit Expense
+ U.S. Further Manufacturing Expenses (if any)
+ CEP Profit
– HM Direct-selling Expense

For CEP transactions

– HM Commission Expense [1]
– HM Credit Expense
= NV for CEP Sales

[1] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. Commissions.

Appendix B

For purposes of this Agreement, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this Agreement, regardless of definitions in the HTSUS, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) The carbon content is 2% or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80% of manganese, or 2.25% of silicon, or 1.00% of copper, or 0.50% of aluminum, or 1.25% of chromium, or 0.30% of cobalt, or 0.40% of lead, or 1.25% of nickel, or 0.30% of tungsten, or 0.10% of molybdenum, or 0.10% of niobium (also called columbium), or 0.15% of vanadium, or 0.15% of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this Agreement unless specifically excluded.

The following products, by way of example, are outside and/or specifically excluded from the scope of this Agreement:

- *SAE grades* (formerly also called AISI grades) above 2300;
- *Ball bearing steels,* as defined in the HTSUS;
- *Tool steels,* as defined in the HTSUS;
- *Silico-manganese steel,* as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- *Silicon-electrical steels,* as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25%;
- *All products (proprietary or otherwise) based on an alloy ASTM specification* (sample specifications: ASTM A506, A507);
- *Non-rectangular shapes,* not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS;
- *Silicon-electrical steels,* as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25%, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (0.001 inch), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (0.001 inch);
- *Certain shadow mask steel,* which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight	< 0.002%

- *Certain flapper valve steel,* which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm
Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight%	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≥ 162 Kgf/mm^2

MECHANICAL PROPERTIES—Continued

Hardness	≥ 475 Vickers number hardness

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area Percentage
Sulfide Inclusion	≤ 0.04%
Oxide Inclusion	≤ 0.05%

Compressive Stress: 10 to 40 Kgf/mm^2

Surface Roughness:

Thickness (mm)	Roughness (μm)
t ≤ 0.209	Rz ≤ 0.5
0.209 < t ≤ 0.310	Rz ≤ 0.6
0.310 < t ≤ 0.440	Rz ≤ 0.7
0.440 < t ≤ 0.560	Rz ≤ 0.8
0.560 < t	Rz ≤ 1.0

• *Certain ultra thin gauge steel strip,* which meets the following characteristics:

Thickness: ≤ 0.100 mm ± 7%

Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strengh	600 to 850 N/mm

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm

• *Certain silicon steel,* which meets the following characteristics:

Thickness: 0.024 inch ± 0.0015 inch

Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %	.....	.....	.....	.....	0.65	.....
Max. Weight %	0.004	0.4	0.09	0.009	.....	0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inch, start measuring one-quarter inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

• *Certain aperture mask steel,* which has an ultra-flat surface flatness and which meets the following characteristics:

Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	DN	Al
Weight %	<0.01	0.004 to 0.007	< 0.007

• *Certain annealed and temper-rolled cold-rolled continuously cast steel,* which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20	.....	.....	.....	0.03	.....	.....	.....	0.003
Max Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08	.....	0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows: The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, *etc.*) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright.	5(0.1)	0(0)	7(0.2)

• *Certain annealed and temper-rolled cold-rolled continuously cast steel,* in coils, with a certificate of analysis per Cable System International (''CSI'') Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds
Theoretical Thickness	0.0061 inch (±10% of theoretical thickness)

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Width	787 mm to 813 mm
Tensile Strength	45,000–55,000 psi
Elongation	minimum of 15% in 2 inches

• *Concast cold-rolled drawing quality sheet steel,* ASTM a–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 max. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• *Certain single reduced black plate,* meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).

• *Certain single reduced black plate,* meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• *Certain single reduced black plate,* meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).

• *Certain cold-rolled black plate bare steel strip,* meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0058 inch ± 0.0003 inch
Hardness	T2/HR 30T 50–60 aiming
Elongation	≥15%
Tensile Strength	51,000.0 psi ± 4.0 aiming

• *Certain cold-rolled black plate bare steel strip,* in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max Weight%	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (± 0.005 inch)
Width	10 inches (+¼ to ⅜ inch/− 0)
Tonsile Strength	55,000 psi max.
Elongation	Minimum of 15% in 2 inches

• *Certain ''blued steel'' coil* (also known as ''steamed blue steel'' or ''blue oxide''), with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• *Certain cold-rolled steel sheet,* coated with porcelain enameling prior to importation, which meets the following characteristics:

Thickness (nominal): ≤0.019 inch
Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004	.....	.....
Min. Weight%	.....	0.010	0.012

• *Certain cold-rolled steel,* which meets the following characteristics:

Width: >66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–2.000

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Yield Point (MPa)	265
Max. Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

• *Certain band saw steel,* which meets the following characteristics:

Thickness: ≤1.31 mm

Width: ≤80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:

Carbide: Fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed

Surface finish: Bright finish free from pits, scratches, rust, cracks, or seams

Smooth edges

Edge camber (in each 300 mm of length): ≤7 mm arc height

Cross bow (per inch of width): 0.015 mm max.

• *Certain transformation-induced plasticity (TRIP) steel,* which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	320
Max. Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590
Min. Elongation %	24 (if 1.000–1.199 thickness range) 25 (if 1.200–1.599 thickness range) 26 (if 1.600–1.999 thickness range) 27 (if 2.000–2.300 thickness range)

Variety 2

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	340
Max. Yield Point (MPa)	520
Min. Tensile Strength (MPa)	690
Min. Elongation %	21 (if 1.000–1.199 thickness range) 22 (if 1.200–1.599 thickness range) 23 (if 1.600–1.999 thickness range) 24 (if 2.000–2.300 thickness range)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5

CHEMICAL COMPOSITION—Continued

Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 (inclusive)
Min. Yield Point (MPa)	370
Max. Yield Point (MPa)	570
Min. Tensile Strength (MPa)	780
Min. Elongation %	18 (if 1.200–1.599 thickness range) 19 (if 1.600–1.999 thickness range) 20 (if 2.000–2.300 thickness range)

• *Certain cold-rolled steel,* which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %	.....	.....	.....	0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800
Min. Yield Point (MPa)	185
Max. Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation	31 (ASTM standard 31% = JIS standard 35%)

Variety 2

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %	.....	.....	.....	0.15
Max. Weight %	0.05	0.40	0.08	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max. Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb,V, Ti, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm)	0.7
Elongation %	≥ 35

• *Porcelain enameling sheet,* drawing quality, in coils, 0.014 inch in thickness, +0.002,–0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

• *Porcelain-enameling sheet* whether or not coated prior to importation with the following additional characteristics:

Cold-rolled steel for porcelain enameling, the foregoing being continuous annealed cold-reduced steel with a nominal thickness of not more than 0.48 mm and widths from 762 mm to 1,524 mm, having a chemical composition, by weight, of not more than 0.004 percent carbon, nor more than 0.010

percent aluminum, 0.006 percent or more of nitrogen, 0.012 percent or more of boron, and more than 0.005 percent silicon, and 0.010 percent or more of oxygen; having no intentional addition of and less than 0.002 percent by weight of titanium, no intentional addition of and less than 0.002 percent by weight of vanadium, no intentional addition of and less than 0.002 percent by weight of niobium, and no intentional addition of and less than 0.002 percent of antimony; having a yield strength of from 179.3 MPa to 344.7 MPa, a tensile strength of from 303.7 MPa to 413.7 MPa, a percent of elongation of from 28 percent to 46 percent on a standard ASTM sample with a 5.08 mm gauge length; for Fishscale resistance; hydrogen traps provided; with a product shape of flat after annealing, with flat defined as less than or equal to 1 I unit with no coil set.

• *Cold-rolled steel strip to specification SAE 4130,* with the following characteristics:

HTSUS item number 7226.92.80.50
Width up to 24 inches
Gauge of ''0.050–0.014 inches,'' and gauge tolerance of ±0.0018 inches

• *Texture-rolled steel strip (SORBITEX),* with the following characteristics:

Thickness: 0.0039 to 0.0600 inches
Width: 0.118 to < 0.5 inches (3 to < 12.7 mm)

CHEMICAL COMPOSITION

C	Si	Mn	P	S	Al	Cr	Ni	Cu
0.76–0.96%	0.10–0.35%	0.30–0.60%	< .025%	< .020%	< .060%	< .30%	< .20%	< .20%

Tensile strength ranges: 245,000 to 365,000 psi.
HTSUS 7211.29.20.30 and HTSUS 7211.29.45.00

• *Reed steel,* with the following characteristics:

Grades Eberle 18, 18C (SAE 1095 modified alloyed steel)
HTSUS 7211.90.00

PHYSICAL CHARACTERISTICS

Thickness	0.0008 to 0.04 inches (0.0203 to 1.015 mm)
Width	0.276 to 0.472 inches (7 mm to 12.0 mm), with width tolerances of ±0.04 to 0.06 mm
Tensile strength	1599 Mpa to 2199 Mpa.

CHEMICAL COMPOSITION

C	Si	Mn	P	S	Cr
0.95–1.05%	0.15–0.30%	0.25–0.50%	Less than 0.015%	Less than 0.012%	Less than 0.40%

Surface: Rmax 1.5 to 3.0 micrometers
Straightness: Max. deviation of 0.56 mm/m
Flatness: Deviation of 0.1 to 0.3% of the width

• *Feeler gauge steel,* with the following characteristics:

Polished surface and deburred or rounded edges

Grades Eberle 18, 18C (SAE 1095 modified alloyed steel)
HTSUS 7211.90.00

PHYSICAL AND MECHANICAL PROPERTIES

Max. width	0.4975 inches
Thickness Range	0.001–0.045 inches
Thickness tolerances	T2–T4 international standard
Tensile strength UTS	246–304 ksi

• *Wood Band Saw Steel with Nickel Content Exceeding 1.25% by Weight,* with the following characteristics:

Both variety 1 and variety 2 are classified under HTSUS item number 7226.99.00.00.

Variety 1

Nickel-alloyed Band Saw Steel, which meets the following characteristics:

Thickness: >1.1 mm, ≤3.00 mm
Width: <400 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni	Cu	Al
Weight %	0.70–0.80	0.20–0.35	0.30–0.45	max. 0.020	max. 0.006	0.05–0.20	1.90–2.10	max. 0.15	0.02–0.04

Microstructure: Tempered Martensite with Bainite, no surface decarburization
Mechanical Properties:
Hardness: 446 +12/−23 HV respectively 45 +1/−2 HRC

Surface Finish : bright, polished
Edges: treated edges
Cross Bow: max. 0.1 mm per mm width

Variety 2

UHB15N20 band saw steel according to the alloy composition:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni

CHEMICAL COMPOSITION—Continued

Weight %	0.70–0.80	0.20–0.35	0.30–0.45	max. 0.020	max. 0.016		1.90–2.10

Typical material properties:Hardened and tempered:
Tensile Strength: 1450 N/mm² for thickness <2 mm and 1370 N/mm² for thickness >2 mm
Width tolerance: B1 = ± 0.35 mm
Thickness tolerance: T1 (± 0.039 mm)
Flatness: P4 (max. deviation 0.1% of width of strip)
Straightness: (±0.25 mm/1000 mm)
Dimensions:
Widths: 6.3–412.8 mm
Thickness: 0.40 to 3.05 mm

• *2% nickel T5 tolerances and ra less than 8 my,* with the following characteristics:
Thickness: 0.5–3.5 mm
Width: 50–650 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Al	Cr	Ni
% in Weight	0.70–0.80	0.15–0.35	0.30–0.50	max. 0.020	max. 0.010	max. 0.020	0.05–0.30	1.90–2.20

High precision T5 tolerance
Roughness: Ra (RMS) max. 8 inches
The product is classified under HTSUS item number 7226.92.50.00

• *Ski-edge profile steel,* with the following characteristics:
For both Grade SAE 1070 and German Grade SAE X35CrMo17:
HTSUS item numbers 7228.60.80 and 7216.69.00
Hardened and tempered, HRC 44–52
Surface: Bright finished, sandblasted or primer coated
Stamped condition

DIMENSIONS

	Width mm	Width mm	Thickness mm	Thickness mm
Ski 39	6	1.90	2	0.50
Ski 40	6	1.70	2	0.50
Ski 129	7.70	2.00	2.20	0.60

CHEMICAL COMPOSITION FOR GRADE SAE 1070

Element	C	Si	Mn	P	S
% in Weight	0.65–0.75	max. 0.40	max. 0.60–0.90	max. 0.04	max. 0.05

CHEMICAL COMPOSITION FOR GERMAN GRADE SAE X35CRMO17

Element	C	Si	Mn	P	S	CR	Mo	Ni
% in Weight	0.33–0.45	max. 1.0	max. 1.50	max. 0.04	max. 0.025	15.5–17.5	0.8–1.3	max. 1.0

Note that this is an angle shape or section steel that is not covered by this scope.

• *Flat wire, with the following characteristics:*
SAE 1074 alloyed, annealed, skin passed
Hardened and tempered
Formed edges
Widths of less than 12.7 mm
Thickness from 0.50–2.40 mm

• Shadow/aperture mask steel, which is Aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and meets the following characteristics:
Thickness: 0.001 to 0.010 inch
Width: 15 to 35 inches
Increased tensile strength of 800 to 1,200 N/mm²

CHEMICAL COMPOSITION

Element	C	N	Mn
Weight %	<0.01%	0.01–0.017%	0.06–0.85%

HTSUS item numbers 7209.18.25.10 or 7211.23.60.75, depending on the width of the material.

• Grade 13C cement kiln steel, with the following specifications:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.65	0.25	0.65	max. 0.020	max. 0.010

Microstructure: Fine grained and homogenous. Matrix of tempered martensite with a small amount of undissolved carbides
Decarburization: No free ferrit is allowed. Total decarburization should not exceed

4% per plane
Mechanical Properties: Tensile strength: *1200–1700* N/mm ^{2}, (Standard 1280 +/ − 80 N/mm^2)
Surface Finish: Gray hardened condition. Ra/CLA—max. 0.25 m. Cut off 0.25 mm Rmax—max. 2.5 m
Edge Condition: Slit edges free from cracks and damages

Dimensions:
Thickness: 0.4–1.40 mm$_2$, Tolerance: T1
Width: 250–1200 mm, Tolerance: B1
Flatness: Unflatness Across Strip: max. 0.4% of the nominal strip width
Coil Size: Inside Diameter: 600 mm
Coil Weight: max. 6.5 kg/mm strip width

• *Certain valve steel (type 2),* with the following specifications: Hardened tempered high-carbon strip, characterized by high fatigues strength and wear resistance, hardness combined with ductility, surface and end-finishes, and good blanking and forming properties.

HTSUS item number: 7211.90.00.00
Typical size ranges:
Thickness: 0.15–1.0 mm
Width: 10.0–140 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Ni	Cr
Weight %	0.7–0.8	0.2–0.35	0.3–0.45	Max. 0.020	Max. 0.016	1.9–2.1	

The merchandise subject to this Agreement is typically classified in the HTSUS at item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS item numbers are provided for convenience and Customs purposes, the written description of the merchandise under Agreement is dispositive.

[FR Doc. 02–24925 Filed 9–30–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–836, A–588–861, A–570–879, A–580–850, A–559–807]

Notice of Initiation of Antidumping Duty Investigations: Polyvinyl Alcohol From Germany, Japan, the People's Republic of China, the Republic of Korea, and Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigations.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: David Goldberger (Singapore, Republic of Korea) at (202) 482–4136, and Michael Strollo (Germany, Japan, the People's Republic of China) at (202) 482–0629, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigations

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 (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are references to the provisions codified at 19 CFR part 351 (2002).

The Petitions

On September 5, 2002, the Department received petitions filed in proper form by Celanese Chemicals Ltd. and E.I. Dupont de Nemours & Co. (collectively, ''the petitioners''). The Department received supplemental information to the petitions from September 16 through 20, 2002.

In accordance with section 732(b)(1) of the Act, the petitioners allege that imports of polyvinyl alcohol (''PVA'') from Germany, Japan, the People's Republic of China (''the PRC''), the Republic of Korea (''Korea''), and Singapore are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from Germany, Japan, Korea and the PRC, are materially injuring, or are threatening to materially injure an industry in the United States.[1]

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate. *See infra,* ''Determination of Industry Support for the Petitions.''

[1] We note that the petitioners have only alleged that imports from Singapore are threatending to materially injure an industry in the United States.

Scope of Investigations

The merchandise covered by these investigations is polyvinyl alcohol. This product consists of all polyvinyl alcohol hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid. Polyvinyl alcohol in fiber form is not included in the scope of these investigations. The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic

producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

We reviewed the description of the domestic like product presented in the petitions. Based upon our review of the petitioners' claims, we concur that there is a single domestic like product, which is defined in the ''Scope of Investigations'' section above. This is consistent with the Department's determinations in past investigations to treat all PVA products as a single class or kind of merchandise. *See, e.g., Notice of Antidumping Orders: Polyvinyl Alcohol From Japan, the People's Republic of China, and Taiwan,* 61 FR 24286 (May 14, 1996).

Finally, the Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petitions contain adequate evidence of industry support and, therefore, polling is unnecessary. *See* the Import Administration Antidumping Investigations Initiation Checklist, Industry Support section, September 25, 2002 (the ''Initiation Checklist''), on file in the Central Records Unit, Room B–099 of the main Department of Commerce building.

For all countries, we determined that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, because the Department received no opposition to the petitions, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petitions. Thus, the requirements of section 732(c)(4)(A)(ii) are also met. Accordingly, we determine that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Initiation Standard for Cost Investigations

Pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of Germany, Japan, Korea, and Singapore were made at prices below the cost of production (''COP'') and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with these investigations. The Statement of Administrative Action (''SAA''), submitted to the Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 103–316 at 833 (1994). The SAA, at 833, states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have ''reasonable grounds to believe or suspect'' that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. *Id.* We have analyzed the country-specific allegations as described below.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. and home market prices, constructed value (''CV''), and factors of production are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Regarding the information involving non-market economies (''NME''), the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issues of a country's NME status and the granting of separate rates to individual exporters. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994).

Germany

Export Price

The petitioners based export price (''EP'') on price quotes within the POI for the sale of delivered PVA produced by Kuraray Europe from a U.S. distributor to a customer in the United States. The petitioners calculated a net U.S. price by deducting a distributor mark-up, international freight, brokerage and handling, and insurance expenses,

[2] *See Algoma Steel Corp. Ltd.*, v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

U.S. customs duties, U.S. inland freight from the warehouse to the customer, and U.S. credit expenses. We adjusted the petitioners' EP calculation by not deducting an amount for imputed U.S. credit expenses; instead, we made an adjustment to normal value (''NV''), in accordance with the Department's EP circumstance-of-sale calculation methodology.

Normal Value

With respect to NV, the petitioners provided home market price quotes within the POI for applications and grades comparable to the products exported to the United States which serve as the basis for EP. The petitioners made an adjustment to home market price for home market credit expenses. As noted above, we made a circumstance-of-sale adjustment for U.S. credit expenses. Moreover, we recalculated NV using exchange rates published by the Federal Reserve in accordance with our practice.

The petitioners have provided information demonstrating reasonable grounds to believe or suspect that sales of PVA in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (''COM''); selling, general, and administrative expenses (''SG&A''); financial expenses; and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce PVA in the United States and in Germany. To calculate SG&A and financial expenses, the petitioners relied upon amounts reported in the 2001 consolidated financial statements of Clariant Corporation, the predecessor to Kuraray Europe. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in Germany on CV. The petitioners calculated CV using the same COM, SG&A, and financial expense figures used to compute the German home market costs. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in the German PVA producer's 2001 financial statements. The petitioners' calculation of profit was based on operating profit and not on the net income of the German PVA producer. Therefore, for initiation purposes, we have recalculated the CV profit rate to include non-operating items. Because this calculation resulted in a loss, we used a profit rate of zero. Should the need arise to use the profit rate provided by the petitioners as facts available under section 776 of the Act in our preliminary or final determination, we may re-examine the information and, if appropriate, revise the margin calculations. Finally, we adjusted the petitioners' CV to make a circumstance-of-sale adjustment for credit expenses, in accordance with our statutory EP calculation methodology.

The estimated dumping margin for Germany based on a comparison between the adjusted EP and home market price is 2.45 percent. The estimated dumping margin for Germany based on a comparison between the adjusted EP and CV is 19.05 percent.

Japan

Export Price

The petitioners based EP on price quotes within the POI for the sale of delivered adhesive-application and textile-application PVA produced by Kuraray Co., Ltd. of Japan (Kuraray) to customers in the United States. The petitioners calculated a net U.S. price for adhesive-application PVA by deducting international freight, brokerage and handling, and insurance expenses, U.S. customs duties, and U.S. inland freight from the warehouse to the customer. For textile-application PVA, the petitioners calculated a net U.S. price by deducting a distributor mark-up, international freight, brokerage and handling, and insurance expenses, U.S. customs duties, U.S. inland freight from the warehouse to the customer, and additional expenses incurred in the United States.

Normal Value

With respect to NV, the petitioners provided home market price quotes within the POI for applications and grades comparable to the products exported to the United States which serve as the basis for EP. The petitioners made an adjustment to home market price for home market credit expenses.

The petitioners have provided information demonstrating reasonable grounds to believe or suspect that sales of PVA in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A, financial expenses, and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce PVA in the United States and in Japan. To calculate SG&A and financial expenses, the petitioners relied upon amounts reported in the 2001 consolidated financial statements of Kuraray. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in Japan on CV. The petitioners calculated CV using the same COM, SG&A, and financial expense figures used to compute the Japanese home market costs. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit based upon Kuraray's 2001 financial statements. The petitioners made a circumstance-of-sale adjustment to CV for credit expenses.

The estimated dumping margins for Japan based on a comparison between EP and home market price range from 15.46 to 29.04 percent. The estimated dumping margins based on a comparison between EP and CV range from 118.46 to 144.16 percent.

Korea

Export Price

The petitioners based EP on price quotes within the POI for the sale of delivered PVA produced and sold by DC Chemical Co., Ltd. (''DC Chemical'') to customers in the United States. The petitioners calculated a net U.S. price by deducting a distributor mark-up, international freight, brokerage and handling, and insurance expenses, U.S. customs duties, U.S. inland freight from the warehouse to the customer, and imputed U.S. credit expenses. We adjusted the petitioners' EP calculation by not deducting an amount for imputed U.S. credit expenses; instead, we made an adjustment to NV, in accordance with the Department's EP circumstance-of-sale calculation methodology.

Normal Value

With respect to NV, the petitioners provided a home market price quote within the POI for an application and grade comparable to the products exported to the United States which serve as the basis for EP. The petitioners made an adjustment to home market price for home market credit expenses. We revised the petitioners' calculation of home market credit expenses to base this expense on the Korean won price, rather than the U.S. dollar equivalent price. As noted above, we made a circumstance-of-sale adjustment for U.S. credit expenses. Moreover, we recalculated NV using exchange rates published by the Federal Reserve in accordance with our practice.

The petitioners have provided information demonstrating reasonable grounds to believe or suspect that sales of PVA in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A, financial expenses, and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce PVA in the United States and in Korea. In order to calculate SG&A and financial expenses, the petitioners relied upon amounts reported in the 2001 financial statements of DC Chemical. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in Korea on CV. The petitioners calculated CV using the same COM, SG&A, and financial expense figures used to compute the Korean home market costs. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit based upon DC Chemical's 2001 financial statements. The petitioners' calculation of profit was based on operating profit and not the net income of the Korean PVA producer. Therefore, for initiation purposes, we have recalculated the CV profit rate to include non-operating items. Because this calculation resulted in a loss, we used a profit rate of zero. Should the need arise to use the profit rate provided by the petitioners as facts available under section 776 of the Act in our preliminary or final determination, we may re-examine the information and, if appropriate, revise the margin calculations. Finally, we adjusted the petitioners' CV to make a circumstance-of-sale adjustment for credit expenses, in accordance with our statutory EP calculation methodology.

The estimated dumping margin for Korea based on a comparison of the adjusted EP and home market price is 25.41 percent. The estimated dumping margin based on a comparison between the adjusted EP and CV is 31.54 percent.

The PRC

Export Price

The petitioners based EP on price quotes within the POI for the sale of PVA produced in the PRC from a U.S. distributor to a customer in the United States. The petitioners calculated a net U.S. price by deducting a distributor mark-up, international freight, brokerage and handling, and insurance expenses, U.S. customs duties, and U.S. inland freight from the warehouse to the customer. The petitioners also adjusted net U.S. price for inland freight expenses in the PRC using a surrogate value for rail freight in accordance with our NME methodology.

Normal Value

The petitioners allege that the PRC is an NME country, and that in all previous investigations the Department has determined that the PRC is an NME. *See, e.g., Notice of Final Determination in the Less Than Fair Value Investigation of Steel Wire Rope From the People's Republic of China,* 66 FR 12759, 12761 (Feb. 28, 2001). In accordance with section 771(18)(c) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. Therefore, the PRC will continue to be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as an NME remains in effect, the petitioners determined the dumping margin using an NME analysis.

The petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to that of the PRC in terms of per-capita gross national income. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiation of this investigation.

The petitioners valued the factors of production using the quantities of inputs reported by the U.S. surrogate to produce PVA because current reliable information about PRC factor quantities was not reasonably available. The factors of production and usage amounts were derived from the actual production records of the U.S. surrogate generated for fully-hydrolyzed PVA during the period January through June 2002.

Values for vinyl acetate monomer, acetic acid, and steam were based on the 2000–2001 annual report of Vinyl Chemicals (India) Ltd., an Indian chemical producer. The value for methanol and certain other raw material inputs were based on the values reported in the publication *Chemical Weekly*. Electricity was valued using electricity purchases taken from the 2000–2001 annual report of VAM Organic Chemical Ltd. (''VOCL''), an Indian producer of PVA. All surrogate values that fell outside the anticipated period of investigation, which in the PRC case is January 1, 2002, through June 30, 2002, were adjusted for inflation.

The petitioners valued several material, labor, and energy inputs using U.S. producer costs rather than the costs of an Indian surrogate producer. We did not accept the valuation of certain of these inputs for purposes of initiation because non-U.S. surrogate prices were reasonably available to the petitioners. In addition, we did not accept the separate valuation of water and steam because these items appear to be included in the factory overhead rate derived from the surrogate producer's financial statements (see discussion of factory overhead below). Consequently, we recalculated NV to exclude each of the costs identified above because it is the most conservative approach in calculating an alleged dumping margin.

To determine factory overhead, SG&A, and financial expenses, the petitioners relied on rates derived from the financial statements of VOCL. Based on the information provided by the petitioners, we believe that the surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiation of this investigation.

Based upon a comparison of EP to adjusted NV, the revised estimated dumping margin is 97.86 percent.

Singapore

Export Price

The petitioners based EP on the average customs unit value of PVA imports during the period July 2001 through June 2002, as the petitioners stated they were unable to obtain price data for U.S. imports from Singapore.

Normal Value

With respect to NV, the petitioners provided a range of prices for PVA sold in Singapore within the POI. For purposes of the petition, the petitioners used the lowest price in the range as a conservative estimate of the home market sales price for PVA. The petitioners made a circumstance-of-sale adjustment for credit expenses. We revised the petitioners' calculation of home market credit expenses to base this expense on the Singapore dollar price, rather than the U.S. dollar equivalent price.

The petitioners have provided information demonstrating reasonable grounds to believe or suspect that sales of PVA in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A, financial expenses, and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce PVA in the United States and in Singapore. In order to calculate SG&A and financial expenses, the petitioners relied upon amounts reported in the 2001 unconsolidated financial statements of Chemical Industries Ltd., a Singaporean producer of comparable merchandise. We recalculated financial expenses based on the 2001 consolidated financial statements of this company. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in Singapore on CV. The petitioners calculated CV using the same COM, SG&A, and financial expense figures used to compute the Singapore home market costs. Consistent with 773(e)(2) of the Act, the petitioners calculated an amount for profit based upon Chemical Industries Ltd.'s 2001 financial statements. Because these statements showed a net loss, petitioners included a zero profit in CV. We recalculated financial expenses as noted above. Furthermore, the petitioners made a circumstance-of-sale adjustment to CV for credit expenses.

The estimated dumping margin for Singapore based on a comparison between the adjusted EP and home market price is 35.11 percent. The estimated dumping margin based on a comparison between the adjusted EP and CV is 61.94 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of PVA from Germany, Japan, Korea, the PRC, and Singapore are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

With regard to Germany, Japan, Korea, and the PRC, the petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. With respect to Singapore, while the imports from Singapore do not meet the statutory requirement for cumulation, in its analysis for threat, the petitioners allege that imports from Singapore will imminently account for more than three percent of all PVA imports of the subject merchandise and therefore are not negligible. See section 771(24)(A)(ii) of the Act.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, production employment, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* the Initiation Checklist.

Initiation of Antidumping Investigations

Based upon our examination of the petitions on PVA, we have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of PVA from Germany, Japan, Korea, the PRC, and Singapore are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Germany, Japan, Korea, the PRC, and Singapore. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine no later than October 21, 2002, whether there is a reasonable indication that imports of PVA from Germany, Japan, Korea, the PRC, and Singapore are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: September 25, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–24928 Filed 9–30–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars From Turkey; Notice of Extension of Time Limits for Preliminary Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 1, 2002.

SUMMARY: The Department of Commerce is extending the time limits for completion of the preliminary results of the administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey. The period of review is April 1, 2001, through March 31, 2002.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood at (202) 482–0656 or (202) 482–3874, respectively, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2002).

Background

On May 23, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey (67 FR 36148). The period of review is April 1, 2001, through March 31, 2002, and the preliminary results are currently due no later than December 31, 2002. The review covers three producers/exporters of the subject merchandise to the United States.

Extension of Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act, because this review involves a number of complicated issues including high inflation in Turkey during the period of review. Moreover, the petitioners requested that the Department conduct verification, pursuant to section 782(i)(3)(A) of the Act. Although we intend to verify the sales and cost data submitted by the three respondents, we will be unable to complete these verifications before the date of the preliminary results as currently scheduled. Therefore, we have extended the deadline for completing the preliminary results until April 30, 2003.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)) and 19 CFR 351.213(h)(2).

Dated: September 24, 2002.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–24926 Filed 9–30–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092502D]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Law Enforcement Advisory Panel (LEAP).

DATES: This meeting will be held on Wednesday, October 16, 2002, from 8:30 a.m. to 12 noon.

ADDRESSES: This meeting will be held at the Hawk's Cay Resort, 61 Hawk's Cay Boulevard, Duck Key, FL; telephone: 305–743–7000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The LEAP will convene to review an update of Joint Enforcement Agreements (JEAs) and the 2003 Operations Plans. The LEAP will discuss which Council managed fisheries are most in need of vessel monitoring systems (VMS) and the requirements for VMS. Also to be discussed is whether vessels should be allowed to simultaneously possess recreational and commercial bag limits and trip limits, respectively. A presentation will be given by NMFS on its process used to monitor quota openings and closures (especially red snapper). The LEAP will also review the Gulf Safety Committee activities; the status of Fishery Management Plans (FMPs), amendments, and regulatory actions; and hear state and federal enforcement reports.

The LEAP consists of principal law enforcement officers in each of the Gulf states as well as NMFS, the U.S. Coast Guard, and the NOAA General Counsel. A copy of the agenda and related materials can be obtained by calling the Council office at 813–228–2815.

Although other non-emergency issues not on the agendas may come before the LEAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meetings. Actions of the LEAP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 9, 2002.

Dated: September 25, 2002.

Richard W. Surdi,

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

[FR Doc. 02–24951 Filed 9–30–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092502C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Vessel Monitoring Systems Committee and Skate Oversight Committee in October, 2002 to consider actions affecting New England fisheries in the

exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on October 16, 2002 and October 22, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Newburyport, MA and Warwick, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Wednesday, October 16, 2002, 9:30 a.m.—Vessel Monitoring Systems Committee Meeting.

Location: New England Fishery Management Council Office, 50 Water Street, Mill #2, Newburyport, MA 01950; telephone: (978) 465–0492.

The committee will review Groundfish Amendment 13 options and Groundfish Enforcement Analysis.

Tuesday, October 22, 2002, 9:30 a.m.—Skate Oversight Committee Meeting.

Location: Hampton Inn and Suites Airport, 2100 Post Road, Warwick, RI 02886; telephone: (401) 739–8888.

The committee will review the Draft Skate Fishery Management Plan (FMP) and Environmental Impact Statement (EIS). They will also review public comments received on Draft Skate FMP/EIS. Also on the agenda will be the review of the Skate Advisory Panel and Skate PDT comments on Draft Skate FMP/EIS. They will recommend measures for inclusion in the Final Skate FMP/EIS for Council consideration.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: September 25, 2002.

Richard W. Surdi,

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

[FR Doc. 02–24950 Filed 9–30–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092502B]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) and Scientific and Statistical Committee (SSC) Salmon Subcommittee will hold a joint work session which is open to the public to review proposed salmon methodology changes.

DATES: The work session will be held Tuesday, October 15, 2002, from 10 a.m. to 4 p.m.

ADDRESSES: The work session will be held at the Embassy Suites Hotel, 7900 NE 82nd Ave., Portland, OR 97220.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council, (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to brief the STT and SSC on changes made to or proposed for the chinook Fishery Regulation Assessment Model (FRAM), review the scientific bases for those changes, and compare results from the updated model with those from the previous version.

Although nonemergency issues not contained in the meeting agendas may come before the STT and the SSC subcommittee for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 25, 2002.

Richard W. Surdi,

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

[FR Doc. 02–24948 Filed 9–30–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092502A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting which is open to the public.

DATES: The GMT working meeting will begin Tuesday, October 15, 2002 at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m. on Wednesday, October 16 through Friday, October 18, 2002.

ADDRESSES: The meetings will be held at NMFS Northwest Region Office, Building 1, Northwest Region Conference Room, 7600 Sand Point Way NE, Seattle, WA 98115–0070; telephone: (206) 526–6150.

Council address: Pacific Fishery Management Council,700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Staff Officer, (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT meeting is to prepare reports, recommendations, and analyses in support of various Council decisions through the

remainder of the year. The following specific items comprise the draft agenda, (1) complete and/or review rebuilding plans for overfished groundfish stocks, (2) recommend processes and standards for incorporating rebuilding plans into the Pacific Coast Groundfish fishery management plan (FMP), (3) resolve any outstanding catch estimation data issues and evaluate the need for inseason management adjustments, (4) consider recommendations for Exempted Fishing Permit processes and standards, (5) evaluate Programmatic Environmental Impact Statements, (6) consider recommendations for FMP Amendment 17 and multi-year management issues, (7) review the Groundfish Strategic Plan, (8) work on Volume 2 of the 2002 Stock Assessment and Fishery Evaluation document, (9) consider a fixed gear sablefish permit stacking recommendation, (10) consider recommendations for 2003 stock assessment priorities and the STAR process, and (11) other miscellaneous Council groundfish issues.

Although nonemergency issues not contained in this agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 25, 2002.

Richard W. Surdi,

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

[FR Doc. 02–24949 Filed 9–30–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability and Effective Date of the Final Revised Management Plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary

AGENCY: National Marine Sanctuary Program (NMSO), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice of Availability and Effective Date of Final Revised Management Plan.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary was Congressionally designated by the Hawaiian Islands Humpback Whale National Marine Sanctuary Act (HIHWNMSA) on November 4, 1992 (Subtitle C of Public Law 102–587, the Oceans Act of 1992). On Friday, March 28 1997, the final regulations were published in the **Federal Register** (62 FR 14799), and became effective on June 2, 1997.

Section 304(e) of the National Marine Sanctuaries Act requires that sanctuary management plans be reviewed and potentially revised every five years. At the time of designation NOAA made a commitment to the state of Hawaii that five years after the management plan and regulations became effective, NOAA, in consultation with the State of Hawaii, would evaluate the progress made toward implementing the management plan, regulations, and goals for the Sanctuary. NOAA also agreed that after the evaluation was complete, NOAA would then re-submit the management plan and regulations in their entirety, as far as they affect State waters, to the Governor for his concurrence.

The review process was composed of four major stages: information collection and characterization; preparation and release of a draft revised management plan; public review and comment; and preparation and release of a final revised management plan. A draft revised management plan and draft environmental assessment were made available for public review on March 19, 2002 (67 FR 12525). Seven public meetings were held throughout the State of Hawaii to collect information and comments from individuals, organizations, and government agencies on the scope, types, and significance of issues related the Sanctuary's draft revised management plan. Written comments were also received throughout the public comment period which ended on May 24, 2002.

A final revised management plan and final environmental assessment were prepared in response to input received from the Sanctuary Advisory Council and comments received during the public review phase. The final revised management plan does not contain any regulatory or boundary changes.

DATES: The final revised management plan was submitted to the Governor of Hawaii on August 2, 2002. The Governor concurred with the final revised management plan on September 6, 2002. This notice confirms the effective date of the new management plan as September 9, 2002.

ADDRESSES: Copies of the final revised management plan and its supporting environmental assessment may be obtained by contacting Naomi McIntosh, Hawaiian Islands Humpback Whale National Marine Sanctuary, 6700 Kalanianaole Highway, Suite 104, Honolulu, HI 96825 or on the Internet at *http://www.hihwnms.nos.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Anne Reisewitz, MPR Coordinator, by phone at (808) 397–2651 or via e-mail at *Annelore.Reisewitz@noaa.gov.*

Authority: 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 25, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–24921 Filed 9–30–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091202C]

Marine Mammals; File No. 981–1578–03

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Peter L. Tyack, Ph.D., Woods Hole Oceanographic Institution, Woods Hole, MA 02543 has been issued an amendment to scientific research Permit No. 981–1578–02.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s): See **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 11, 2001, notice was published in the **Federal Register** (66 FR 51930) that an amendment of Permit No. 981–1578, issued on August 31, 2000 (65 FR 57319), had been requested by the above-named individual. On May 22, 2002, another notice was published in the **Federal Register** (67 FR 35965) that an additional amendment of Permit No. 981–1578 was requested by the above named individual. The requested amendments have been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The amended permit authorizes the holder to: increase the maximum received level for non-airgun sounds to 180 dB re 1 Pa; test a whale-finding sonar's ability to detect gray whales migrating past the central California coast; add tagging of humpback whales (*Megaptera novaeangliae*) in the vicinity of the Hawaiian Islands; and expand the research area to include the entire North Atlantic Ocean.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Dated: September 25, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–24947 Filed 9–30–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket No. 010222048–2217–03

The Domestic and Family Law Documents Exception to the Electronic Signatures in Global and National Commerce Act

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce

ACTION: Notice, Request For Comments

SUMMARY: Section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, *codified at* 15 U.S.C. §§ 7001 *et seq.* (''ESIGN'' or ''the Act''), preserves the legal effect, validity, and enforceability of signatures and contracts relating to electronic transactions and electronic signatures used in the formation of electronic contracts. 15 U.S.C. § 7001(a). Section 103 (a) and (b) of the Act, however, provides that the provisions of section 101do not apply to contracts and records governed by statutes and regulations regarding court documents; probate and domestic law matters; certain provisions of state uniform commercial codes; utility service cancellations, real property foreclosures and defaults; insurance benefits cancellations; product recall notices; and documents related to hazardous materials and dangerous substances. 15 U.S.C. §§ 7003(a),(b). Section 103 of the Act also requires the Secretary of Commerce, through the Assistant Secretary for Communications and Information, to review the operation of these exceptions to evaluate whether they continue to be necessary for consumer protection, and to make recommendations to Congress based on this evaluation. 15 U.S.C. § 7003(c)(1). This Notice is intended to solicit comments from interested parties for purposes of this evaluation, specifically on the domestic and family law documents exception to the ESIGN Act. *See* 15 U.S.C. § 7003(a)(2). NTIA will publish separate notices requesting comment on the other exceptions listed in section 103 of the ESIGN Act.[1]

DATES: Written comments and papers are requested to be submitted on or before December 2, 2002.

ADDRESSES: Written comments should be submitted to Josephine Scarlett, National Telecommunications and Information Administration, 14th Street and Constitution Ave., N.W., Washington, DC 20230. Paper submissions should include a three and one-half inch computer diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. In the alternative, comments may be submitted electronically to the following electronic mail address: esignstudy__fmlw@ntia.doc.gov. Comments submitted via electronic mail also should be submitted in one or more of the formats specified above.

FOR FURTHER INFORMATION CONTACT: For questions about this request for comment, contact: Josephine Scarlett, Attorney, Office of the Chief Counsel, NTIA, 14th Street and Constitution Ave., N.W., Washington, DC 20230, telephone (202) 482–1816 or electronic mail: jscarlett@ntia.doc.gov. Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background: Electronic Signatures in Global and National Commerce Act

Congress enacted the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, 114 Stat. 464 (2000), to facilitate the use of electronic records and signatures in interstate and foreign commerce and to remove uncertainty about the validity of contracts entered into electronically. Section 101 requires, among other things, that electronic signatures, contracts, and records be given legal effect, validity, and enforceability. Sections 103(a) and (b) of the Act provides that the requirements of section 101 shall not apply to contracts and records governed by statutes and regulations regarding: court documents and records, probate and domestic law matters; documents executed under certain provisions of state commercial

[1] Comments submitted in response to **Federal Register** notices requesting comment on the other exceptions to ESIGN willbe considered as part of the same section 103 evaluation and not as a separate review of the Act. NTIA is also evaluating the court documents exception to ESIGN.

law; consumer law covering utility services, real property foreclosures and defaults, and insurance benefits notices; product recall notices; and hazardous materials documents.

The statutory language providing for an exception to section 101 of ESIGN for domestic relations and family law documents is found in section 103(a) of the Act:

Sec. 103. [15 U.S.C. 7003] Specific Exceptions.

(a) Excepted Requirements.— The provisions of section 101 shall not apply to a contract or other record to the extent it is governed by—

* * * *

(2) a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law;

* * * *

The statutory language requiring the Assistant Secretary for Communications and Information to submit a report to Congress on the results of the evaluation of the section 103 exceptions to the ESIGN act is found in section 103(c)(1) of the Act as set forth below.

(c) Review of Exceptions.—

(1) Evaluation required.—The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after the date of enactment of this Act, the Assistant Secretary shall submit a report to Congress on the results of such evaluation.

Domestic and Family Law Documents

State legislatures and state courts have primary jurisdiction for establishing procedures and rules that govern marriage, divorce, adoptions, child support and other domestic and family law matters within that state. The ESIGN exception for domestic and family law documents means, in effect, that domestic and family law documents executed electronically or containing electronic signatures are *not* required to be accorded the same legal validity or effect as a paper document. Section 102(a)(1) of ESIGN provides that the states may adopt electronic transactions statutes, however, that give the state exclusive jurisdiction with regard to electronic transactions that occur within the state. *See* 15 U.S.C. § 7002(a). This section allows states to modify, limit, or supersede the application of ESIGN to electronic transactions that occur within the state law by adopting either the Uniform Electronic Transactions Act (known as UETA) as approved and recommended for enactment by the National Conference of Commissioners on Uniform State Laws (NCCUSL) or a statute that specifies an alternative procedure for the use and acceptance of electronic signatures, which complies with the provisions of ESIGN. *See id.*

Several states have used section 102(a)(1) of ESIGN to adopt electronic transactions laws that incorporate or exclude state-exclusive areas from the application of the state's electronic transactions law.[2] *See* National Conference of Commissioners on Uniform State Laws athttp://www.nccusl.org/nccusl/LegislativeByState.pdf. Thirty-nine states have adopted theversion of UETA recommended by NCCUSL or their own version of UETA. Of the states that have passed UETA laws, five have expressly excluded domestic relations and family law documents from the operation of the state electronic transactions laws.[3] A large number of the remaining states have passed state UETA laws that do not contain language that expressly excludes family law documents. These statutes do contain general provisions, however, that make the substantive domestic relations law controlling, which requires an examination of the domestic relations law to determine whether electronic family law documents are legally valid.

For example, Maryland's UETA law does not exempt domestic relations and family law documents but provides: ''this title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subsection (B) of this section to the extent it is governed by a law other than those specified in subsection (B) of this section.'' *See* 2000 Md. Laws 8, section 21–101 (E). The law also provides: ''[a] transaction subject to this title is also subject to other applicable substantive law.'' *Id.* at section 21–101(F).

In similar fashion, South Carolina's UETA statute provides: This [section regarding electronic signatures] does not apply to the extent that its application would result in a construction of law that is clearly inconsistent with the manifest intent of the lawmaking body or repugnant to the context of the same rule of law [of the underlying substantive law]. However, the mere requirement that information be 'in writing', 'written', 'printed', 'signed' or any other word that purports to specify or require a particular communication medium, is not by itself sufficient to establish such intent. *See* 1998 S.C. Acts 374, sec. 26–5–320(B).

The absence of an exception in a state's UETA law for documents governed by domestic relations and family law, therefore, does not automatically make these documents subject to that law. If the underlying substantive law requires a paper writing or prohibits the use of an electronic signature for the formation of these documents, electronic documents for family and domestic law matters would not be legally valid. Alternatively, the underlying state substantive law governing domestic relations and family law may allow documents to be formed in an electronic format or established using an electronic signature.

Since the enactment of ESIGN, federal and state courts have made tremendous gains toward providing the public with electronic access to court documents and online filing procedures in courts across the nation.[4] In their efforts to computerize court systems, the states may have revised their laws and procedures to include some family law and domestic relations documents among those that are available and may be filed electronically.

The legislative history of the ESIGN Act does not indicate the intent of the drafters in making an exception for domestic relations and family law documents, but the personal nature of the information disclosed during these proceedings and the relative privacy interests of the participants may raise issues that do not appear in legal proceedings involving commercial or other civil matters. Information regarding changes in state law to allow electronic filings or access to documents pertaining to divorce, paternity, adoption, child support, protective order, guardianship proceedings, or power of attorneys would assist in the evaluation of whether consumers would be adequately protected if the domestic relations and family documents exception to ESIGN is eliminated from the Act.

[2] We note that there are federal laws that impact family law matters where there is a federal interest. *See e.g.* 50 U.S.C. § 520 (governs the entry of default orders in divorce proceedings where the defendant is on active military duty). The writing and evidentiary requirements for documents related to domestic law, however, are largely within the exclusive jurisdiction of the states.

[3] Alabama, Louisiana, Mississippi, New Jersey, and New Mexico. *See* National Conference of Commissioners on Uniform State Laws at http://www.nccusl.org/nccusl/legislativebystate.pdf.

[4] NTIA has also published a separate Federal Register notice requesting comment on the court documents exception to ESIGN. Comments filed in response to the court documents notice may be considered in the evaluation of the domestic relations and family law documents exception.

The ESIGN Section 103 Evaluation

The ESIGN Act directs the Assistant Secretary of Communications and Information to conduct an evaluation of the exceptions set out in section 103 of the Act to determine whether the exceptions continue to be necessary for the protection of consumers, and to submit a report to Congress on the results of the evaluations no later than June 30, 2003. The Assistant Secretary for Communications and Information is the chief administrator of NTIA. As the President's principal advisor on telecommunications policies pertaining to the Nation's economic and technological advancement, NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy.

The ESIGN section 103 evaluation of the domestic relations and family law documents exception is intended to evaluate the current status of the law and procedure regarding this issue, in preparation for a report to Congress on whether the domestic relations and family law documents exception remains necessary to protect consumers. This evaluation is not a review or analysis of laws relating to these documents for the purpose of recommending that Congress draft legislation or propose changes to those laws but to advise Congress of the current state of law, practice, and procedure regarding this issue. Comments filed in response to this Notice should not be considered to have a connection with or impact on ongoing specific federal and state procedures or rulemaking proceedings concerning family law or domestic relations documents.

Invitation to Comment

NTIA requests that all interested parties submit written comment on any issue of fact, law, or policy that may assist in the evaluation required by section 103(c). We invite comment from all parties that may be affected by the removal of the family law documents exception from the ESIGN Act including, but not limited to, state agencies and organizations, national and state bar associations, consumer advocates, and family law practitioners. The comments submitted will assist NTIA in evaluating the potential impact of the removal of the family law documents exception from ESIGN on state domestic relations and family law, and state electronic transactions laws. The following questions are intended to provide guidance as to the specific subject areas to be examined as a part of the evaluation. Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

1. Describe state laws that allow for electronic access and filing of documents related to domestic relations and family law, including, but not limited to, documents related to adoptions, divorce, child custody or support, guardianship and civil protection.

2. Discuss how statutes that require written documents related to domestic and family law matters may be affected if the exception for domestic relations and family law matters is eliminated from the ESIGN Act.

3. Describe other state, or federal laws, that require family law documents to be excluded from the operation of ESIGN or the applicable state uniform electronic transactions law.

4. Describe state or uniform laws that allow domestic relations and family law documents to be established in an electronic format or with an electronic signature.

5. Discuss any unique issues surrounding the execution of documents for each of the specific areas that states have considered in determining whether domestic relations and family law documents may or may not be processed in an electronic format. The following list is not exhaustive and any other area relevant to domestic relations and family law may be discussed.

a. petitions for adoption, or transfer of parental rights, or any information regarding the identity of biological parents;

b. petitions for divorce or applications for alimony authorizations for alimony, custody, or child support (final or pending litigation);

c. visitation, support and custody agreements or modifications of agreements between parties;

d. property settlements or agreements related to domestic relations actions;

e. requests for or answers regarding protective orders, emergency or otherwise;

f. guardianship proceedings and powers of attorney;

g. court orders, reports, notices, summons, or service of process regarding items a. through f. above; and

h. any other domestic relations or family law document or issue that contains a writing requirement, contract, agreement or other document.

6. State whether uniform laws governing domestic relations and family law issues have been adopted and the impact on these laws if the ESIGN exception for domestic relations and family law matters is eliminated (e.g., the Uniform Child Custody Jurisdiction and Enforcement Act, the Interstate Family Support Act). Discuss whether any of the uniform laws related to domestic relations and family law, as adopted in any state, either allow or prohibit the use of electronic documents to meet the writing requirements of the law, including notices to parties or communications between courts in different states.

7. Provide a description of any instance in which documents related to domestic relations cases have been executed in an electronic format, including final court orders, or plans to implement procedures for the on-line execution of such documents.

Please provide copies of studies, reports, opinions, research or other empirical data referenced in the responses.

Dated: September 26, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02–24891 Filed 9–30–02; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0246]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Government Property

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information

collection for use through January 31, 2003. DoD proposes that OMB extend its approval for use through January 31, 2006.

DATES: DoD will consider all comments received by December 2, 2002.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite OMB Control Number 0704–0246 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Rick Layser, OUSD (AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0246.

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

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, at (703) 602–0293. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dp/dars/dfars.html.* Paper copies are available from Mr. Rick Layser, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION: *Title, Associated Forms, and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 245, Government Property, and related clauses in DFARS Part 252; DD Form 1149, Requisition and Invoice/Shipping Document; DD Form 1342, Property Record; DD Form 1419, Industrial Plant Equipment Requisition; DD Form 1637, Notice of Acceptance of Inventory Schedules; DD Form 1639, Scrap Warranty; DD Form 1640, Request for Plant Clearance; and DD Form 1662, Property in the Custody of Contractors; OMB Control Number 0704–0246.

Needs and Uses: DoD needs this information to keep an account of Government property in the possession of contractors. Property administrators, contracting officers, and contractors use this information to maintain property records and material inspection, shipping, and receiving reports.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 50,590.

Number of Respondents: 14,862.

Responses Per Respondent: Approximately 3.

Annual Responses: 42,925.

Average Burden Per Response: 1.2 hours.

Frequency: On occasion.

Summary of Information Collection

This requirement provides for the collection of information related to providing Government property to contractors; contractor use and management of Government property; and reporting, redistribution, and disposal of contractor inventory. This information collection covers the requirements relating to DFARS Part 245 and related clauses and forms.

a. DFARS 245.302–1(b)(1)(A)*(1)* requires contractors to submit DD Form 1419 to the Defense Supply Center Richmond, before acquiring industrial plant equipment (IPE), to determine whether existing reallocable Government-owned facilities can be used.

b. DFARS 245.302–1(b)(1)(B) requires contractors to submit requests for proposed acquisition of automatic data processing equipment through the administrative contracting officer.

c. DFARS 245.405(1) requires contractors to obtain contracting officer approval before using Government production and research property on work for foreign governments or international organizations.

d. DFARS 245.407(a)(iv) requires contractors to submit requests for non-Government use of IPE to the contract administration office.

e. DFARS 245.505–5, 245.505–6, and 245.606–70 require contractors to use DD Form 1342 as a source document for establishing property records; to report information concerning IPE; and to list excess IPE.

f. DFARS 245.603–70(c) requires contractors that perform plant clearance duties to ensure that inventory schedules are satisfactory for storage or removal purposes. Contractors may use DD Form 1637 for this function.

g. DFARS 245.607–1(a)(i) permits contractors to request a pre-inventory scrap determination, made by the plant clearance officer after an on-site survey, if inventory is considered without value except for scrap.

h. DFARS 245.7101–2 permits contractors to use DD Form 1149 for transfer and donation of excess contractor inventory.

i. DFARS 245.7101–4 requires contractors to use DD Form 1640 to request plant clearance assistance or to transfer plant clearance.

j. DFARS 245.7303 and 245.7304 require contractors to use invitations for bid for the sale of surplus contractor inventory.

k. DFARS 245.7308(a) requires contractors to send certain information to the Department of Justice and the General Services Administration when the contractor sells or otherwise disposes of inventory with an estimated fair market value of $3 million or more, or disposes of any patents, processes, techniques or inventions, regardless of cost.

l. DFARS 245.7310–7 requires the purchaser of scrap to represent and warrant that the property will be used only as scrap. The purchaser also must sign DD Form 1639.

m. DFARS 252.245–7001 requires contractors to provide an annual report for contracts involving Government property in accordance with the requirements of DD Form 1662.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02–24713 Filed 9–30–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0397]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Requests for Equitable Adjustment

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through March 31,

2003. DoD proposes that OMB extend its approval for use through March 31, 2006.

DATES: DoD will consider all comments received by December 2, 2002.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite OMB Control Number 0704–0397 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Rick Layser, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0397.

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

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, at (703) 602–0293. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dp/dars/dfars.html.* Paper copies are available from Mr. Rick Layser, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION: *Title and OMB Number:* Contract Modifications—Defense Federal Acquisition Regulation Supplement (DFARS) Part 243 and associated clauses in DFARS 252.243; OMB Control Number 0704–0397.

Needs and Uses: The information collection required by the clause at DFARS 252.243–7002, Requests for Equitable Adjustment, implements 10 U.S.C. 2410(a). DoD contracting officers and auditors use this information to evaluate contractor requests for equitable adjustment to contract terms.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 2,120.

Number of Respondents: 440.

Responses Per Respondent: 1.

Annual Responses: 440.

Average Burden Per Response: 4.8 hours.

Frequency: On occasion.

Summary of Information Collection

The clause at DFARS 252.243–7002, Requests for Equitable Adjustment, requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete. The clause also requires contractors to fully disclose all facts relevant to the requests for adjustment.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02–24714 Filed 9–30–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0250]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Contract Administration

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through January 31, 2003. DoD proposes that OMB extend its approval for use through January 31, 2006.

DATES: DoD will consider all comments received by December 2, 2002.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite OMB Control Number 0704–0250 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Rick Layser, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0250.

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

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, at (703) 602–0293. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dp/dars/dfars.html.* Paper copies are available from Mr. Rick Layser, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION: *Title, Associated Forms, and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 242, Contract Administration, and related clauses in DFARS Part 252; DD Form 375, Production Progress Report; DD Form 375C, Production Progress Report (Continuation); and DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions; OMB Control Number 0704–0250.

Needs and Uses: DoD needs this information to perform contract administration functions. DoD uses the information as follows:

a. Contract administration offices use the information required by DFARS Subpart 242.11, and submitted on DD Forms 375 and 375C, to determine contractor progress and to identify any factors that may delay contract performance.

b. Administrative contracting officers use the information required by DFARS Subpart 242.73 to determine the allowability of insurance/pension costs under Government contracts.

c. Contract administration offices and transportation officers use the information required by DFARS 252.242–7003, and submitted on DD Form 1659, in providing Government bills of lading to contractors.

d. Contracting officers use the information required by DFARS 252.242–7004 to determine if contractor material management and accounting systems conform to established DoD standards.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 537,590.

Number of Respondents: 109,560.

Responses Per Respondent: Approximately 2.

Annual Responses: 172,430.

Average Burden Per Response: Approximately 3 hours.

Frequency: On occasion.

Summary of Information Collection

This information collection includes requirements relating to DFARS Part 242, Contract Administration.

a. DFARS Subpart 242.11 requires DoD contract administration personnel to conduct production reviews to determine contractor progress and to identify any factors that may delay contract performance. Contractors must provide information needed to support the reviews and must submit production progress reports on DD Forms 375 and 375c.

b. DFARS Subpart 242.73 contains requirements for Government conduct of Contractor Insurance/Pension Reviews. Contractors must provide documentation needed to support the reviews.

c. DFARS 252.242–7003 requires contractors to request Government bills of lading by submitting DD Form 1659 to the transportation officer or the contract administration office.

d. DFARS 252.242–7004 requires contractors to establish, maintain, disclose, and demonstrate material management and accounting systems.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02–24716 Filed 9–30–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Under Secretary of Defense (Acquisition, Technology and Logistics)/Deputy Under Secretary of Defense (Industrial Policy)/Industrial Capabilities and Assessments.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Under Secretary of Defense (Acquisition, Technology and Logistics)/Deputy Under Secretary of Defense (Industrial Policy)/Industrial Base Capabilities and Readiness announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 2, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Under Secretary of Defense (Acquisition, Technology and Logistics)/Deputy Under Secretary of Defense (Industrial Policy)/Industrial Base Capabilities and Readiness, ATTN: Mr. John Bissell, Room 3E1060, 3330 Defense Pentagon, Washington, DC 20301–3330.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Industrial Base Capabilities and Readiness, at (703) 602–4290.

Title, Associated Form; and OMB Number: Industrial Capabilities Questionnaire; DD Form 2737; OMB Number 0704–0377.

Needs and Uses: As part of its responsibilities to facilitate a diverse, responsive, and competitive industrial base, the Department of Defense (DoD) requires accurate, pertinent, and up to date information as to industry's ability to satisfy defense needs. The Industrial Capabilities Questionnaire will be used by all Services and the Defense Logistics Agency to gather business, industrial capability (employment, skills, facilities, equipment, processes, and technologies), and manufactured end item information to conduct required industrial assessments and to support DoD strategic planning and decisions. Such data is essential to the Department of Defense for peacetime and wartime industrial base planning. All DD Form 2737 data submitted to the Department of Defense, Military Services or Defense Agencies are treated as Proprietary Company Confidential information and protected from release to other parties.

Affected Public: Business or other for-profit.

Annual Burden Hours: 12,800.

Number of Respondents: 153,600.

Responses Per Respondent: 1.

Average Burden Per Response: 12 Hours.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are industry professionals who provide information to the requesting DoD agency on the industrial capabilities associated with the subject facility being reviewed. The DoD agencies were directed to solicit only those data elements within this form necessary to conduct the particular planning or assessment task at hand. This approach is used to minimize the burden for data requests on industry and limit the retention of in-house data to that essential to supporting defense decisions and plans. A significant portion of this information will be collected electronically and, with appropriate measures to protect sensitive data, will be made available to authorized users in the Department to support a wide variety of industrial capability analyses. These analyses are used to support cost effective acquisition of defense systems and key troop support/consumable items, assess the implications of changes in defense spending on industry, development of responsive logistics support efforts, and industrial preparedness planning and readiness analyses. The lack of accurate, current and relevant industry capability information will adversely impact the integrity of the Department's decisions and planning efforts.

Dated: September 25, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–24824 Filed 9–30–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Joint Defense Science Board/Air Force Scientific Advisory Board Task Force on the Acquisition of National Security Space Programs will meet in closed sessions on October 3–4, 2002, in Littleton, CO; October 15–17, 2002, in Los Angeles, CA, and Colorado Springs, CO; and October 30–November 1, 2002, in Chantilly, VA. This Task Force will review the acquisition of National Security Space Programs and make recommendations to improve the

acquisition of space programs from their initiation to deployment.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will focus on what matters to providing national security advantage to the United States and look at the problem in as holistic a fashion as possible, considering the entire space acquisition process, including industry suppliers as well as government acquirers. The assessment will consider what is happening in the four interconnected sectors of the space business—commercial, civil, intelligence and military. Personnel issues, including numbers, skills, experience and demographics of space professionals (including CAAS and FFRDC personnel) as well as effects of corporate mergers in all these areas may be included. The assessment will also consider all aspects of the government's role in managing and funding space system acquisition—SPO, PEO, Science and Technology, Major Command, Service Headquarters, OSD, NRO, NASA and Congress—to derive insights.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Due to critical mission requirements, there was insufficient time to provide timely notice of the October 3–4, 2002, meeting required by section 10(a)(2) of the Federal Advisory Committee Act and subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 101–6, which further requires publication at least 15 calendar days prior to the first meeting of the Task Force on the Acquisition of National Security Space Programs.

Dated: September 25, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–24825 Filed 9–30–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice.

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 December 2, 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 25, 2002.

John D. Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: William D. Ford Federal Direct Loan Program Statutory Forbearance Forms.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 4,092.

Burden Hours: 818.

Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to agree to statutory forbearances on their loans.

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 2167. 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 Joseph Schubart at his e-mail address *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. 02–24828 Filed 9–30–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO. 84.200A]

Office of Postsecondary Education; Graduate Assistance in Areas of National Need (GAANN) Program; Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: GAANN provides fellowships in areas of national need to assist graduate students with excellent academic records who demonstrate financial need and plan to pursue the highest degree available in their course of study.

Eligible Applicants: Academic departments of institutions of higher education that meet the requirements in 34 CFR 648.2.

Applications Available: October 11, 2002.

Deadline for Transmittal of Applications: November 22, 2002.

Deadline for Intergovernmental Review: January 22, 2003.

Estimated Available Funds: The Administration has requested $31,000,000 for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for this program.

Estimated Range of Awards: $145,184–$750,000.

Estimated Average Size of Awards: $219,354.

Estimated Number of Awards: 69.

Note: The Department is not bound by any estimates in this notice.

SUPPLEMENTARY INFORMATION: *GAANN Stipend Level:* The Secretary will determine the GAANN fellowship stipend for the academic year 2003–2004 based on the level of support provided by the National Science Foundation (NSF) graduate fellowships as of February 1, 2003, except that the amount will be adjusted as necessary so as not to exceed the GAANN fellow's demonstrated level of financial need.

GAANN Institutional Payment: The Secretary will determine the institutional payment for the academic year 2003–2004 by adjusting the previous academic year institutional payment, which was calculated to be $11,031 per fellow, by the U.S. Department of Labor's Consumer Price Index for the 2002 calendar year.

Project Period: Up to 36 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 35 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (character per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Note: Multi-disciplinary applications must abide by the page limits for each academic discipline for which fellowships are requested.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR part 648.

Priority: Absolute Priority: This competition focuses on projects designed to meet a priority in the regulations for this program (34 CFR 648.33).

Areas of National Need: A project must provide fellowships in one or more of the following areas of national need: Biology, chemistry, computer and information sciences, engineering, geological and related sciences, mathematics, and physics.

Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

Instructions for Transmittal of Applications: **Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) 34 CFR 75.102. Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The GAANN Program—CFDA No. 84.200A is one of the programs included in the pilot project. If you are an applicant under the GAANN Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the GAANN Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

Note: Please note that due to the Department's end of the fiscal year close out activities, the e-APPLICATION system will be unavailable on October 1. It will become available for users again on Wednesday, October 2.

For Applications and Further Information Contact: Brandy A. Silverman, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8521. Telephone: (202) 502–7886 or via Internet: *ope_gaann_program@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call

the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1135.

Dated: September 26, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–24922 Filed 9–30–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for the Approval of Public Postsecondary Vocational Education, and State Agencies for the Approval of Nurse Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education (The Advisory Committee).

What Is the Purpose of This Notice?

On July 24, 2002, we published a notice in the **Federal Register** to invite written comments on accrediting agencies that had submitted petitions for review by the Advisory Committee at its December 2–4, 2002 meeting. The National Accrediting Commission of Cosmetology Arts and Sciences was omitted from the list of accrediting agencies in our July 24, 2002 notice. This notice invites written comments on the petition for expansion of scope submitted by the National Accrediting Commission of Cosmetology Arts and Sciences that will be reviewed at the Advisory Committee meeting to be held on December 2–4, 2002.

Petition for an Expansion of Scope

1. National Accrediting Commission of Cosmetology Arts and Sciences (Current scope of recognition: the accreditation of postsecondary schools and departments of cosmetology arts and sciences.) (Requested scope of recognition: the accreditation throughout the United States of postsecondary schools and departments of cosmetology arts and sciences and massage therapy.)

Where Should I Submit My Comments?

Please submit your written comments by October 18, 2002 to Carol Griffiths, Chief, Accrediting Agency Evaluation, Accreditation and State Liaison. You may contact her at the U.S. Department of Education, 1990 K Street, NW., 7th Floor, Room 7105, Washington, DC 20006–8509, telephone: (202) 219–7011. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. One of the purposes of the Advisory Committee is to advise the Secretary of Education on the recognition of accrediting agencies and State approval agencies.

Will This Be My Only Opportunity To Submit Written Comments?

Yes, this notice announces the only opportunity you will have to submit written comments. However, another **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests to make oral presentations before the Advisory Committee on the agencies that the Committee will review. That notice, however, does not offer an opportunity to submit written comment.

What Happens to the Comments That I Submit?

We will review your comments, in response to this notice, as part of our evaluation of the National Accrediting Commission of Cosmetology Arts and Sciences' compliance with the Secretary's Criteria for Recognition of Accrediting Agencies. The Criteria are regulations found in 34 CFR part 602 (for accrediting agencies).

We will also respond to your comments, as appropriate, in the staff analysis we present to the Advisory Committee at its December 2002 meeting. Therefore, in order for us to give full consideration to your comments, it is important that we receive them by October 18, 2002. In all instances, your comments regarding the National Accrediting Commission of Cosmetology Arts and Sciences must relate to the Criteria for Recognition.

What Happens to Comments Received After the Deadline?

We will review any comments received after the deadline. If such comments, upon investigation, reveal that the accrediting agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate.

Where Can I Inspect Petitions and Third-Party Comments Before and After the Meeting?

Subject to the provisions of 5 U.S.C. 522, petitions, interim reports, and those third-party comments received in advance of the meeting, will, upon written request, be made available, by appointment, for inspection and copying at the U.S. Department of Education, 1990 K Street, NW., 7th Floor, Room 7105, Washington, DC 20006–8509, telephone (202) 219–7011 until October 18, 2002. They will be available again after the December 2–4 Advisory Committee meeting.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Authority: 5 U.S.C. Appendix 2.

Dated: September 24, 2002.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 02–24826 Filed 9–30–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–397–001]

ANR Pipeline Company; Notice of Compliance Filing

September 24, 2002.

Take notice that on September 17, 2002, ANR Pipeline Company (ANR) filed revised tariff sheets in compliance with the Commission's August 27, 2002 Order in the above-referenced docket. ANR Pipeline Company, 100 FERC 61,204 (2002).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–24840 Filed 9–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–44–000]

Dominion Transmission, Inc.; Notice of Report of Refunds

September 24, 2002.

Take notice that on September 19, 2002, Dominion Transmission, Inc. (DTI) tendered for filing a report of refunds that DTI flowed through to its customers.

DTI states that the purpose of this filing is to report the refunds that resulted from Columbia Gulf Transmission Company's (Columbia Gulf's) settlement in Docket No. RP91–160, which required Columbia Gulf to refund environmental costs reimbursed by its insurance carriers.

DTI states that the refunds were allocated based on DTI's customers' fixed cost responsibility as set out on Sheet No. 38 of DTI's FERC Gas Tariff.

DTI states that copies of its filing are being sent by first-class mail, postage prepaid, by DTI to DTI's affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before October 1, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–24836 Filed 9–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–551–000]

Dominion Transmission Inc.; Notice of Proposed Changes in FERC Gas Tariff

September 24, 2002.

Take notice that on September 19, 2002, Dominion Transmission Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, revised tariff sheets listed at Appendix A of its filing. DTI requests an effective date of November 1, 2002 for its proposed tariff sheets.

DTI states that the purpose of this filing is to comply with Article VII, Section G of the August 31, 1998, Stipulation and Agreement in Docket Nos. RP97–406, *et al.* (the RP97–406 Settlement), which provides for the gradual conversion of Rate Schedule GSS–II firm storage services, to service entitlements under Rate Schedules GSS and FT (FT–GSS service). Article VII, Section A provides for the final 15 percent conversion of these service entitlements, effective November 1, 2002. Article VII, Section G provides for DTI to revise base storage and transportation service rates at each stage of the conversion, as detailed in Appendix B of the RP97–406 Settlement. The conversion produces a slight increase to DTI's Rate Schedule GSS Demand and Capacity rates and its firm transportation Reservation Charges, and to the interruptible service rates that are derived from these rate elements.

DTI states that its proposed tariff sheets reflect the final conversion of Rate Schedule GSS–II entitlements to Rate Schedule GSS service and related firm transportation. Because this is the final conversion of GSS–II under the RP97–406 Settlement, DTI also seeks to remove the GSS–II rates and the FT–GSS–II surcharge from its rate sheets. Furthermore, DTI has proposed to delete the GSS–II Rate Schedules and all references to FT–GSS–II and GSS–II from its tariff.

DTI states that copies of this letter of transmittal and enclosures are being served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–24841 Filed 9–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–552–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

September 24, 2002.

Take notice that on September 23, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Second Revised Sheet No. 4, with an effective date of November 1, 2002.

GTN states that it is revising this tariff sheet to modify the rate for service under Rate Schedule FTS–1 (E–2) (WWP) in accordance with the negotiated rate formula for that service as specified in GTN's tariff.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–24842 Filed 9–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–553–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

September 24, 2002.

Take notice that on September 23, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, First Revised Sheet No. 4. GTN requests that the above-referenced tariff sheet be made effective November 1, 2002.

GTN states that the purpose of this filing is to reduce its Mitigation Revenue Recovery Surcharge (MRRS) consistent with the requirements of its Settlement in Docket Nos. RP94–149–000, *et al.* In addition, GTN is filing to reduce its Competitive Equalization Surcharge, which was designed to mirror the MRRS and apply to new expansion shippers subscribing to long-term firm capacity on GTN.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–24843 Filed 9–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–107]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

September 24, 2002.

Take notice that on September 20, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Calpine Energy Services, L.P. Tennessee requests that the Commission grant such approval effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–24838 Filed 9–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–108]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

September 24, 2002.

Take notice that on September 20, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Louisville Gas and Electric Company. Tennessee requests that the Commission grant such approval effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–24839 Filed 9–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–1932–004, P–1933–010, and P–1934–010–California]

Southern California Edison; Notice of Availability of Final Environmental Assessment

September 24, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the applications for licenses for the Lytle Creek, Santa Ana River 1 & 3, and the Mill Creek 2/3 Hydroelectric Projects, located on the Lytle Creek, Santa Ana River, and Mill Creek, respectively, in San Bernardino County, California, and has prepared a Final Multiple Project Environmental Assessment (FEA) for the projects. The projects are located within the San Bernardino National Forest.

The FEA contains the staff's analysis of the potential environmental impacts of the projects and concludes that licensing the projects, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659.

For further information, contact Jon Cofrancesco at (202) 502–8951.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–24837 Filed 9–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Integrated System Rates

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Secretary acting under sections 301(b), 302(a), 402(e), 641, 642, 643, and 644, of the Department of Energy Organization Act (Pub. L. 95–91), has approved and placed in effect on an interim basis Rate Order No. SWPA–48 which provides for the following Integrated System Rate Schedules:

Rate Schedule P–02, Wholesale Rates for Hydro Peaking Power

Rate Schedule NFTS–02, Wholesale Rates for Non-Federal Transmission/Interconnection Facilities Service

Rate Schedule EE–02, Wholesale Rate for Excess Energy

The rate schedules supersede the existing rate schedules shown below:

Rate Schedule P–98D, Wholesale Rates for Hydro Peaking Power—(superseded by P–02)

Rate Schedule NFTS–98D, Wholesale Rates for Non-Federal Transmission/Interconnection Facilities Service—(superseded by NFTS–02)

Rate Schedule EE–98, Wholesale Rate for Excess Energy—(superseded by EE–02)

DATES: The effective period for the rate schedules specified in Rate Order No. SWPA–48 is October 1, 2002, through September 30, 2006.

FOR FURTHER INFORMATION CONTACT: Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6696, *reeves@swpa.gov.*

SUPPLEMENTARY INFORMATION:

Southwestern Power Administration's (Southwestern) Administrator has determined, based on the Fiscal Year (FY) 2002 Integrated System Current Power Repayment Study, that existing rates will not satisfy cost recovery criteria specified in Department of Energy Order No. RA 6120.2 and Section 5 of the Flood Control Act of 1944. The finalized FY 2002 Integrated System Power Repayment Studies (PRSs), indicate that an increase in annual revenue of $6,138,503, or 5.6 percent, beginning October 1, 2002, will satisfy cost recovery criteria for the Integrated System projects. The proposed Integrated System rate schedules would increase annual revenues from $109,463,500 to $115,006,176, primarily to recover increased expenditures in operations and maintenance (O&M) and investment. In addition, an analysis of the Purchased Power Deferral Account indicates the need for an annual increase of $595,827 to recover the purchased energy costs. This rate proposal also includes a provision to continue the Administrator's Discretionary Purchased Power Adder Adjustment, to adjust the purchased power adder annually, of up to $0.0011 per kilowatthour as necessary, at his/her discretion, under a formula-type rate, with notification to the FERC.

Following review of Southwestern's proposal within the Department of Energy, I approved, Rate Order No. SWPA–48, on an interim basis through September 30, 2006, or until confirmed and approved on a final basis by the FERC.

Dated: September 18, 2002.

Spencer Abraham,

Secretary.

In the Matter of: Southwestern Power Administration Integrated System Rates; Order Confirming, Approving and Placing Increased Power Rate in Effect on an Interim Basis

[Rate Order No. SWPA–48]

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy revised Delegation Order No. 0204–108 to delegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order. By Amendment No. 3 to Delegation Order No. 0204–108, effective November 10, 1993, 58 FR 59717, the Secretary of Energy revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating that authority to the Deputy Secretary of Energy. By notice, dated April 15, 1999, the Secretary of Energy rescinded the authority of the Deputy Secretary of Energy under Delegation Order No. 0204–108. By Delegation Order No. 0204–172, effective November 11, 1999, the Secretary of Energy again provided interim rate approval authority to the Deputy Secretary of Energy. Pursuant to Delegation Order No. 00–037–00, effective December 6, 2001, authority is delegated to the Deputy Secretary of Energy for interim rate approval and to the Federal Energy Regulatory Commission for final rate approval. Delegation Order No. 0204–108 is no longer applicable to rates filed by the Power Marketing Administrations. While presently there is no Deputy Secretary; the Secretary of Energy possesses the necessary authority to approve rates.

Background

Federal Energy Regulatory Commission (FERC) confirmation and approval of the following Integrated System (System) rate schedules was provided in FERC Docket No. EF98–4011–000 issued April 29, 1998, for the period January 1, 1998, through September 30, 2001:

Rate Schedule P–98D, Wholesale Rates for Hydro Peaking Power—(superseded by P–02)

Rate Schedule NFTS–98D, Wholesale Rates for Non-Federal Transmission/Interconnection Facilities Service—(superseded by NFTS–02)

Rate Schedule EE–98, Wholesale Rate for Excess Energy—(superseded by EE–02)

On July 26, 2001, these rate schedules were extended on an interim basis by the Deputy Secretary under Rate Order No. 45 for the period October 1, 2001, through September 30, 2002. During the period that current rates have been in effect, Southwestern has modified the Integrated System rate schedules three times for the purpose of clarifying and revising specific provisions that did not impact revenue requirements. Each modification of the rate schedules was approved by FERC on a final basis, the latest being rate schedules, P–98D and NFTS–98D, which were approved by FERC on July 31, 2001.

Southwestern Power Administration's (Southwestern), Current Power Repayment Study (PRS) indicates that the existing rate would not satisfy present financial criteria regarding repayment of investment within a 50-year period due to increasing operation and maintenance expenditures and investment for both the Corps of Engineers (Corps) and Southwestern. The revised PRS indicates that an increase in annual revenues of $6,138,503 was necessary beginning October 1, 2002, to accomplish repayment in the required number of years. Accordingly, Southwestern has prepared proposed rate schedules based on the FY 2002 Rate Design Study and the additional revenue requirement.

Informal meetings were held in April 2002 with customer representatives to review the repayment and rate design processes and present the basis for the 5.6 percent annual revenue increase. In May 2002, Southwestern prepared a proposed 2002 PRS for the Integrated System.

Title 10, part 903, subpart A of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustment,'' has been followed in connection with the proposed rate adjustments. More specifically, opportunities for public review and comment on proposed System power rates during a 90-day period were announced by notice published in the **Federal Register** May 21, 2002, (67 FR

35802). A Public Information Forum was held June 6, 2002, in Tulsa, Oklahoma, and a Public Comment Forum was scheduled to be held July 10, 2002, also in Tulsa, but was canceled since no one indicated their intent to attend. Written comments were due by August 19, 2002. Southwestern mailed copies of the proposed May 2002 Power Repayment and Rate Design Studies to customers and interested parties that requested the data, for review and comment during the formal period of public participation.

Following conclusion of the comment period on August 19, 2002, comments presented during the formal public participation process were reviewed. Once all comments were carefully evaluated, the 2002 Power Repayment and Rate Design Studies were completed. No changes were made to the FY 2002 PRS based on comments received. The studies were finalized in August 2002. The Administrator has made the decision to submit the rate proposal for interim approval and implementation. The comments resulting from the public participation process and responses, as developed by Southwestern's staff, are contained in this Rate Order.

Discussion

General

The existing rate schedules developed in the FY 1997 Integrated System Power Repayment Studies were the basis for revenue determination in the August 2002 Integrated System Current Power Repayment Study. The Current Power Repayment Study indicates that existing rates are insufficient to produce the annual revenues necessary to accomplish repayment of the capital investment as required by Section 5 of the Flood Control Act of 1944 and Department of Energy (DOE) Order No. RA 6120.2.

A Revised Power Repayment Study was prepared based on $6,138,503 of additional annual revenue beginning October 1, 2002, to satisfy repayment criteria. This amount is no different than what was proposed in May 2002. No adjustments were made to the May 2002 PRS based on comments received except to finalize the PRS.

During development of the May rate design study, Southwestern recognized that no costs for Non-Federal, non-firm transmission service were being incurred under the current transmission rate schedule. So, Southwestern redesigned the rate for Non-Federal, non-firm transmission service to be a formula rate rather than a specific dollar rate. Currently, all requests for Non-Federal, non-firm transmission on Southwestern's transmission system must use the Southwest Power Pool regional open access transmission tariff rate. Consequently, Southwestern does not have contractual arrangements for Non-Federal, non-firm transmission service at this time; however, should Southwestern need to provide that service in the future, a rate will be available.

In Southwestern's 1988, 1990 and 1997 Rate Proposals, two noteworthy issues, which were previously approved by FERC were described in detail. The issues, which still exist today, were (1) the treatment of a portion of the Truman project investment as not currently repayable, and (2) the purchased power adder and discretionary adjustment.

Harry S Truman Project

The Truman issue arose out of the limitations placed on the project's operations by the Corps. The project was designed and constructed to have 160 MW of dependable (marketable) capacity through the use of six reversible pump turbine generating units which could return water to the reservoir following normal generation, to mitigate extreme variations in water available for generation and the lack of storage capacity in the project (only two feet). Pumping ensures project dependable capacity and allows marketing of all six units. A substantial fish kill during testing of the units and considerable opposition to the project's operation, both in the pumping mode and the full six-unit generation mode, led the Corps to significantly restrict the project's operation. In particular, the project's pumps may not be used and only a limited number of units may be utilized simultaneously. Consequently, Southwestern is unable to market full capacity from the project and has declared only two units in commercial operation. Southwestern proposed to the FERC in the 1988 rate filing that, since the entire project was neither revenue-producing, declared in commercial operation, nor expected to be in service within the then-existing cost evaluation period, the total investment allocated to power was not repayable under DOE or FERC regulations. Southwestern further proposed an adjustment to Truman's allocated costs and reduced the repayable investment to an amount equal to approximately 44 percent of then-allocated costs, with the remaining amount to be deferred until the project can be operated as it was designed. The FERC approved this proposal as an acceptable interim measure while the Corps develops a cost allocation for Truman based on actual operating conditions. Southwestern also proposed this concept to the Corps, and the Corps agreed to consider it as an option in developing the cost allocation for the project. Subsequently, the Corps has completed a major revision to the Truman project cost allocation and has utilized Southwestern's proposed concept for determining repayable investment at the project during the interim period until the project becomes fully operational. Although not yet approved on a final basis, the Interim Cost Allocation proposed by the Corps for the Truman project has been utilized in the development of the 1990, 1997 and 2002 PRSs in support of the revenue requirements of Southwestern's Integrated System and the rate proposal, as the most recent cost allocation available which reasonably reflects the level of costs expected to be payable at the Truman project during the cost evaluation period.

During February 1997, the Interagency Committee on Cost Allocations (ICCA) met to review and potentially approve the Truman, Stockton, and Clarence Cannon project cost allocations. The Stockton cost allocation was subsequently approved on a final basis on May 8, 1997. The Clarence Cannon was approved on August 25, 1998. The Truman cost allocation was to be sent back to the Corps' Kansas City District office to make changes in the allocation's assumptions and then be prepared for finalization. However, in June 1997, a meeting of the Southwestern, the Corps and several customer representatives was held to discuss the Truman cost allocation. The customers expressed their concern about the significant level of costs being proposed while the project continued to be limited in its ability to produce hydropower. At this meeting, the Corps agreed to review the issue of assigning hydro-related costs to another project purpose that had contributed to limiting the hydro operation of the project. The allocation of those costs to another purpose would be potentially considered temporary and the costs would be reallocated back to the hydropower purpose in an amount relational to the part of the hydropower purpose functioning as originally designed. Southwestern is continuing to pursue finalization of this cost allocation with the Corps. However, it is not anticipated that the Truman cost allocation will be finalized in the near future; therefore, Southwestern has continued to use the Interim Cost Allocation for the Truman project in development of the 2002 PRS.

Purchased Power Deferral Account (Discretionary Adjustment and Adder)

During the time the purchased power adder and the deferral accounting mechanism have been in place, they have proven to be effective in assuring that purchased power revenues equal purchased power costs over time. The financial interests of the Government have been protected in this endeavor, and the rate component has been adjusted as necessary. In the 1997 Rate Proposal, Southwestern requested approval for the Administrator to have authority to adjust the purchased power rate component up to once annually, based on a formula-type rate included in the rate schedules, by up to $0.0011 per kWh at his or her discretion. The flexibility derived from this authority enables Southwestern to react more quickly to significant changes in water conditions which may have occurred during the preceding year or simply to exercise better control on the amount of revenue in the Account and to better limit the over or under recoveries of revenue. The Administrator utilized this authority in implement adjustments of up to $0.0011 per kWh to help increase revenues collected in the Account during the previous years of less than average water conditions and the corresponding increase in the costs for purchased power. This authority seems to remain appropriate, particularly in light of the fact that the Account has no direct effect on Integrated System repayment requirements and the separate rate component serves to provide revenues to meet expected costs which, if they do not come to pass, are either held to meet future costs or result in a lower purchased power rate for customers. Therefore, Southwestern's Administrator requests continuing authority to adjust the purchased power rate component annually based on a formula-type rate included in the rate schedules.

An element directly related to the Account and accrual of interest thereto is the determination of the purchased power adder itself. Southwestern is proposing, as in all previous proposals beginning with the 1983 implementation of the purchased power rate component, that the adder be set equal to the current average long-term purchased power rate requirement. As shown in the Rate Design Study, the amount is determined by dividing the estimated total average direct purchased power costs by Southwestern's total annual contractual 1200-hour peaking energy commitments to the customers (exclusive of contract support arrangements). In this rate proposal, the resulting Purchased Power Adder (Adder) is $0.0025 per kWh of peaking energy. The total revenue created through application of this Adder would enable Southwestern to cover its average annual purchased power costs.

Rate schedules were designed to recover the additional revenue requirements. The basic monthly demand charge for the sale of Federal hydroelectric power and the base energy charge have increased. The transformation charge, though paid by a few customers having 69 kV and below deliveries, has increased and affects revenues as well. In addition, transmission charges for non-Federal, firm service have increased. The increases to both transformation and transmission charges are due to additions and replacements that have been made to Southwestern's aging transmission facilities since the last rate change.

In accordance with FERC's Order No. 888, Southwestern will continue charging separately for five ancillary services and offering network transmission service. Southwestern's rate design has separated the five ancillary services for all transmission service. Two ancillary services, Scheduling, System Control and Dispatch Service and Reactive and Voltage Support Service, are required for every transmission transaction. These charges are also a part of the capacity rate for Federal power. This is consistent with Southwestern's long-standing practice of charging for the sale and delivery of Federal power in its Federal demand charge. The three remaining ancillary services will be made available to any transmission user within Southwestern's control area, including Federal power customers. The Rate Schedules for Peaking Power and Non-Federal Transmission Service reflect these charges. Network transmission service will be provided to those, also within Southwestern's control area, who request the service, but for non-Federal deliveries only. The rate and application of this service are identified in the Non-Federal Transmission/Interconnection Facilities Service Rate Schedule, NFTS–02.

Comments and Responses

The Southwestern Power Administration (Southwestern) received numerous questions to which responses were provided during the public participation period and which are included in the background information. In addition, Southwestern received comments from five entities during the public participation process. Those comments are summarized into six general areas of concern, and Southwestern's responses to the concerns raised are as follows:

Corps O&M Expenses

Comments

Southwestern should revisit its projections of the Corps of Engineers Operation and Maintenance (O&M) costs with particular attention to projected personnel costs to assure projections are conservative and that all efficiencies consistent with sound business principles have been incorporated into these areas. With respect to personnel costs, commentors take issue with inclusion of expenses for trainees to replace retiring personnel. Commentors state that this reflects poor planning on the part of the Corps and should not be reflected as a part of the ongoing future base costs because such an assumption inflates long term future cost estimates and rates.

Response

Projections for Corps of Engineers (Corps) O&M are developed by the Corps and provided to Southwestern annually. The Corps makes projections of their base O&M costs using historical information and planning documents, and also includes projections for large maintenance items for each of the projects that have been included in their outyear budget estimates. These projections are made in current year dollars and do not include inflation. Southwestern reviews this information, questioning the Corps where inconsistencies seem to occur, clarifying its understanding of the cost estimates, and adjusting the estimates to future year dollars based on the Gross Domestic Product Index to incorporate inflationary expectations. The Corps has advised Southwestern that, among other costs, the addition of trainees and increased project maintenance are two elements in base costs. The Corps informed Southwestern that trainee costs are limited to projects where retirements are imminent but project maintenance will continue to increase until such time as the projects identified for rehabilitation can be completed. Southwestern inquired further and was advised that the Corps is confident that their O&M estimates fairly represent the minimum expenditure level expected for the projects' O&M and that this level of expenditure is expected to continue into the future.

Southwestern does not receive the detail of personnel costs included in the Corps' O&M estimates, nor is it necessary for Southwestern to have this information since the Corps provides

total forecasted O&M expenditures by project. Although Southwestern can provide suggestions, proposing changes to the management of the Corps' resources, particularly their personnel processes, is beyond the scope of Southwestern's authorities. Southwestern is tasked with recovering the power costs at Corps of Engineers dams; the Corps is responsible for managing their organization. The Corps believes that its internal controls, accounting system reviews and funding procedures effectively provide the needed level of justification, consistency and control of its O&M expenditures. Southwestern has no oversight authority with regard to Corps expenditures for O&M activities. Southwestern agrees that such costs should be prudently and timely incurred at reasonable levels consistent with sound business principles. The estimates historically provided by the Corps have been reasonably accurate in total, although they fluctuate somewhat from actual expenditures by individual project.

The primary cause for the increase in Corps O&M between the FY 1997 PRS (on which current rates are based) and the FY 2002 PRS is the inclusion, beginning with the FY 1998 PRS, of an estimate for the Unfunded Civil Service Retirement System (CSRS) and Health/Life Insurance Benefits. Without the inclusion of this increased cost element in the FY 2002 PRS (which were not part of the forecast in the FY 1997 filing), the Corps' O&M estimate, including the average year large maintenance items, has increased less than 2% in total over the last five years. Although the Corps has historically been fairly accurate, their projections for O&M costs for the past two years have been less than what was recorded on their financial statements. The Corps has confirmed that the past few years' projections were based on anticipated reductions in funding, but have realized they were underestimating and in the FY 2002 projections have increased their estimates to better reflect their expected expenditures.

The Corps' estimates of O&M are based on what they believe will be their actual expenditures on their financial statements. This process is consistent with the requirements of RA 6120.2. The procedure for the Corps to provide O&M estimates is based on a Memorandum of Agreement with the Corps of Engineers in November 1989, and has been fairly accurate. The projection of Corps O&M in the FY 2002 PRS for the final year of the cost evaluation period (FY 2006) is 3.8 percent higher than the Corps' actual O&M expenditures for historical year FY 2001, primarily reflecting an expected period of relatively stable funding.

Southwestern believes that the estimates provided by the Corps for their O&M are reasonable based on their historical accuracy and accurately reflect what the Corps will ultimately book as actual expenditures on their financial statements.

Corps of Engineers—Estimates for Large Maintenance Items

Comments

Southwestern should revisit its process for determining estimates of future Large Maintenance Items (LMI) for purposes of the PRS. It would appear that the process Southwestern is using is not in compliance with RA 6120.2. Southwestern should modify the process to include a comparison of actual LMI costs in previous years with the forecasted LMI for those years contained in previous PRSs. In addition, Southwestern should closely examine the proposed 5.25 percent one-year LMI factor proposed by the East Texas Cooperatives, a figure premised on a more accurate methodology than used by Southwestern.

Response

Southwestern has reviewed its methodology for mitigating the impact of Large Maintenance Items which are estimated to occur in the final year of the cost evaluation period and has determined that the methodology is sound, produces reasonable estimates and has been reasonably accurate historically when combined as a part of overall total estimates of Corps O&M costs.

The estimates of large maintenance items are provided by the Corps, in detail by project, by year. In an effort to minimize wide swings in the effect of large maintenance items (specifically in the last year) and to add stability to rates, Southwestern developed a procedure over fifteen years ago that removes the large maintenance estimates in the fifth year of the cost evaluation period and replaces that estimate with a ten-year average of large maintenance item estimates. In order to alleviate the impact that one or two years of increased large maintenance items had on the rates, Southwestern has used an average over a ten-year period. This has ''leveled out'' the LMI estimates and has, when added to the routine O&M, reflected a more accurate estimate of what the Corps' expenditures have been in the fifth year. This method of forecasting appears to be very efficient since in comparing the historical fifth year estimate with its corresponding actual expenditure, the Corps' O&M estimates appear to be quite reasonable. In fact, during the past few years, the estimate of total Corps O&M expenditures for the fifth year, which include Southwestern's methodology for estimating the large maintenance item component, has been within three percent of the actual for that year, with the most recent estimate being within 0.1 percent of the actual.

Southwestern has also evaluated the use of an average of the most recent forecasts as suggested by one entity commenting, but found that in years when forecasts for that one year were significantly higher, there was a substantial impact on the rate Southwestern would charge. By using the suggested methodology in the commentor's suggestion, the one-year average factor for eight of the past ten years would have resulted in a factor significantly greater than the recommended 5.25 percent. While the proposal to use one year's average would reflect a decrease in this PRS, use of the recommended methodology in eight of the past ten years would have resulted in an increase in revenue requirements for those years and possible rate increases. Consequently, Southwestern believes the proposed method is less accurate than the existing method and reintroduces yearly variations which are mitigated under the existing method in response to customer concerns expressed some years ago.

The use of actual historical data on large maintenance items and base expenses may be preferable, but with the lack of detailed data available from the Corps and with power being only one of the purposes for which the Corps captures financial data, we believe it is not a practical approach. In addition, it would add very little, if anything, to the accuracy of the Corps' O&M estimates which in total have been very good.

Southwestern has confirmed that the Corps' O&M estimates are based on historical costs and actual project costs in accordance with RA 6120.2. Southwestern reviews the estimates to compare with actuals. However, the Corps also considers in its estimates the RA 6120.2 requirement that, ''forecast shall take into account known factors which are expected to affect the future level of such costs during the cost evaluation period.'' The PRS reflects actual LMI in the Corps' total historical O&M expenses for each year since it is part of the total O&M number. The Corps provides actual O&M expenses based on joint-use and specific-use cost

pursuant to their regulations for their financial statement reporting.

As has been noted, Southwestern believes that the estimate in the fifth year of average LMI expenses for Corps O&M expenses is reasonably accurate. Southwestern prepares PRSs each year and will continue to monitor its processes to assure estimates are reasonable and that all efficiencies consistent with sound business principles have been incorporated.

Southwestern's O&M Expenses

Southwestern's O&M expenses have increased by approximately $13 million over the FY 1997 Power Repayment Study. Included in Southwestern's O&M expenses are salaries and wages, maintenance costs on aging transmission facilities, transmission-related services and purchased power costs. The commentors state that Southwestern should reduce its forecasted O&M expenses to reflect more reasonable estimates.

Response

Southwestern's O&M expense estimates increased significantly between the FY 1997 Power Repayment Study (PRS) and the current PRS for a number of reasons. Purchased Power costs increased by approximately $3 million due to greater than expected unit cost increases and reductions in the availability of banking energy arrangements. In addition, costs increased by $4.4 million due to requirements beginning January 1, 1998, for transmission losses to be replaced through purchased energy rather than reduced in kind as done previously. This cost is totally offset by a corresponding increase in revenues collected from transmission customers, but nonetheless appears as a significant cost increase. The rate for Federal power and energy, including the Purchased Power Adder are not affected by this cost.

Southwestern has experienced increased costs for transmission service charges since FY 1997. Due to implementation of a new contract, Southwestern now pays an additional $1.0 million for transmission service. However, the impact of this increase in Southwestern's transmission service costs has been minimized by an increase in transmission revenues.

Southwestern's Transmission and Marketing expense have increased by $4.6 million over the FY 1997 PRS estimates. A significant portion of this increase is related to Southwestern's employee salaries, even though Southwestern has reduced Full-Time Equivalents by approximately 8 percent. This increase in employee salaries and wages is due to cost of living adjustments and other payroll requirements set by the U.S. Congress and regulated wage surveys affecting craft personnel and dispatchers. The remaining portion of Transmission and Marketing costs have increased proportionately to historical trends and are within the rate of inflation for the period.

Southwestern has based its O&M expense estimates in the FY 2002 PRS on historical trends and future budget projections. As evidenced by the increase in historical costs, many of which are outside Southwestern's control, Southwestern believes its estimates are reasonable and will represent what is anticipated to be recorded on Southwestern's financial statements.

Corps and Southwestern's Investment Estimates

Comments

Some commentors have expressed concern regarding the level of added investment during the initial 5-year cost evaluation period (CEP) and that past history shows an over-forecasting of actual plant in service to estimates. Some commentors recommended that Southwestern reduce its forecast for added investment while others expressed a desire for the appropriate level to be achieved to assure rehabilitation of the Corps' aging plants. Also noted in the comments was a lack of decreased O&M expense related to replacing older, typically maintenance-intensive plant.

Response

The estimates in the PRS for future investment (over the 5-year CEP) is an average of $9 million per year for replacements, $18 million in construction work in progress (projects that have been started but not yet complete and on the ''books''), and a conservative estimate of $35.7 million for single unit rehabilitations at four of the Corps' 22 projects. These projections are for only an incremental portion of the total rehabilitation and represents what is expected to take place within the 5-year CEP and has been committed to funding by the Corps. It is anticipated that the remaining costs that fall outside the 5-year CEP in the FY 2002 PRS will be included in future PRSs.

Projections for the Corps Investment (replacements) are developed based on data provided by the Corps to Southwestern every five years and reviewed annually by the Corps. The Corps makes projections of their investments based on planning documents. The Corps determines what projects are in need of repair and makes a request for budget appropriations to fund that replacement. The Corps has based their estimates of future investments for the PRS on anticipated project funding to perform the needed work. The funding has not always materialized during the budgeting process. This has contributed to some historical estimates being higher than actual expenditures.

We believe the FY 2002 PRS estimates are more accurate than previous estimates due to a new customer funding source whereby the Corps has access to a consistent funding level in addition to the appropriation process. The alternative customer funding process will relieve some pressure due to reduced appropriations and allow for projects to be started and completed in a timely manner. Southwestern believes that with the alternative customer funding method in place, more of the projected replacements and maintenance will be accomplished by the Corps, and will result in more closely matching PRS estimates in the future.

In addition, the O&M costs for which the Corps provides Southwestern estimates (as discussed in an earlier comment) are anticipated to remain higher during the 5-year CEP, until such time as all phases of the rehabilitations have been completed, due to having to maintain and upgrade the rest of the aging facilities. Having discussed these issues with Corps representatives, Southwestern believes that the estimates provided by the Corps for O&M are based on their best judgment as to what will be their actual expenditures. Southwestern also believes that their O&M estimates, compared with actuals, are fairly accurate and representative of what will be entered on their financial statements. Southwestern shares the customers' belief that in the future these O&M estimates may well, in fact, be reduced. But with the appropriation reductions and other funding issues that the Corps has encountered in the past, there remains a massive backlog of projects that need to be completed as funding becomes available, which means that it will be many years before a reduction in O&M is recognized by the Corps. Contrary to one commentor's assertion, Corps estimates do not continue to increase throughout the 50 year period. Corps O&M estimates beyond the 5-year CEP are held constant from the 5th year through the 50th year yielding no additional expenses.

As stated in RA6120.2 (paragraph 10), replacements of investment will be

''included in repayment studies by adding the estimated capital cost of (the) replacement to the unpaid Federal investment in the year each replacement is estimated to go into service.'' Southwestern is required to forecast for replacements. Southwestern must forecast replacements for the entire period of the PRS. The Corps provides the best data they have available, together with the service lives of the equipment. Southwestern and the Corps review these estimates annually and update the replacement data with the goal to reflect what will occur on the annual financial statements.

Unfunded Civil Service Retirement System Benefits

Comment

Revenues collected by Southwestern for ''Unfunded'' Civil Service Retirement System (CSRS) and Health and Life Insurance Benefits should be (1) removed from Southwestern's rates because Southwestern has no authority to collect them, (2) properly account for the additional interest effects of the revenues collected, or (3) apply the revenues collected to Southwestern's debt rather than to the CSRS expenses.

Response

Statement of Federal Financial Accounting Standards (SFFAS) No. 5, requires all federal agencies, including Power Marketing Administrations (PMAs), to record the full cost of pension and postretirement benefits in financial statements beginning in fiscal year 1997. SFFAS No. 5 prescribes that the aggregate entry age normal (AEAN) actuarial cost method be used to calculate pension expenses and accrued actuarial liabilities for pension benefits. Under the AEAN method, which is based on dynamic economic assumptions, including future salary increases, the actuarial present value of projected benefits is allocated on a level basis over the earnings or the service of the group between entry age and assumed exit ages and is applied to pensions on the basis of a level percentage of earnings. The portion of this actuarial present value allocated to a valuation year is called the ''normal cost''. The Office of Personnel Management (OPM) applies the AEAN method to estimate the amount by which employer and employee contributions toward future CSRS pension benefits fall short of the normal cost of those benefits.

For CSRS employees, OPM reported that, in 1995, 25.14 percent of gross salaries was the full (normal) cost to the federal government of benefits earned that year by employees and that federal agencies contributed 7 percent and employees contributed 7 percent to OPM for CSRS, leaving a funding deficiency of 11.14 percent of each CSRS employee's annual salary. Such deficiencies are made up by Treasury's funding of OPM retirement costs. Southwestern has included an estimate of the unfunded portion of the CSRS costs in its Power Repayment Studies every year since 1998. Revenues have been returned to the Treasury by Southwestern each year since 1998 to be used by Treasury to fund OPM retirement benefits and health insurance costs.

Even though this is the first Integrated System rate filing that has included unfunded CSRS costs, it is not the first rate filing Southwestern has submitted that includes unfunded CSRS costs. Southwestern has had three previous rate filings since 1998 for two other rate systems that have been submitted through the DOE and ultimately approved by FERC. Southwestern did not receive any comments related to the CSRS issue in any of the public comment periods of those three rate filings. Furthermore, the Southeastern Power Administration (SEPA) included CSRS cost estimates in a rate filing in 1998. The comments on that rate filing included opposition to the inclusion of the CSRS estimates. The FERC confirmed the SEPA filing on a final basis and did not accept the arguments to exclude the CSRS costs. A request for rehearing related to the filing was also denied.

Authority to collect revenues for the unfunded CSRS costs comes primarily from Section 5 of the Flood Control Act of 1944 which, in part, states ''* * *Rate schedules shall be drawn having regard to the recovery''* * * ''of the cost of producing and transmitting such electric energy,* * *'' Unfunded CSRS has been determined to be a cost of ''producing and transmitting electricity.'' Upon disbursement, the Federal government funds the unfunded portion of the CSRS program just as it funds the funded portion of the CSRS program. The difference is that, when retirement payments are issued, OPM and not Southwestern is the agency that the funding of the unfunded portion of CSRS costs is directed to. The authority to collect revenues to repay the CSRS program costs is no different than the authority to collect the funded portion.

Southwestern agrees with the comment that it should properly account for the additional interest effects of the revenues collected and is currently doing so. Southwestern's existing procedure imputes an interest credit at current year interest rates on all revenues received—which would include revenues received to repay CSRS costs. The effect of the interest credit carries throughout the entire repayment period.

Regarding the issue of applying revenues received for CSRS expenses to Southwestern's debt, the application of revenues is guided by DOE Order 6120.2 (paragraph 8c.(3)) which states ''Annual revenues will be first applied to the following recovery of costs during the year in which they occurred: operation and maintenance (O&M), purchased and exchanged power, transmission service and other, and interest expense and any appropriation amortization of revenue bonds. Remaining revenues are available for amortization* * *''. Therefore, Southwestern applies its revenues received to the CSRS expenses before it applies any revenue toward the amortization of the Federal investment.

Isolated Projects and Bundled Rates

Comments

Southwestern should not be charging a pancaked rate for the sale and delivery of Federal power. Those customers that receive Federal power from isolated Corps projects should not be required to pay for transmission and ancillary services that they do not use. In addition, those customers should receive credit for incurring costs that the typical Southwestern customer does not. Even though this issue was raised in Southwestern's 1997 rate proceedings and was rejected by Southwestern, the Secretary of Energy and the FERC, this issue should be reconsidered and not viewed as a binding precedent because the regulatory and market environment has changed considerably.

Response

Southwestern's sales of Federal power and energy are based on a ''postage-stamp'' type rate, which is based on the financial integration of all the projects marketed under the Integrated System, as well as various components of Southwestern's transmission system. The capacity rate for all Federal power customers includes a transmission component and the two required ancillary services. This rate has been set to assure that Southwestern charges itself the same rates it charges for the use of the transmission system for wheeling non-Federal power. The customers which receive the output of Corps of Engineers projects that are presently electrically isolated from Southwestern's primary interconnected system requested integration of such projects into the Integrated System to

receive that system's benefits, including lower costs. In addition, such customers receive a number of benefits from their project sales which other Federal customers do not, such as overload capacity, condensing, greater scheduling flexibility, and an exclusion from paying the Purchased Power Adder. Such projects also include components of Southwestern's transmission system and switchyard facilities used to deliver power and energy from the dams. Revenues from all sales within the Integrated System are applied toward repayment of all Federal investment for all projects, regardless of their electrical integration status.

Southwestern is not required by FERC Order No. 888 or Order No. 2000 to offer unbundled services to its customers. Section 5 of the Flood Control Act of 1944 sets forth the statutory requirements for the sale and delivery of Federal power and energy. Furthermore, based on DOE policy, ''each of the PMAs that own transmission facilities will publish generally applicable open access wholesale transmission tariffs and will take service itself under such tariffs. The tariffs will include rates, terms, and conditions, and will offer transmission services, including ancillary services, to all entities eligible to seek a transmission order under section 211 of the Federal Power Act * * *'' Southwestern has complied with this policy in separating its non-Federal transmission service and to provide for ancillary services.

Even though Southwestern agrees that the electric industry has changed considerably since 1997, the conditions and points raised related to this issue are the same as were espoused in 1997. Upon review, there does not appear to be any overriding factor that compels Southwestern to change its previous determination that those customers do benefit from the treatment of the transmission system and related facilities and the power rate charged to the customers reflects such benefits. The parties expressing these concerns voluntarily and knowingly entered into long-term contractual arrangements to receive the benefits of these projects at integrated system rates. We find it disingenuous to now seek through the rate development process to overturn what was done for their benefit through mutually agreeable bi-lateral contracts.

Operational Efficiencies

Comments

Southwestern management should commit to incorporate any operational efficiencies that would reduce the magnitude of the rate increase. Such efficiencies should be fully discussed as part of the Power Repayment Study. Overstatement of revenue requirements can tempt management to operate less efficiently than might otherwise have been possible.

Response

Southwestern agrees that it should incorporate all efficiencies available into its day-to-day operations to accomplish the requirements of Section 5 of the Flood Control Act of 1944 for Southwestern to maintain ''the lowest possible rates to consumers consistent with sound business principles.'' Southwestern's Power Repayment Studies are developed annually to recover its costs to help accomplish that requirement and not to specifically identify efficiencies that have been instituted by the agency throughout the year. Southwestern continually strives to incorporate efficiencies in its operational activities. One example of such efficiencies can be illustrated by the number of full-time employees (FTE) employed by Southwestern. Even with the same number of customers and a significantly changing industry, the FTE for 1997 was 193 while the FTE in 2001 was 178. Another example of Southwestern's attention to efficient operation may be reflected in the rates themselves. The average rates charged by Southwestern for energy or transmission are the lowest in the region and will continue to be so even if this proposed rate increase is implemented. Furthermore, most of the increase in this proposed rate increase comes from costs outside of Southwestern's direct control. Those costs include Corps of Engineers costs, salary increases determined by Congress and charges for unfunded civil service retirement system costs.

Unlike many other utilities, Southwestern's management has no incentive to raise rates to allow them to operate less efficiently. Revenues received from sales of power and other services are deposited directly into the U.S. Treasury and are credited toward the repayment of the hydropower system costs. There are no additional revenues for Southwestern's management to use from higher rates because operating costs are obtained through a separate Congressional appropriation process which is not directly related to higher or lower rates.

Other Issues

Other issues are discussed in the Administrator's Record of Decision.

Availability of Information

Information regarding this rate proposal including studies, comments and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, OK 74101.

Administrator's Certification

The August 2002 Revised Power Repayment Study indicates that the increased power rates will repay all costs of the Integrated System including amortization of the power investment consistent with the provisions of Department of Energy Order No. RA 6120.2. In accordance with Delegation Order No. 00–037.00, December 6, 2001, and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed System rates are consistent with applicable law and the lowest possible rates consistent with sound business principles.

Environment

The environmental impact of the proposed System rates was evaluated in consideration of DOE's guidelines for implementing the procedural provisions of the National Environmental Policy Act and was determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective October 1, 2002, the following Southwestern System Rate Schedules which shall remain in effect on an interim basis through September 30, 2006, or until the FERC confirms and approves the rates on a final basis.

Dated: September 18, 2002.

Spencer Abraham,

Secretary.

[FR Doc. 02–24863 Filed 9–30–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Sam Rayburn Dam Power Rate Schedules

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: The Secretary of Energy acting under sections 301(b), 302(a), 402(e), 641, 642, 643, and 644, of the Department of Energy Organization Act (P. L. 95–91) has approved and placed into effect on an interim basis Rate Order No. SWPA–49 which decreases the power rate for the Sam Rayburn Dam Project (Rayburn) pursuant to the following Sam Rayburn Dam Rate Schedule:

Rate Schedule SRD–02, Wholesale Rates for Hydro Power and Energy Sold to Sam Rayburn Dam Electric Cooperative, Inc., (Contract No. DE–PM75–92SW00215)

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, One West Third Street, Tulsa, OK 74103, (918) 595–6696, *gene.reeves@swpa.gov.*

SUPPLEMENTARY INFORMATION: The existing hydroelectric power rate for the Rayburn project is $2,077,632 per year. The rate was approved on a final basis by the Federal Energy Regulatory Commission on October 22, 2001, for the period October 1, 2001, through September 30, 2005. The FY 2002 Rayburn Power Repayment Studies indicate the need for a decrease in the annual rate of $64,608, or 3.1 percent beginning October 1, 2002.

The Administrator, Southwestern Power Administration (Southwestern) has followed Title 10, Part 903 Subpart A, of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' (Part 903) in connection with the proposed rate schedule. On May 21, 2002, Southwestern published notice in the **Federal Register**, 67 FR 35805, of a 90-day comment period, together with a Public Information Forum and a Public Comment Forum, to provide an opportunity for customers and other interested members of the public to review and comment on a proposed rate decrease for the Rayburn project. Both public forums were canceled when no one expressed an intention to participate. Written comments were accepted through August 19, 2002. Only one comment was received from Gillis & Angley, Counselors at Law, on behalf of Sam Rayburn Dam Electric Cooperative, Inc. (SRDEC), which stated that SRDEC (the sole customer) had no objection to the proposed rate adjustment.

Information regarding this rate proposal, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, Suite 1400, One West Third Street, Tulsa, Oklahoma 74103.

Following review of Southwestern's proposal within the Department of Energy, I approved Rate Order No. SWPA–49, which decreases the existing Rayburn rate to $2,013,024 per year for the period October 1, 2002, through September 30, 2006.

Dated: September 18, 2002.

Spencer Abraham,

Secretary.

[Rate Order No. SWPA–49]

In the matter of:

Order Confirming, Approving and Placing Decreased Power Rate Schedule in Effect on an Interim Basis

Pursuant to sections 301(b), 302(a), 402(e), 641, 642, 643, and 644, of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration (Southwestern) was transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place power and transmission rates into effect on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy delegated to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order. By Amendment No. 3 to Delegation Order No. 0204–108, effective November 10, 1993, the Secretary of Energy re-delegated to the Deputy Secretary of Energy, the authority to confirm, approve and place into effect on an interim basis power and transmission rates of the Power Marketing Administrations. By notice, dated April 15, 1999, the Secretary of Energy rescinded the authority of the Deputy Secretary of Energy under Delegation Order No. 0204–108. By Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy again provided interim rate approval authority to the Deputy Secretary of Energy. Pursuant to Delegation Order No. 00–037.00, effective December 6, 2001, authority is delegated to the Deputy Secretary of Energy for interim rate approval and to the Federal Energy Regulatory Commission for final rate approval. Delegation Order No. 0204–108 is no longer applicable to rates filed by the Power Marketing Administrations. While presently there is no Deputy Secretary; the Secretary of Energy possesses the necessary authority to approve rates.

Background

The Sam Rayburn Dam Project (Rayburn) is located on the Angelina River in the State of Texas in the Neches River Basin. Since the beginning of its operation in 1965, it has been marketed as an isolated project, under contract with Sam Rayburn Dam Electric Cooperative, Inc. (Contract No. DE–PM75–92SW00215).

In the Federal Energy Regulatory Commission (FERC) Docket No. EF01–4021–000, issued October 22, 2001, for the period October 1, 2001, through September 30, 2005, the FERC confirmed and approved the current annual Sam Rayburn Dam rate of $2,077,632.

Discussion

Southwestern's FY 2002 Current Power Repayment Study (PRS) indicates that the existing annual power rate of $2,077,632 did not represent the lowest possible rate needed to meet cost recovery criteria. The reduced revenue requirement is due to a decrease in the Corps of Engineers (Corps) and Southwestern operations and maintenance expenses. The Revised PRS indicates that a decrease in annual revenues of $64,608 beginning in FY 2003 is sufficient to accomplish repayment of the Federal investment in the required number of years. Accordingly, Southwestern developed a proposed rate schedule based on that decreased revenue requirement.

Title 10, part 903, Subpart A of the Code of Federal Regulations,

''Procedures for Public Participation in Power and Transmission Rate Adjustment,'' has been followed in connection with the proposed rate adjustment. More specifically, opportunities for public review and comment during a 90-day period on the proposed Rayburn power rate were announced by notice published in the **Federal Register**, May 21, 2002, 67 FR 35805. A Public Information Forum was scheduled to be held June 6, 2002, and a Public Comment Forum was scheduled to be held July 10, 2002, both in Tulsa, Oklahoma. Both forums were canceled as no one expressed an intent to participate. Written comments were due by August 19, 2002. Southwestern provided notice of the **Federal Register**, together with supporting data, to the customer and interested parties for review and comment during the formal period of public participation. In addition, prior to the formal 90-day public participation process, Southwestern met with the customer and the customer representative to discuss the preliminary information on the proposed rate adjustment. Only one formal comment was received from Gillis & Angley, Counsellors at Law, on behalf of Sam Rayburn Dam Electric Cooperative, Inc. (SRDEC), which stated that SRDEC (the sole customer) had no objection to the proposed rate adjustment.

Upon conclusion of the comment period in August 2002, Southwestern finalized the Power Repayment Study and rate schedule for the proposed annual rate of $2,013,024 which is the lowest possible rate needed to satisfy repayment criteria. This rate represents an annual decrease of 3.1 percent.

Information regarding this rate decrease, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74103.

Comments and Responses

Southwestern received one written comment in which the customer representative expressed no objection to the proposed rate adjustment.

Other Issues

There were no other issues raised during the informal meeting or during the formal public participation period.

Administrator's Certification

The FY 2002 Revised Rayburn PRS indicates that the annual power rate of $2,013,024 will repay all costs of the project, including amortization of the power investment consistent with provisions of the Department of Energy (DOE) Order No.

RA 6120.2. In accordance with Delegation Order No. 00–037.00, December 6, 2001, and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed Rayburn power rate is consistent with applicable law and the lowest possible rate consistent with sound business principles.

Environment

The environmental impact of the rate decrease proposal was evaluated in consideration of DOE's guidelines for implementing the procedural provisions of the National Environmental Policy Act, 10 CFR part 1021, and was determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me, I hereby confirm, approve and place in effect on an interim basis, for the period October 1, 2002, through September 30, 2006, the annual Sam Rayburn Dam Rate of $2,013,024 for the sale of power and energy from Sam Rayburn Dam to the Sam Rayburn Electric Cooperative, Inc., under Contract No. DE–PM75–92SW00215, dated October 7, 1992.

Dated: September 18, 2002.

Spencer Abraham,

Secretary.

[FR Doc. 02–24864 Filed 9–30–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Modification and Construction of Transmission Lines for the U.S. 93 Hoover Dam Bypass Project (DOE/EIS–0352)

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of Decision.

SUMMARY: The Federal Highway Administration (FHWA) prepared an Environmental Impact Statement (EIS) for construction of a new segment of U.S. Highway 93 for the purpose of improving congestion and hazardous vehicle/pedestrian conflicts where the highway crosses the Colorado River over Hoover Dam. As a cooperating agency for the EIS, Western Area Power Administration (Western) proposed modifications to its transmission system and facilities to accommodate the construction of the new highway and bridge spanning the Colorado River. With this Record of Decision (ROD), Western is adopting the FHWA EIS and announcing its decision to modify its transmission system to accommodate the new highway segment. Western's decision for its action considered the environmental ramifications of the U.S. 93 Hoover Dam Bypass Project (Project). Western will ensure that its responsibilities under the National Historic Preservation Act (NHPA) and the Endangered Species Act (ESA) are met before the modifications are implemented.

FOR FURTHER INFORMATION CONTACT: Mr. John Holt, Environment Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, telephone (602) 352–2592, e-mail *holt@wapa.gov.* Copies of the EIS and the FHWA ROD are available from Dave Zanetell, Project Manager, Federal Highway Administration, 555 Zang Street, HFL–16, Lakewood, CO 80228, telephone (303) 716–2157. For information about the Department of Energy (DOE) National Environmental Policy Act (NEPA) process, contact Ms. Carol M. Borgstrom, Director, NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: FHWA was the lead agency for the Project EIS (FHWA–AZNV–EIS–98–03–01; Final dated January 2001). Western was designated a cooperating agency for the Project EIS by the FHWA on November 27, 1998. After an independent review of the Final FHWA EIS, Western concluded that its comments and suggestions have been satisfied and with this notice, is adopting the FHWA EIS for its participation in the Project. Western's EIS number is DOE/EIS–0352.

The FHWA released its ROD on the Project in March 2001 and selected the Sugarloaf Mountain route as its preferred alternative. The Sugarloaf Mountain Alternative consists of construction of a new bridge and highway access across the Colorado River in the vicinity of Hoover Dam. The new bridge and highway will eliminate truck traffic and other through-traffic over Hoover Dam. The Project is located in Clark County, Nevada, and Mohave County, Arizona, and lies entirely on Federal lands, including the Lake Mead National Recreation Area (administered by the

National Park Service) and the Hoover Dam Reservation Area (administered by the U.S. Bureau of Reclamation). The Sugarloaf Mountain Alternative crosses the Colorado River about 1,500 feet downstream from Hoover Dam and requires construction of approximately 2.2 miles of highway approach in Nevada, a 1,700-foot-long bridge, and a 1.1-mile highway approach in Arizona. The EIS addresses the effects of the Project, including modification of Western's transmission system.

Western has decided to modify the current transmission system configuration including substation terminal work, and remove the Arizona and Nevada (A&N) Switchyard to accommodate the new highway segment and bridge. Modifications to Western's transmission system will occur in two phases. The modifications for the first phase include: (a) Rebuilding approximately 2.6 (total) miles of the Hoover-Mead No. 6 (single circuit) and No. 7 (double circuit) 230-kilovolt (kV) Transmission Lines (removing electrical equipment, conductors, overhead ground wires; replacing lattice steel structures with steel poles; and installing conductors, overhead ground wire, insulators, and miscellaneous transmission line hardware); (b) Removing conductors and overhead ground wires and insulator assemblies for approximately 1.2 (total) miles of the existing Arizona-Nevada Circuits 11 and 12 230-kV Transmission Lines between the Hoover Dam to the A&N Switchyard; (c) Constructing approximately 0.3 miles of single circuit 230-kV transmission line connecting Southern California Edison Circuit No. 10 to the A&N Switchyard and to the Hoover Dam Power Plant; and (d) Modifying transmission line connections at the Hoover Dam Power Plant yard and A&N Switchyard to accommodate the new configurations. Terminal work will include replacing surge arresters and associated steel supports. Other first phase modifications may be required based on final design. Phase one would be complete by spring 2003.

Modifications for the second phase include the removal of the A&N Switchyard and the upgrade of the Hoover-Mead transmission line. The impacts of the removal of the A&N Switchyard were evaluated as part of the EIS. The removal of the A&N Switchyard will dictate upgrades to existing transmission lines that connect at the switchyard and run to the Mead substation (Hoover-Mead Transmission Line Upgrade). The need for this transmission line upgrade was part of the transmission reconfiguration options evaluated in the Final EIS, but since the final configuration was dependent upon the FHWA's decision, this upgrade was not fully evaluated in the EIS. Phase two is scheduled for completion in spring 2004.

The FHWA determined that the Sugarloaf Mountain Alternative is the environmentally preferable alternative and evaluated the social, economic, and environmental impacts to the affected area in the EIS. Where the impact from Western's action was addressed as a subset of the overall Project impacts, the EIS serves as Western's environmental review. For the Hoover-Mead Transmission Line Upgrade, where the impacts from Western's action were not addressed pending final Project design, Western will prepare a separate Environmental Assessment (EA). Western will complete the EA, including cultural and endangered species consultations, prior to its implementation.

The EIS impact analysis concluded that, with mitigation measures, most impacts from the Project would not be significant. There would be significant unavoidable visual impacts to several historic properties and Traditional Cultural Properties (TCPs), including the Hoover Dam National Historic Landmark and the Gold Strike Canyon and Sugarloaf Mountain TCPs. Other historic sites or features would be affected or potentially affected by the Project, including some elements of the transmission system not owned by Western (the Nevada State Switchyard, the Metropolitan Water District Switchyard, and the Southern California Edison Switchyard), as well as the transmission towers and lines in Arizona and Nevada and the A&N Switchyard that would be affected by Western's action. The FHWA has consulted with the State Historic Preservation Office, the Advisory Council on Historic Preservation and Native American tribes. A Programmatic Agreement (PA) and treatment plan was developed for avoidance, minimization, and mitigation of adverse effects to historical and cultural properties. Western is a signatory to the PA. The FHWA is required to complete historic documentation of facilities affected by the Project as described in the PA. Western will ensure that its responsibilities under the NHPA are met before its action is implemented.

There will be no air, noise, land use, or socioeconomic impacts stemming from phase one of Western's action. For the Project as a whole, there will be no long-term impacts to air quality. Noise levels would be elevated during construction due to construction traffic and blasting. Some recreational activities would be restricted during construction for safety purposes, but there are no long-term impacts to the general uses of the area. Since the Project area is located in a currently unpopulated area, no minority or low-income groups live in the area; therefore, no disproportionately high and adverse human health or environmental effects on minority and low-income groups is anticipated.

The U.S. Fish and Wildlife Service issued a Biological Opinion for the Project, which determined that the Project is not likely to adversely affect the bald eagle (*Haliaeetus leucocephalus*), razorback sucker (*Xyrauchen texanus*), southwestern willow flycatcher (*Empodonax traillii extimus*), bonytail chub (*Gila elegans*), or Devil's Hole pupfish (*Cyprinodon diabolis*), which are federally listed endangered species. The Sugarloaf Mountain Alternative may affect the desert tortoise, a Federally-listed threatened species. The Biological Opinion provides mitigation to avoid harm to the desert tortoise. Western will ensure that its responsibilities under the ESA are met before the transmission line modifications are implemented.

Other species of concern affected by the Project include the desert bighorn sheep (*Ovis canidensis nelsoni*), banded Gila monster (*Heloderma suspectum cinctum*), Yuma puma (mountain lion) (*Felis concolor browni*), and bicolored penstemon (*Penstemon bicolor ssp. roseus*). Western is adopting the mitigation measures in the Final EIS and the terms and conditions identified in the FHWA Biological Opinion for reducing impacts to these species.

While the Colorado River itself is in an area subject to flooding, the Project area is considered to be in an area of minimal or moderate risk of flooding. There are no wetlands in the Project area. Construction impacts to water quality will primarily be from runoff from new cut and fill slopes and construction roads. Western construction activities may impact water quality; therefore, it is adopting mitigation measures specified in the EIS to minimize these impacts.

The A&N Switchyard will be removed as part of Western's phase two action. The site may contain soil contaminated with polychlorinated biphenyls (PCBs). Prior to any construction activities, contaminated soil will be identified, removed, and properly disposed of in accordance with the Resource Conservation and Recovery Act, and other applicable or relevant and appropriate requirements.

Description of Alternatives

Construction of the FHWA preferred alternative will require removal and modification of Western's transmission system. Western evaluated seven preliminary electrical transmission reconfiguration options as part of the EIS. All options require removal of existing spans and towers and construction of new spans. Three of the options would require removal of the existing A&N Switchyard and replacing a single-phase circuit with a double-phase circuit to the Mead Substation (phase two). Additionally, the Sugarloaf Mountain Alternative requires a realignment of two of the Hoover-Mead transmission lines to accommodate the new highway alignment.

Western determined the best engineering approach for the phase one and two modifications discussed above based on an evaluation of the electrical conditions on the transmission lines and switchyards and current transmission line construction and electrical standards.

The No Action Alternative was evaluated in the EIS and found to not meet the Project purpose and need.

Mitigation Measures

The Final EIS identified mitigation measures needed to reduce the impacts of the Project. The specific measures are discussed in the FHWA ROD on pages 22 to 35 and in Chapter 3 of the EIS. Western is adopting those measures that are applicable to its action and will issue a Mitigation Action Plan (MAP) prior to any construction activities that will address the adopted and standard mitigation measures. Some of the measures include restricting vehicular traffic to existing access roads or public roads, recontouring and reseeding disturbed areas, environmental awareness training for all construction and supervisory personnel, and mitigation of radio and television interference generated by transmission lines. Long-term operations of the transmission line will follow Western's standard operating procedures and will not be affected by this action. The mitigation that applies to the construction of the new lines and the upgrading of the existing lines includes the following provisions:

1. Protection of the desert tortoise and banded Gila monster through compliance with the FHWA Biological Opinion.

2. Protection of Cultural and Historical resources as signators to the Programmatic Agreement.

3. Adoption of mitigation measures as specified in the FWHA EIS.

4. Monitor actions for compliance with Western's standard mitigation measures.

This ROD has been prepared in accordance with Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508) and DOE Procedures for Implementing NEPA (10 CFR part 1021). Upon approval, the MAP will be made available.

Dated: September 20, 2002.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–24862 Filed 9–30–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7386–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements—40 CFR Part 257, Subpart B

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting requirements—40 CFR Part 257, Subpart B, ICR #1745.04, OMB Control #2050–0154, expiring September 30, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 31, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1745.04 and OMB Control No. 2050–0154, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1745.04. For technical questions about the ICR contact Paul Cassidy at 703–308–7281 in the Office of Solid Waste.

SUPPLEMENTARY INFORMATION: Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements—40 CFR Part 257, Subpart B , OMB Control No. 2050–0154, EPA ICR No. 1745.04, expiring September 30, 2002. This is a request for extension of a currently approved collection.

In order to effectively implement and enforce final changes to 40 CFR part 257, subpart B on a State level, owners/operators of construction and demolition waste landfills that receive CESQG hazardous wastes will have to comply with the final reporting and recordkeeping requirements. The 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), as amended, mandated that the U.S. Environmental Protection Agency (EPA) revise the Criteria for Solid Waste Disposal Facilities that may receive household hazardous wastes and conditionally exempt small quantity generator (CESQG) wastes. EPA submitted a Report to Congress in October 1988 that assessed the impacts on human health and the environment associated with Subtitle D (non-hazardous waste) units. While this study found that the revised Criteria for municipal solid waste disposal units were necessary to protect human health and the environment, the report failed to draw a conclusion relating to industrial Subtitle D units. The limited data on such units indicated that there might be a basis for concern and further study was needed.

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. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on May 1, 2002 (67 FR 21668); no comments were received. Burden Statement: The annual public reporting and record keeping

burden for this collection of information is estimated to average 67 hours per response. 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.

Respondents/Affected Entities: Construction and demolition waste landfill owners/operators and State Agencies.

Estimated Number of Respondents: 145.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 9,675 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $938.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1745.04 and OMB Control No. 2050–0154 in any correspondence.

Dated: September 2, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–24805 Filed 9–30–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[UT–001–0050; FRL–7388–2]

Adequacy Status of the Utah County, Utah PM_{10} State Implementation Plan Revision for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this document, EPA is notifying the public that we have found that the motor vehicle emissions budgets (for 2010 and 2020) in the Utah County, Utah particulate matter of 10 micrograms in size or smaller (PM_{10}) State Implementation Plan (SIP) revision submitted on July 3, 2002, are adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Mountainland Association of Governments, the Utah Department of Transportation, and the U.S. Department of Transportation are required to use the 2010 and 2020 motor vehicle emissions budgets from this submitted SIP revision for future conformity determinations.

DATES: This finding is effective October 16, 2002.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, Air & Radiation Program (8P–AR), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6493.

The letter documenting our finding is available at EPA's conformity website: *http://www.epa.gov/oms/transp/conform/adequacy.htm.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.

This action is simply an announcement of a finding that we have already made. We sent a letter to the Utah Department of Environmental Quality on September 5, 2002 stating that the 2010 and 2020 PM_{10} and NO_X motor vehicle emissions budgets in the submitted Utah County PM_{10} SIP revision are adequate. This finding has also been announced on our conformity website at *http://www.epa.gov/oms/transp/conform/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from our completeness review, and it also should not be used to prejudge our ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved, and vice versa.

We've described our process for determining the adequacy of submitted SIP budgets in a memo entitled, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,'' dated May 14, 1999. We followed this guidance in making our adequacy determination.

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

Dated: September 23, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 02–24916 Filed 9–30–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7387–7]

EPA Science Advisory Board, Notification of Public Advisory Committee Meetings of the Contaminated Sediment Science Plan Review Panel; and Notification of Cancelled Meetings of the Human Health Research Strategy Review Panel

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of three meetings of the Contaminated Sediment Science Plan Review Panel (CSSP Review Panel) of the U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB). The Panel will meet on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. For teleconference meetings, available lines may also be limited.

Important Notice: The document that is the subject of this SAB review, Contaminated Sediment Science Plan, June 13, 2002 draft, is available on the SAB Web site at *http://www.epa.gov/sab/panels/cssprpanel.html.* Any questions concerning the draft document should be directed to the program contact noted below.

Background—The background for this review and the charge to the panel were published in the 67 FR 49336, July 30, 2002. The notice also included a draft charge to the panel, a call for nominations for members of the panel in certain technical expertise areas needed to address the charge and described the process to be used in forming the panel.

1. Contaminated Sediment Science Plan Review Panel—October 17, 2002 Teleconference

The CSSP Review Panel will meet on October 17, 2002 via teleconference from 2:00 pm to 4:00 pm Eastern Time. This teleconference meeting will be hosted out of Conference Room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The meeting is open to the public, but, due to limited space, seating will be on a first-come basis. The public may also attend via telephone, however, lines may be limited. For further information concerning the meeting or how to obtain the phone number, please contact Mr. Lawrence Martin, Designated Federal Officer, contact information indicated in this FR notice.

Purpose of the Meeting—The purpose of this public teleconference meeting is to: (a) Discuss the charge and the adequacy of the review materials; (b) to discuss specific charge assignments to the CSSP Review Panelists; and (c) to clarify specific points of interest raised by the Panelists in preparation for the face-to-face meeting to be held on October 30–31, 2002.

See below for availability of review materials, the charge to the review panel, and contact information.

2. Contaminated Sediment Science Plan Review Panel—October 30–31, 2002 Meeting

The CSSP Review Panel of the Science Advisory Board (SAB) will conduct a public meeting on October 30–31, 2002. The meeting will begin on October 30 at 8:30 am and adjourn no later than 5:30 pm that day. On October 31, 2002, the meeting may begin at 8 am and adjourn no later than 5 pm. The meeting will take place at the SAB Conference Room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The meeting is open to the public, with the same provisions identified above in #1.

Purpose of the Meeting—The purpose of this meeting is to conduct a review of an Agency draft document entitled, Contaminated Sediment Science Plan, June 13, 2002 draft, prepared by the U.S. Environmental Protection Agency. In particular, the Review Panel will: (a) Engage in dialogue with appropriate officials from the Agency who are responsible for the Plan's preparation; (b) discuss panelist's written responses to elements addressed by the charge questions; (c) receive public comments as appropriate; and (d) assemble and revise written drafts to complete a rough draft written review of the Plan.

See below for availability of review materials, the charge to the review panel, and contact information for both meetings.

3. Contaminated Sediment Science Plan Review Panel—November 22, 2002 Teleconference

The CSSP Review Panel will meet on November 22, 2002 via teleconference from 3:00 pm to 5:00 pm Eastern Time. This teleconference meeting will be hosted out of Conference Room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The meeting is open to the public, with the same provisions identified above in #1.

Purpose of the Meeting—The purpose of this public teleconference meeting is to: (a) Discuss drafts of sections of the Panel Report; (b) recommend revisions to the Panel Report; and (c) clarify specific points of concern for further discussion and resolution.

The need for subsequent meetings of the Review Panel will be discussed at this meeting and schedules of any future meetings to complete review of this topic will be determined. Information concerning any future public meetings will appear in **Federal Register** notices as appropriate.

Charge to the CSSP Review Panel—The background to the charge and the charge questions are located on the SAB website at: *http://www.epa.gov/sab/panels/cssprpanel.html*.

FOR FURTHER INFORMATION: To inquire about public participation in the meetings identified above please contact Mr. Lawrence Martin, Designated Federal Officer, CSSP Review Panel, USEPA Science Advisory Board (1400A), Suite 6450R, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–6497; fax at (202) 501–0323; or via e-mail at *martin.lawrence@epa.gov*. Requests for oral comments must be in writing (e-mail, fax or mail) and received by Mr. Martin no later than noon Eastern Time on the following dates: for the October 17 teleconference call, requests must be received by October 12; for the October 30–31 face to face meeting, requests must be received by October 25, 2002; and for the November 22 teleconference, requests must be received by November 15, 2002.

The SAB will have a brief period (no more than 10 minutes) available during the Teleconference meeting for applicable public comment. For the Teleconference, the oral public comment period will be divided among the speakers who register. At the October 30–31 face to face meeting, the oral public comment will be limited to 120 minutes divided among the speakers who register. Registration is on a first come basis. Speakers who have been granted time on the agenda may not yield their time to other speakers. Those wishing to speak but who are unable to register in time may provide their comments in writing. Members of the public desiring additional information about the meeting locations or the call-in number for the teleconference, must contact Mr. Martin at the addresses and numbers identified above.

A copy of the draft agenda for each meeting will be posted on the SAB Web site (*http://www.epa.gov/sab*) (under the AGENDAS subheading) approximately 10 days before that meeting.

Availability of Review Material—There is one primary document that is the subject of the review. The review document is available electronically at the following site *http://www.epa.gov/sab/panels/cssprpanel.html*. For questions and information pertaining to the review document, please contact Dr. Lee Hofmann Office of Solid Waste and Emergency Response, Mail Code 5103T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, DC 20460 at telephone number 202–566–1928, or by e-mail at: *hofmann.lee@epa.gov*.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total (unless otherwise indicated above). Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the

comments may be made available to the review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (http://www.epa.gov/sab) and in the Science Advisory Board FY2001 Annual Staff Report which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Martin at least five business days prior to the meeting so that appropriate arrangements can be made.

Human Health Research Strategy Review Panel—Meeting Cancellation

The Agency's Science Advisory Board (SAB) announced on June 19, 2002 (67 FR 41718–41721) that it was initiating the panel formation process for the review of the Environmental Protection Agency's Human Health Research Strategy. At that time, the SAB also solicited nominations for members of the expert panel that would be established to review the research strategy. The SAB also announced on September 12, 2002 (67 FR 57814–57815), its intention to hold two meetings to conduct this review. The dates identified for the meetings were September 30, 2002 and October 7–9, 2002. Today the SAB is notifying the public that the panel meetings will not be held on these dates and that they will be scheduled for a later time. Unexpected difficulties in scheduling the meeting have caused this delay. A future **Federal Register** notice will provide information on when these meetings will be rescheduled. For further information, please contact Dr. Suhair Shallal, Designated Federal Officer, by email at *shallal.suhair@epa.gov*, or by telephone at (202) 564–4566.

Dated: September 25, 2002.

Vanessa Vu,

Director, , EPA Science Advisory Board Staff Office.

[FR Doc. 02–24915 Filed 9–30–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7387–8]

Koppers Charleston Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environment Protection Agency is proposing to enter into an administrative settlement with Koppers Charleston (Beazer East, Inc.) for response costs pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Koppers Charleston Superfund Site (Site) located in Charleston, Charleston County, South Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–CPSB), 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: September 13, 2002.

Anita Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–24914 Filed 9–30–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL DEPARTMENT AGENCY

[FRL–7388–1]

Proposed Agreement Pursuant to Sections 122(g) and (h) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Zionsville Third Site Superfund Site

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice; request for public comment on proposed *de minimis* settlement.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (''CERCLA''), notification is hereby given of a proposed administrative agreement concerning the Zionsville Third Site hazardous waste site located approximately 150 feet east of U.S. Highway 421 and approximately 350 feet south of the Environ-Chem Superfund site in Zionsville, Indiana (the ''Site''). EPA proposes to enter into this agreement under the authority of sections 122(g) and (h) and 107 of CERCLA. The proposed agreement has been executed by the following de minimis parties: Ahlstrom Filtration, Inc.; Akzo Nobel Coatings Inc. (Wyandotte Paint Co.); Also Industries, Inc. (Synthane-Taylor); Allen-Bradley Company, LLC.; Allied Waste Transportation, Inc. d/b/a Vermillion Waste Systems; American National Can Company, now Rexam Beverage Can Company; American Recovery Company, Incorporated; A.O. Smith Corporation; Ashland Inc.; Belden Inc. (Cooper Industries); BMC Industries, Inc. (for Buckbee Mears Co.); Borg Warner Inc. on behalf of Warner Gear Division (Borg-Warner); Brulin & Company, Inc.; Carlisle Tire &Wheel Company (formerly known as Carlisle Tire & Rubber Company (Indus Wheel); Chemical Waste Management, Inc.; Child Craft Industries, Inc. (Smith Cabinet); Cintech Industrial Coatings, Inc. (for Cincinnati Varnish); Cloudsley Company; Cohesant of MO, Inc. s/k/a King Adhesives, Inc. and its parent Cohesant Technologies Inc.; Commercial Sewer Cleaning Company, Inc.; Cummins Engine Co.; David L. Wade, Inc. (FKA Standard Paints Incorporated); Davis-Frost, Inc. (formerly Frost Paint & Oil Co.); Devro-Teepak, Inc.; Egyptian Lacquer Mfg. Co., Inc.; Electro-Spec, Inc.; Emhart Industries, Inc.; Ericsson Inc.; Farm Credit Services of Mid-America; Freudenberg-NOK, Gen. Corp Inc (General Tire); Georgia Pacific Corporation, successor in interest to James River II (Crown Zellerback); H.B. Fuller Company; Heriff Jones, Inc.; Hill-Room Company, Inc.; International Paper Company (successor in interest to Champion International Corporation); International Paper Company (for Chase Packaging Corp.); I.W.D. Waste, Inc.; Kurfees Coatings (Louisville Varnish); KCL Corporation; Kewanee Industries Inc. for Bruning Paint Company and Chevron Environmental Management

Co.; Knauf Fiber Glass; Lennox International Inc. as related to Wickes Mfg. (Bohn Alum./Heat); Marathon Oil Company (includes Rock Island Refining Corporation which merged with Marathon Oil Company); Marathon Pipe Line Company; Marcus Paint Company; Marisol, Inc.; McLaughlin Gormley King Company; Modine Manufacturing Company (successor in interest to Signet Systems (Easton)); Moormann Bros. Mfg.; Mueller Copper Tube Products, Inc. f/k/a Halstead Industries, Inc.; National Railroad Passenger Corporation; Onan Corporation; Philips Electronics North America Corporation; PPG Industries, Inc.; R.R. Donnelley & Sons Company; Red Spot Paint & Varnish Co., Inc.; Reliance Electric Company; RHI Holdings, Inc. as successor to Rexnold Holdings, Inc.; Robbie Manufacturing, Inc.; Rockwell International; Seagate Technology LLC, as successor in interest to the operating assets of Seagate Technology, Inc. and on behalf of Magnet Peripherals, Inc & MPI Plastic; Sequa Corporation; The Sherwin-Williams Corporation; Superior Oil Company, Inc.; The Timken Company; TRW Inc.; Unisys Corporation, United States Gypsum (for itself and as successor for this matter only to Durabond); United Technologies Corporation (Inmont Corporation and Essex Group); United Technologies Corporation (United Technologies Automotive, Inc.—Alam Plastics); Valhi, Inc./IMPEX; Viacom Inc., successor by merger to CBS Corporation, f/k/a Westinghouse Electric Corporation; Thermo King; Wabash Products; White Consolidated Industries, Inc.; Whittaker Corporation (Dayton Coatings) and all affiliates; World Color Press (Salem Gravure) [n/k/a Quebecor World (USA), Inc.]; Federal Bureau of Prisons; and U.S. Department of the Navy.

Under the proposed agreement, the de minimis parties will pay a total of approximately $3,083,555.54, which will be placed into an escrow account to be used for response costs incurred and to be incurred at the Site. A group of 34 non-de minimis settlors under this agreement will perform the remaining removal actions to be conducted at the Site, and pay EPA's costs of overseeing these removal actions. EPA has incurred and will continue to incur response costs overseeing response activities conducted to mitigate an imminent and substantial endangerment to human health or the environment present or threatened by hazardous substances present at the Site. The Settling Parties have spent approximately $8 million to perform cleanup activities at the Site to date, and the remaining response cost are estimated at $6 million. The non-de minimis settlors under this proposed agreement are: Alcoa Inc.; Anderson Development Company; ArvinMeritor, Inc., successor in interest to Arvin Industries, Inc.; Batesville Casket Company, Inc.; Beazer East, Inc.; Bemis Company, Inc.; Bridgestone/Firestone North America Tire, LLC; Chemical Marketing Corp.; Detrex Corporation; Exxon Mobil Corporation for Mobil Oil Corporation; Ford Motor Company; Freightliner LLC (formerly Freightliner Corp.); General Electric Company; General Motors Corporation; HC Industries, Inc.; Honeywell International Inc.; JCI Jones Chemicals, Inc.; Jeffboat LLC; Kimberly Clark Corporation; Liberty Solvents & Chemicals; Lilly Ind. Coatings, Inc. n/k/a The Valspar Corporation and The Valspar Corporation; Lucent Technologies (AT&T); Maytag Corporation (Jenn-Air); McDonnell Douglas Corporation, a wholly-owned subsidiary of The Boeing Company; Pratt & Lambert; Radio Materials Corporation; RCA Corporation; S.C. Johnson & Son, Inc.; Stolle Corporation; Tyco Healthcare Group LP, as successor in interest to the Kendall Company; Tyco International (US) Inc. (Ludlow Corporation); Union Carbide Corporation; Waste Research & Reclamation Co., Inc.; and Whirlpool Corporation.

For thirty days following the date of publication of this notice, the EPA will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before October 31, 2002.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to: In the Matter of Zionsville Third Site, Zionsville, Indiana, U.S. EPA Docket No. V–W–02C–698.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 66064–3490, (312) 886–0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 02–24913 Filed 9–30–02; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–2338]

Twelfth Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee will be held on October 31, 2002, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: October 31, 2002; 2:30 p.m. to 4:30 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room (TW–C305), Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the twelfth meeting of the WRC–03 Advisory

Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the twelfth meeting is as follows:

Agenda

Twelfth Meeting of the WRC–03 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room (TW–C305), Washington, DC 20554. October 31, 2002; 2:30 p.m. to 4:30 p.m.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Eleventh Meeting
4. Reports from regional WRC–03 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 02–24894 Filed 9–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2002–N–9]

Notice of Availability of the Federal Housing Finance Board Information Quality Guidelines

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Housing Finance Board (Finance Board) has made available its final Information Quality Guidelines pursuant to the requirements of Office of Management and Budget (OMB) Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies, dated February 22, 2002.

FOR FURTHER INFORMATION CONTACT: Andy Taylor, Computer Specialist, (202) 408–2830; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554) directs OMB to issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by Federal agencies.'' The OMB guidelines require each agency to prepare a final report providing the agency's information quality guidelines. Each agency is further required to publish a notice of availability of this final report in the **Federal Register** and to post this report on its Web site by October 1, 2002. The Finance Board will post its final Information Quality Guidelines on its Web site at *www.fhfb.gov.*

Dated: September 26, 2002.

Judith L. Hofmann,

Director, Office of Management.

[FR Doc. 02–24923 Filed 9–30–02; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice.

SUMMARY: *Background:* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. Report title: Consumer Satisfaction Questionnaire
Agency form number: FR 1379
OMB Control number: 7100–0135
Frequency: Event–generated
Reporters: Consumers
Annual reporting hours: 195 hours
Estimated average hours per response: 20 minutes
Number of respondents: 592
Small businesses are affected.
General description of report: This information collection is voluntary (15 U.S.C. §57(a)(f)(1)). This information collection is not usually given confidential treatment under the Freedom of Information Act (FOIA). However, if a respondent provides information not specifically solicited on the form, that information may be exempt from disclosure under FOIA (5 U.S.C. §§(b)(4), (b)(6), or (b)(7)) upon specific request from the respondent.
Abstract: The questionnaire is sent to consumers who have filed complaints against state member banks. It is used to determine whether complainants are satisfied with the way the Federal Reserve System handled their complaints and to solicit suggestions for improving the complaint investigation process.

2. Report title: The Disclosure Requirements in Connection with Regulation CC to Implement the Expedited Funds Availability Act
Agency form number: Reg CC
OMB Control number: 7100–0235
Frequency: Event–generated
Reporters: State member banks and uninsured state branches and agencies of foreign banks
Annual reporting hours: 331,630 hours
Estimated average hours per response: Initial notice or upon request, 1 minute; Case–by–case hold notice, 3 minutes; Notice of exceptions, 3 minutes; Notice posted where customers make deposits, 15 minutes; Annual notice of new ATMs, 5 hours; Notice of changes in policy, 20 hours; and Notice of nonpayment to depositary bank, 1 minute.
Number of respondents: 1,271
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 4008). Because the Federal Reserve does not collect any information, no issue of confidentiality arises.
Abstract: Regulation CC requires depository institutions to make funds

deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and costly) overdrafts, and allow customers to compare the policies of different institutions before deciding at which institution to deposit funds. The regulation also requires notice to the depositary bank and to a customer of nonpayment of a check.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:

1. Report title: Applications for Membership in the Federal Reserve System
Agency form number: FR 2083, FR 2083A, FR 2083B, and FR 2083C
OMB Control number: 7100–0046
Frequency: On Occasion
Reporters: Commercial banks and certain mutual savings banks
Annual reporting hours: 280 hours
Estimated average hours per response: 4 hours
Number of respondents: 70
Small businesses are affected.
General description of report: This information collection is required to obtain or retain a benefit (12 U.S.C. §§ 321, 322, and 333). The information in the application is not confidential; however, parts may be given confidential treatment at the applicant's request (5 U.S.C. § 552(b)(4)).
Abstract: The application for membership is a required one–time submission, pursuant to Section 9 of the Federal Reserve Act, which collects the information necessary for the Federal Reserve to evaluate the statutory criteria for admission of a new or existing bank to membership in the Federal Reserve System. This application provides managerial, financial, and structural data.
Current Actions: The Federal Reserve proposes to revise the application by replacing a majority of Section I of the application, which applies to de novo banks, with a reference to the new Interagency Charter and Federal Deposit Insurance application form (ICDIA form), recently developed by the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS). Two existing items and a footnote in this section would be retained and slightly clarified. One item in Section II of the membership application would be revised slightly, and Section III would remain unchanged. The proposed revisions should improve consistency and make filing of the application more expeditious and less burdensome.

2. Report title: Domestic Finance Company Report of Consolidated Assets and Liabilities
Agency form number: FR 2248
OMB Control number: 7100–0005
Frequency: Monthly, Quarterly, and Semiannually
Reporters: Domestic finance companies
Annual reporting hours: 352 hours
Estimated average hours per response: Monthly, 18 minutes; Quarterly, 25 minutes; and Semiannually, 10 minutes.
Number of respondents: 80
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. § 225(a)). Individual respondent data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. § 552).
Abstract: Each monthly report collects balance sheet data on major categories of consumer and business credit receivables and on major short–term liabilities. For quarter–end months (March, June, September, and December), additional asset and liability items are collected to provide a full balance sheet. The supplemental section collects data on asset–backed securities. These data are used to construct universe estimates of finance company holdings, which are published in the monthly statistical releases Finance Companies (G.20) and Consumer Credit (G.19), in the quarterly statistical release Flow of Funds Accounts of the United States (Z.1), and in the Federal Reserve Bulletin (Tables 1.51, 1.52, and 1.55).
Current Actions: The agency staff proposes three changes to the report. First, because the number of finance companies participating in the monthly survey has declined, the staff proposes to reduce the authorized panel size from 100 finance companies to 80 finance companies. Second, the staff proposes to add four questions about the breakdown of 1–4 family real estate loans. These questions would be answered only for quarter–end months. Third, the staff proposes to add a special addendum section to the report, which would on occasion include additional questions pertaining to financial topics of interest. These addendum questions would be asked up to twice a year. To help ease the reporting burden, these addendum questions would be sent in advance to the respondents.

3. Report title: Notifications Related to Community Development and Public Welfare Investments of State Member Banks
Agency form number: FR H–6
OMB Control number: 7100–0278
Frequency: Event–generated
Reporters: State member banks
Annual reporting hours: 80 hours
Estimated average hours per response: Investment notice, 2 hours; Application, 5 hours; and Extension of divestiture period, 5 hours.
Number of respondents: Investment notice, 25; Application, 5; and Extension of divestiture period, 1.
Small businesses are not affected.
General description of report: This information collection is required to obtain a benefit (12 USC 338a, and 12 CFR 208.22). Individual respondent data generally are not regarded as confidential, but information that is proprietary or concerns examination ratings would be considered confidential.
Abstract: Regulation H requires state member banks that want to make community development or public welfare investments to comply with the Regulation H notification requirements: (1) if the investment does not require prior Board approval, a written notice must be sent to the appropriate Federal Reserve Bank; (2) if certain criteria are not met, a request for approval must be sent to the appropriate Federal Reserve Bank; and, (3) if the Board orders divestiture but the bank cannot divest within the established time limit, a request or requests for extension of the divestiture period must be submitted to the appropriate Federal Reserve Bank.
Current Actions: The proposed revision would create a form and checklist that banks could use, at their option, to report the information required by Regulation H for investments that do not require prior Board approval. To the extent that this voluntary form were used by banks, it would potentially ease their reporting burden by allowing the banks to fill in the form rather than typing a letter containing the required information. The form will also potentially help the Board staff to collect uniform and thorough information about community development and public welfare investments. The checklist would help banks determine whether they must submit a request for prior approval.

4. Report title: International Applications and Prior Notifications Under Subpart B of Regulation K
Agency form number: FR K–2
OMB Control number: 7100–0284
Frequency: Event–generated
Reporters: Foreign banks
Annual reporting hours: 700 hours
Estimated average hours per response: 35 hours

Number of respondents: 20
Small businesses are not affected.
*General description of report:*This information collection is required to obtain or retain a benefit (12 U.S.C. 3105 and 3107). The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption (5 U.S.C. 552).
Abstract: Foreign banks are required to obtain the prior approval of the Federal Reserve to establish a branch, agency, or representative office, or to acquire ownership or control of a commercial lending company in the United States or to change the status of any existing office in the United States. The Federal Reserve uses the information, in part, to fulfill its statutory obligation to supervise foreign banking organizations with offices in the United States.
Current Actions: The application requirements currently are contained in Supervision and Regulation Letter dated March 5, 1992 (SR 92–6). A copy of this letter is available on the Board's public website at http://www.federalreserve.gov/boarddocs/srletters/. The proposed FR K–2 would consist of a reporting form with filing instructions in addition to the informational requirements currently contained in SR 92– 6. The proposed modified and enhanced form FR K–2 would clarify and streamline the information required in international applications and prior notifications and reduce the need for repeated requests for additional information after the application or notification has been filed.

The current FR K–2 was developed in 1992 shortly after the passage of the Foreign Bank Supervision Enhancement Act. Since that time, the Federal Reserve has gained significant experience in processing these types of applications and has over time expanded and modified the list of standard information that should be required in these types of applications and notifications. This expanded list would include information regarding the home country laws and regulations designed to deter and prevent money laundering, terrorist financing and other illicit activities, as well as the policies and procedures in place at the foreign bank to detect and prevent money laundering, terrorist financing, and other illicit activities.

Also, Regulation K has been modified to allow for more proposals to be processed under the prior notification procedures. SR 92–6 currently contains two attachments: one attachment related to information collected in applications to establish a branch, agency, or commercial lending company, and one attachment related to information collected in applications to establish a representative office. The form does not currently contain separate attachments outlining informational requirements for prior notifications. In order to add clarity, the proposed FR K–2 would have separate attachments as follows indicating the required information depending on the type of application or notification.

Attachment A – Information Requested in Connection with Applications by Foreign Banks to Establish Branches, Agencies, or Commercial Lending Companies in the United States (section 211.24(a)(1) of Regulation K).

Attachment B – Information Requested in Connection with Applications by Foreign Banks to Establish Representative Offices in the United States (section 211.24(a)(1) of Regulation K);

Attachment C – Information Requested in Connection with Notifications by Foreign Banks to Establish Branches, Agencies, or Commercial Lending Companies in the United States (section 211.24(a)(2)(i)(A) of Regulation K);

Attachment D – Information Requested in Connection with Notifications by Foreign Banks to Establish Representative Offices in the United States (section 211.24(a)(2)(i)(B)(1) – (3) of Regulation K);

Attachment E – Commitments Required in Connection with Applications and Notifications by Foreign Banks to Establish Branches, Agencies, Commercial Lending Companies, or Representative Offices in the United States.

5. Report title: Application for a Foreign Organization to Become a Bank Holding Company
Agency form number: FR Y–1f
OMB Control number: 7100–0119
Frequency: Event–generated
Reporters: Foreign banking organizations
Annual reporting hours: 360 hours
Estimated average hours per response: 90 hours
Number of respondents: 4
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. §§ 1842(a) and (c) and 1844(a) through (c)) and by the USA PATRIOT Act, § 327). The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption (5 U.S.C. 552).
Abstract: Under the Bank Holding Company Act (BHCA), submission of this application is mandatory for any company organized under the laws of a foreign country seeking initial entry into the United States through the establishment or acquisition of a U.S. subsidiary bank. Applicants must provide financial and managerial information, discuss the competitive effects of the proposed transaction, and discuss how the proposed transaction would enhance the convenience and needs of the community to be served.
Current Actions: Several changes would be made to the FR Y–1f, including: (1) clarifying the application to improve consistency with the FR Y–3 (OMB No. 7100–0121), where applicable; (2) adding language to the instructions for an organization seeking to become a financial holding company (FHC) in accordance with the Gramm–Leach–Bliley Act; (3) adding an item to collect information on the anti–money laundering measures taken by the Applicant and its home country to comply with the requirements of the USA PATRIOT Act; and (4) adding items to collect information regarding the manner in which a foreign bank applicant is supervised by its home country authority(ies) and whether it is able to provide adequate assurances of access to information on its operations and activities, as required by the Foreign Bank Supervision Enhancement Act (FBSEA).

Final approval under OMB delegated authority of the extension for three years, with minor clarifications to the following reports:

1. Report title: Applications for Subscription to, Adjustment in Holding of, and Cancellation of Federal Reserve Bank Stock
Agency form number: FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, and FR 2087
OMB Control number: 7100–0042
Frequency: On occasion
Reporters: National, State member, and Nonmember banks
Annual reporting hours: 881 hours
Estimated average hours per response: 0.5 hours
Number of respondents: 1,758
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. §§ 222, 248, 282, 287, 288, and 321). Upon request from an applicant, certain information may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552).

Abstract: These applications are required by the Federal Reserve Act and Regulation I and must be submitted to Federal Reserve Banks by organizing and existing member commercial banks requesting the issuance, adjustment, or cancellation of Federal Reserve Bank stock. The applications are necessary in order to obtain account data on a bank's capital and surplus and to document its request to increase or decrease its holdings of Federal Reserve Bank stock.

Final approval under OMB delegated authority of the implementation of the following report:

1. Report title: The Quantitative Impact Study
Agency form number: FR 3045
OMB Control number: 7100–0303
Frequency: One–time
Reporters: Large domestic bank holding companies
Annual reporting hours: 8,000 hours
Estimated average hours per response: 400 hours
Number of respondents: 20
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 1844) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The Federal Reserve, in conjunction with the Office of the Comptroller of the Currency (OCC), plan to survey twenty large bank holding companies (BHCs) as part of a worldwide effort by the Basel Committee on Banking Supervision (the Committee). The Committee plans to survey leading financial institutions from the thirteen countries participating on the Committee as well as many other countries in order to gauge the likely effects of proposed new capital standards for internationally active banking organizations.

On a best–efforts basis, BHCs will be asked to provide information about their exposures (e.g., loans and loan commitments) for each major loan portfolio (corporate, interbank, sovereign, and retail) and to identify for each portfolio the estimated effect of potential new regulatory capital requirements. Such information and corresponding pro forma capital requirements will be requested using current capital standards and also under each of several alternative approaches: a so–called ''standardized'' approach, which is similar to current rules, and both ''foundation'' and ''advanced'' internal risk–based measures. The survey will be completed using formatted Excel spreadsheets that will calculate each respondent's capital requirements based on the information it provides.

Board of Governors of the Federal Reserve System, September 24, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–24680 Filed 9–30–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

ACTION: Notice.

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829); OMB Desk Officer—Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

1. Report title: Recordkeeping, Reporting, and Disclosure Requirements in Connection with Regulation BB (Community Reinvestment Act)
Agency form number: N/A
OMB Control number: 7100–0197
Frequency: Annually
Reporters: State member banks
Annual reporting hours: 159,160 hours
Estimated average hours per response: Recordkeeping Requirement, small business and small farm loan register, 219 hours. Optional Recordkeeping Requirements, consumer loan data, 326 hours and other loan data, 25 hours. Reporting Requirements, assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; and HMDA out of MSA loan data, 253 hours. Optional Reporting Requirements, data on lending by a consortium or third party, 17 hours; affiliate lending data, 38 hours; strategic plan, 275 hours; and request for designation as a wholesale or limited purpose bank, 4 hours. Disclosure Requirement, public file, 10 hours.
Number of respondents: 976
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. §§ 248 (1) and 12 U.S.C. 2905 et seq.) and generally, the data that are reported to the Board are not considered onfidential.

Abstract: On May 30, 2002, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) published a joint request for comment on the proposed extension, without change, for OMB approval of the information collections contained in the CRA regulations (67 FR 37915). Pursuant to 5 CFR 1320.16 this is a final notice announcing the Board's approval of the information collection. The Board is publishing a separate final notice but this notice is substantively similar to the notice to be published by the other Agencies.

The Board did not receive any comments. However, the FDIC and OTS each received an identical comment from an academic. This commenter did not object to the proposed extension of OMB approval of the information collections contained in the CRA regulations. The commenter recommended that the Agencies (1) continue all existing data collection and reporting requirements; (2) maintain current public file requirements; and (3) do not consider or require any race data under CRA. Since these recommendations are not contrary to the proposed extension of OMB approval of the CRA information collections, the Agencies have not made any changes from the proposal in response to this comment.

Board of Governors of the Federal Reserve System, September 25, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–24848 Filed 9–30–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 2002.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. IB Bancshares, Inc., McKinney, Texas, and VB Bancshares, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Independent Bank, McKinney, Texas.

Board of Governors of the Federal Reserve System, September 24, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–24681 Filed 9–30–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 15, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Neil D. McCurry, Jr., Sarasota, Florida; to acquire additional voting shares, and Liane McCurry, Sarasota, Florida; J. Steadman McCurry, Charlotte, North Carolina, Neil D. McCurry, Sr., and Bettye S. McCurry, Bradenton, Florida; to acquire voting shares, of People's Community BancShares, Inc., Sarasota, Florida, and thereby acquire voting shares of People's Community Bank of the West Coast, Sarasota, Florida.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Arthur Temple, III, as trustee of the Arthur Temple III, Generation Skipping Trust, Lufkin, Texas, and certain other family trusts; to acquire voting shares of Diboll State Bancshares, Inc., Diboll, Texas, and thereby indirectly acquire voting shares of First Bank & Trust East Texas, Diboll, Texas.

Board of Governors of the Federal Reserve System, September 25, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–24850 Filed 9–30–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 25, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Farmers Bancorp Inc., Blytheville, Arkansas; to acquire 100 percent of the voting shares of First State Bank, Kenton, Tennessee

B. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Community Financial Corporation, Owatonna, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank Owatonna, Owatonna, Minnesota, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Davis Bancorporation, Inc., Davis, Oklahoma; to acquire an additional 5 percent, for a total of 22.05 percent, of the voting shares of Century Capital Financial, Inc., Kilgore, Texas, and thereby indirectly acquire additional voting shares of City National Bank of Kilgore, Kilgore, Texas, and Century Capital Financial-Delaware, Inc., Wilmington, Delaware.

In connection with this application, Applicant also has applied to acquire FBC Financial Corporation, Claremore, Oklahoma, and thereby engage in the operation of a savings association.

2. Nodaway Valley Bancshares, Inc., Maryville, Missouri; to acquire 100 percent of the voting shares of Buchanan County Bancshares, Inc., and thereby indirectly acquire voting shares of Heritage Bank of St. Joseph, Saint Joseph, Missouri.

Board of Governors of the Federal Reserve System, September 25, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–24851 Filed 9–30–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Craco, Inc., Vinita, Oklahoma; to engage *de novo* through its subsidiary First Acquisition Corporation, Vinita, Oklahoma, in leasing and lease financing on personal property, pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, September 25, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc.02–24849 Filed 9–30–02; 8:45 am]

BILLING CODE 6210–01–S

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

TIME AND DATE: 11 a.m., Monday, October 7, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 27, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–25061 Filed 9–27–02; 2:26 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Governmentwide Per Diem Advisory Board

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Establishment of Subcommittees under the Governmentwide Per Diem Advisory Board.

Establishment of Subcommittees: This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), and advises of the establishment of the Per Diem Review and Government Lodging Program Subcommittees under GSA's Governmentwide Per Diem Advisory Board (Board). The Administrator of General Services has determined that the establishment of these Subcommittees are necessary and in the public interest.

Purpose: The Per Diem Review Subcommittee is established to collect, review and report pertinent information to the Board. The primary purpose of the subcommittee is to present recommendations to the Board for improvements to the Per Diem process and/or methodology.

The Government Lodging Program Subcommittee is established to identify, review and report lodging program(s) best practices used by private industry. Through the review of this information the Board will provide advice to GSA regarding best practices for a Governmentwide lodging program.

FOR FURTHER INFORMATION CONTACT: The Office of Transportation and Personal Property, Office of Governmentwide Policy, is the organization within GSA that is sponsoring this Board. For additional information, contact Joddy P. Garner (MTT), 1800 F Street, NW, Washington DC 20405, telephone (202) 501–4857, or by e-mail at *joddy.garner@gsa.gov.*

Stephen A. Perry,

Administrator.

[FR Doc. 02–24833 Filed 9–30–02; 8:45 am]

BILLING CODE 6820–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–83]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Assessment of Surveillance Projects, Educational Materials, Adverse Outcome Alerts, and Information Distribution Systems—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). The Division of Healthcare Quality Promotion (DHQP), NCID, CDC, provides surveillance methods, notices about adverse outcomes, and educational products and materials to assist healthcare personnel in monitoring and preventing infections, antimicrobial resistance, and other adverse events.

The surveillance project methods include definitions, data collection forms, and computer programs. The educational materials include slides sets, web-based information and instruction, posters, video conferences, and workbooks. The surveillance and educational materials may be distributed via the Internet, postal mail, or electronic mail. The notices include important alerts about healthcare-associated disease outbreaks and clusters that may be of national importance. These notices are delivered through a voluntary Rapid Notification System e-mail subscriber list that can also rapidly gather information to assess the scope of these problems in U.S. healthcare facilities and target corrective actions or educational strategies.

To ensure that these important functions are performed efficiently and provide the strongest public health benefit possible, DHQP needs to assess their usability and develop strategies to improve their quality. In addition, DHQP needs to assess the DHQP website and other distribution systems (*e.g.*, electronic mail, postal mail). DHQP will seek to do this through a series of surveys. The number of questions in each survey will range from five to 25. These assessments will enable DHQP to better assist healthcare personnel in preventing infections, antimicrobial resistance, and other adverse events. Data will be collected using the Internet or printed forms. There are no costs to respondents.

Title	Number of respondents	Number of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
Assessment of Surveillance Methods	1000	1	1	1000
Assessment of Educational Materials	12,500	1	10/60	2,083
Assessment of Scope of Healthcare-associated adverse outcomes	47,200	1	10/60	7,867
Assessment of Distribution Systems	105,900	1	10/60	17,650
Total				28,600

Dated: September 24, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–24827 Filed 9–30–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2160–N]

RIN 0938–ZA38

State Children's Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: Title XXI of the Social Security Act (the Act) authorizes payment of Federal matching funds to States, the District of Columbia, and U.S. Territories and Commonwealths to initiate and expand health insurance coverage to uninsured, low-income children under the State Children's Health Insurance Program (SCHIP). This notice sets forth the final allotments of Federal funding available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year 2003. States may implement SCHIP through a separate State program under title XXI of the Act, an expansion of a State Medicaid program under title XIX of the Act, or a combination of both.

EFFECTIVE DATE: This notice is effective on October 31, 2002. Final allotments are available for expenditures after October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Purpose of This Notice

This notice sets forth the allotments available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year (FY) 2003 under title XXI of the Social Security Act (the Act). Final allotments for a fiscal year are available to match expenditures under an approved State child health plan for 3 fiscal years, including the year for which the final allotment was provided. That is, the FY 2003 allotments will be available to States for FY 2003, and unexpended amounts may be carried over to FYs 2004 and 2005. Federal funds appropriated for title XXI are limited, and the law specifies a formula to divide the total annual appropriation into individual allotments available for each State, the District of Columbia, and each U.S. Territory and Commonwealth with an approved child health plan.

Section 2104(b) of the Act requires States, the District of Columbia, and U.S. Territories and Commonwealths to have an approved child health plan for the fiscal year in order for the Secretary to provide an allotment for that fiscal year. All States, the District of Columbia, and U.S. Territories and Commonwealths have approved plans for FY 2003. Therefore, the FY 2003 allotments contained in this notice pertain to all States, the District of Columbia, and U.S. Territories and Commonwealths.

II. Methodology for Determining Final Allotments for States, the District of Columbia, and U.S. Territories and Commonwealths

This notice specifies, in the table under section III, the final FY 2003 allotments available to individual States, the District of Columbia, and U.S. Territories and Commonwealths for either child health assistance expenditures under approved State child health plans or for claiming an enhanced Federal medical assistance percentage rate for certain SCHIP-related Medicaid expenditures. As discussed below, the FY 2003 final allotments have been calculated to reflect the methodology for determining an allotment amount for each State, the District of Columbia, and each U.S. Territory and Commonwealth under section 2104 of the Act, as amended.

Section 2104(a) of the Act provides that, for purposes of providing allotments to the 50 States and the District of Columbia, the following amounts are appropriated: $4,295,000,000 for FY 1998; $4,275,000,000 for each FY 1999 through FY 2001; $3,150,000,000 for each FY 2002 through FY 2004; $4,050,000,000 for each FY 2005 through FY 2006; and $5,000,000,000 for FY 2007. However, under section 2104(c) of the Act, 0.25 percent of the total amount appropriated each year is available for allotment to the U.S. Territories and Commonwealths of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. Section 2104(c) of the act also specifies that the total amounts are allotted to the U.S. Territories and Commonwealths according to the following percentages: Puerto Rico, 91.6 percent; Guam, 3.5 percent; the Virgin Islands, 2.6 percent; American Samoa, 1.2 percent; and the Northern Mariana Islands, 1.1 percent.

Section 2104(c)(4)(B) of the Act provides for additional amounts for allotment to the Territories and Commonwealths: $32,000,000 for FY 1999; $34,200,000 for each FY 2000 through FY 2001; $25,200,000 for each FY 2002 through FY 2004; $32,400,000 for each FY 2005 through FY 2006; and $40,000,000 for FY 2007. For FY 2003, title XXI of the Act provides $25,200,000 for allotment to the U.S. Territories and Commonwealths. Therefore, the total amount available for allotment to the U.S. Territories and Commonwealths in FY 2003 is $33,075,000 (that is, $25,200,000 plus $7,875,000 (0.25 percent of the FY 2003 appropriation of $3,150,000,000)).

For FY 2003, there is no reduction to the total amount available for allotment to the 50 States and the District of Columbia under sections 4921 and 4922 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33, enacted on August 5, 1997). From FYs 1998 to 2002 only, the total amount available for allotment to the 50 States and the District of Columbia was reduced by a total of $60,000,000; $30,000,000 of which was allocated to the Public Health Service for a special diabetes research program for children with Type I diabetes, and $30,000,000 of which was for special diabetes programs for Indians.

Therefore, the total amount available nationally for allotment for the 50 States and the District of Columbia for FY 2003 was determined in accordance with the following formula:

$$A_T = S_{2104(a)} - T_{2104(c)}$$

A_T = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$ = Total appropriation for the fiscal year indicated in section 2104(a) of the Act. For FY 2003, this is $3,150,000,000.

$T_{2104(c)}$ = Total amount available for allotment for the U.S. Territories and Commonwealths; determined under section 2104(c) of the Act as 0.25 percent of the total appropriation for the 50 States and the District of Columbia.

For FY 2003, this is: .0025 × $3,150,000,000 = $7,875,000.

Therefore, for FY 2003, the total amount available for allotment to the 50 States and the District of Columbia is $3,142,125,000. This was determined as follows:

A_T ($3,142,125,000) = $S_{2104(a)}$ ($3,150,000,000) − $T_{2104(c)}$ ($7,875,000)

For purposes of the following discussion, the term ''State,'' as defined in section 2104(b)(1)(D)(ii) of the Act, ''means one of the 50 States or the District of Columbia.''

Under section 2104(b) of the Act, the determination of the number of children applied in determining the SCHIP allotment for a particular fiscal year is based on the three most recent March supplements to the Current Population Survey (CPS) of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The determination of the State cost factor is based on the annual average wages per employee in the health services industry, which is determined using the most recent 3 years of those wage data. The data are reported and determined as final by the Bureau of Labor Statistics (BLS) of the Department of Labor and are officially available before the beginning of the calendar year in which the fiscal year begins. Since FY 2003 begins on October 1, 2002 (that is, in calendar year 2002) in determining the FY 2003 SCHIP allotments, we are using the most recent official data from the Bureau of the Census and the BLS, respectively, available before January 1 of calendar year 2002.

Number of Children

For FY 2003, as specified by section 2104(b)(2)(A)(iii) of the Act, the number of children is calculated as the sum of 50 percent of the number of low-income, uninsured children in the State, and 50 percent of the number of low-income children in the State. The number of children factor for each State is developed from data provided by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in the annual CPS on these topics. As part of a continuing formal process between the Centers for Medicare & Medicaid Services (CMS) and the Bureau of the Census, each

fiscal year we obtain the number of children data officially from the Bureau of the Census.

Under section 2104(b)(2)(B) of the Act, the number of children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the three most recent March supplements to the CPS officially available from the Bureau of the Census before the beginning of the 2002 calendar year. In particular, through December 31, 2001, the most recent official data available from the Bureau of the Census on the numbers of children were data from the three March CPSs conducted in March 1999, 2000, and 2001 (representing data for years 1998 through 2000).

State Cost Factor

The State cost factor is based on annual average wages in the health services industry in the State. The State cost factor for a State is equal to the sum of: 0.15 and 0.85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia.

Under section 2104(b)(3)(B) of the Act, as amended by the Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113, enacted on November 29, 1999) the State cost factor for each State for a fiscal year is calculated based on the average of the annual wages for employees in the health industry for each State using data for each of the most recent 3 years as reported and determined as final by the BLS in the Department of Labor and available before the beginning of the calendar year in which the fiscal year begins. Therefore, the State cost factor for FY 2003 is based on the most recent 3 years of BLS data officially available as final before January 1, 2002 (the beginning of the calendar year in which FY 2003 begins); that is, it is based on the BLS data available as final through December 31, 2001. In accordance with these requirements, we used the final State cost factor data available from BLS for 1998, 1999, and 2000 in calculating the FY 2003 final allotments.

The State cost factor is determined based on the calculation of the ratio of each State's average annual wages in the health industry to the national average annual wages in the health care industry. Since BLS is required to suppress certain State-specific data in providing us with the State-specific average wages per health services industry employee due to the Privacy Act, we calculated the national average wages directly from the State-specific data provided by BLS. As part of a continuing formal process between CMS and the BLS, each fiscal year CMS obtains these wage data officially from the BLS.

Under section 2104(b)(4) of the Act, as amended by the BBRA, each State and the District of Columbia is allotted a ''proportion'' of the total amount available nationally for allotment to the States. The term ''proportion'' is defined in section 2104(b)(4)(D)(i) of the Act and refers to a State's share of the total amount available for allotment for any given fiscal year. In order for the entire total amount available to be allotted to the States, the sum of the proportions for all States must exactly equal one. Under the statutory definition, a State's proportion for a fiscal year is equal to the State's allotment for the fiscal year divided by the total amount available nationally for allotment for the fiscal year. In general, a State's allotment for a fiscal year is calculated by multiplying the State's proportion for the fiscal year by the national total amount available for allotment for that fiscal year in accordance with the following formula:

$SA_i = P_i \times A_T$

SA_i = Allotment for a State or District of Columbia for a fiscal year.

P_i = Proportion for a State or District of Columbia for a fiscal year.

A_T = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year. For FY 2003, this is $3,142,125,000.

In accordance with the amended statutory formula for determining allotments, the State proportions are determined under two steps, which are described below in further detail.

Under the first step, each State's preadjusted proportion is calculated. This is done, first, by multiplying the State's number of children and the State cost factor to determine a ''product'' for each State. The products for all States are then summed. Finally, the product for a State is divided by the sum of the products for all States, thereby yielding the State's preadjusted proportion.

Application of Floors and Ceilings

Under the second step, the preadjusted proportions are subject to the application of proportion floors, ceilings, and a reconciliation process, as appropriate. The amended SCHIP statute specifies three proportion floors, or minimum proportions, that apply in determining States' allotments. The first proportion floor is equal to $2,000,000 divided by the total of the amount available nationally for the fiscal year. This proportion ensures that a State's minimum allotment would be $2,000,000. For FY 2003, no State's preadjusted proportion is below this floor. The second proportion floor is equal to 90 percent of the allotment proportion for the State for the previous fiscal year; that is, a State's proportion for a fiscal year must not be lower than 10 percent below the previous fiscal year's proportion. The third proportion floor is equal to 70 percent of the allotment proportion for the State for FY 1999; that is, the proportion for a fiscal year must not be lower than 30 percent below the FY 1999 proportion.

Each State's allotment proportion for a fiscal year is limited by a maximum ceiling amount, equal to 145 percent of the State's proportion for FY 1999; that is, a State's proportion for a fiscal year must be no higher than 45 percent above the State's proportion for FY 1999. The floors and ceilings are intended to minimize the fluctuation of State allotments from year to year and over the life of the program as compared to FY 1999. The floors and ceilings on proportions are not applicable in determining the allotments of the U.S. Territories and Commonwealths; they receive a fixed percentage specified in the statute of the total allotment available to the U.S. Territories and Commonwealths.

As determined under the first step for determining the States' preadjusted proportions, which is applied before the application of any floors or ceilings, the sum of the proportions for all the States and the District of Columbia will be equal to exactly one. However, the application of the floors and ceilings under the second step may change the proportions for certain States; that is, some States' proportions may need to be raised to the floors, while other States' proportions may need to be lowered to the maximum ceiling. If this occurs, the sum of the proportions for all States and the District of Columbia may not exactly equal one. In that case, the statute requires that the proportions will need to be adjusted, under a method that is determined by whether the sum of the proportions is greater or less than one, such that the sum of the proportions exactly equal one.

The sum of the proportions would be greater than one if the application of the floors and ceilings resulted in raising the proportions of some States (due to the floors) to a greater degree than the proportions of other States were lowered (due to the ceiling). If, after application of the floors and ceiling, the sum of the proportions is greater than

one, the amended statute requires the Secretary to determine a maximum percentage increase limit, which, when applied to the State proportions, would result in the sum of the proportions being exactly one.

If, after the application of the floors and ceiling, the sum of the proportions is less than one, the statute requires the States' proportions to be increased in a ''pro rata'' manner so that the sum of the proportions again equals one. It is also possible, although unlikely, that the sum of the proportions (after the application of the floors and ceiling) will exactly equal one, and therefore, the proportions would require no further adjustment.

Determination of Preadjusted Proportions

The following is an explanation of how we applied the two State-related factors specified in the statute to determine the States' preadjusted proportions for FY 2003. The term ''preadjusted,'' as used here, refers to the States' proportions before the application of the floors and ceiling and adjustments, as specified in the amended SCHIP statute. The determination of each State and the District of Columbia's preadjusted proportion for FY 2003 is in accordance with the following formula:

$PP_i = (C_i \times SCF_i) / \Sigma (C_i \times SCF_i)$

PP_i = Preadjusted proportion for a State or District of Columbia for a fiscal year.

C_i = *Number of Children* in a State (section 2104(b)(1)(A)(i) of the Act) for a fiscal year. This number is based on these number of low-income children for a State for a fiscal year and the number of low-income uninsured children for a State for a fiscal year determined on the basis of the arithmetic average of the number of those children as reported and defined in the three most recent March supplements to the CPS of the Bureau of the Census, officially available before the beginning of the calendar year in which the fiscal year begins. (*See* section 2104(b)(2)(B) of the Act.)

For fiscal year 2003, the Number of Children is equal to the sum of 50 percent of the number of low-income uninsured children in the State for the fiscal year and 50 percent of the number of low-income children in the State for the fiscal year. (*See* section 2104(b)(2)(A)(iii) of the Act.)

SCF_i = *State Cost Factor* for a State (section 2104(b)(1)(A)(ii) of the Act).

For a fiscal year, this is equal to:

$0.15 + 0.85 \times (W_i/W_N)$

W_i = The annual average wages per employee for a State for that year (section 2104(b)(3)(A)(ii)(I) of the Act).

W_N = The annual average wages per employee for the 50 States and the District of Columbia (section 2104(b)(3)(A)(ii)(II) of the Act).

The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of those wages for employees in the health services industry (SIC 80), as reported and determined as final by the BLS of the Department of Labor for each of the most recent 3 years officially available before the beginning of the calendar year in which the fiscal year begins. (*See* section 2104(b)(3)(B) of the Act).

$\Sigma(C_i \times SCF_i)$ = The sum of the products of $(C_i \times SCF_i)$ for each State (section 2104(b)(1)(B) of the Act).

The resulting proportions would then be subject to the application of the floors and ceilings specified in the amended SCHIP statute and reconciled, as necessary, to eliminate any deficit or surplus of the allotments because the sum of the proportions was either greater than or less than one.

Section 2104(e) of the Act requires that the amount of a State's allotment for a fiscal year be available to the State for a total of 3 years; the fiscal year for which the State child health plan is approved and the 2 following fiscal years. Section 2104(f) of the Act requires the Secretary to establish a process for redistribution of the amounts of States' allotments that are not expended during the 3-year period to States that have fully expended their allotments.

III. Table of State Children's Health Insurance Program Final Allotments for FY 2003

Key to Table

Column/Description

Column A = State. Name of State, District of Columbia, U.S. Commonwealth or Territory.

Column B = Number of Children. The number of children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income uninsured children, and is based on the three most recent March supplements to the CPS of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The FY 2003 allotments were based on the 1999, 2000, and 2001 March supplements to the CPS. These data represent the number of people in each State under 19 years of age whose family income is at or below 200 percent of the poverty threshold appropriate for that family, and who are reported to be without health insurance coverage. The number of children for each State was developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in its annual March CPS on these topics.

For FY 2003, the number of children is equal to the sum of 50 percent of the number of low-income uninsured children in the State and 50 percent of the number of low-income children in the State.

Column C = State Cost Factor. The State cost factor for a State is equal to the sum of: 0.15, and 0.85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State cost factor for each State was calculated based on the wage data for each State as reported and determined as final by the BLS in the Department of Labor for each of the most recent 3 years and available before the beginning of the calendar year in which the fiscal year begins. The FY 2003 allotments were based on final BLS wage data for 1998, 1999, and 2000.

Column D = Product. The product for each State was calculated by multiplying the number of children in Column B by the State cost factor in Column C. The sum of the products for all 50 States and the District of Columbia is below the products for each State in Column D. The product for each State and the sum of the products for all States provides the basis for allotment to States and the District of Columbia.

Column E = Proportion of Total. This is the calculated percentage share for each State of the total allotment available to the 50 States and the District of Columbia. The percent share of total is calculated as the ratio of the product for each State in Column D to the sum of the products for all 50 States and the District of Columbia below the products for each State in Column D.

Column F = Adjusted Proportion of Total. This is the calculated percentage share for each State of the total allotment available after the application of the floors and ceilings and after any further reconciliation needed to ensure that the sum of the State proportions is equal to one. The three floors specified in the amended statute are: (1) A floor of $2,000,000 divided by the total amount available for all allotments for the fiscal year; (2) an annual floor of 90 percent of (that is, 10 percent below) the

preceding fiscal year's allotment proportion; and (3) a cumulative floor of 70 percent of (that is, 30 percent below) the FY 1999 allotment proportion. There is also a cumulative ceiling of 145 percent of (that is, 45 percent above) the FY 1999 allotment proportion.

Column G = Allotment. This is the SCHIP allotment for each State, Commonwealth, or Territory for the fiscal year. For each of the 50 States and the District of Columbia, this is determined as the adjusted proportion of total in Column F for the State multiplied by the total amount available for allotment for the 50 States and the District of Columbia for the fiscal year.

For each of the U.S. Territory and Commonwealths, the allotment is determined as the Proportion of Total in Column E multiplied by the total amount available for allotment to the U.S. Territories and Commonwealths. For the U.S. Territories and Commonwealths, the Proportion of Total in Column E is specified in section 2104(c) of the Act. The total amount is then allotted to the U.S. Territories and Commonwealths according to the percentages specified in section 2104 of the Act. There is no adjustment made to the allotments of the U.S. Territories and Commonwealths as they are not subject to the application of the floors and ceiling. As a result, Column F in the table, the Adjusted Proportion of Total, is empty for the U.S. Territories and Commonwealths.

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STATE CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FEDERAL FISCAL YEAR:						2003
A	B	C	D	E	F	G
STATE	NUMBER OF CHILDREN (000)	STATE COST FACTOR	PRODUCT	PROPORTION OF TOTAL (3)	ADJUSTED PROPORTION OF TOTAL (3)	ALLOTMENT (1)
ALABAMA	303	0.9659	292.1914	1.6434%	1.6541%	$51,972,697
ALASKA	42	1.0375	43.0544	0.2422%	0.2365%	$7,430,455
ARIZONA	466	1.0593	493.1020	2.7734%	2.7914%	$87,709,090
ARKANSAS	213	0.9036	192.0172	1.0800%	1.0870%	$34,154,500
CALIFORNIA	2,812	1.0972	3,085.4074	17.3535%	17.4661%	$548,807,933
COLORADO	209	1.0199	213.1561	1.1989%	1.2067%	$37,914,522
CONNECTICUT	126	1.0913	136.9604	0.7703%	0.7753%	$24,361,434
DELAWARE	46	1.1270	51.2771	0.2884%	0.2764%	$8,686,068
DISTRICT OF COLUMBIA	32	1.2108	38.7443	0.2179%	0.2292%	$7,201,920
FLORIDA	947	1.0211	966.9347	5.4384%	5.4737%	$171,990,713
GEORGIA	546	0.9995	545.2041	3.0664%	3.0863%	$96,976,597
HAWAII	67	1.1335	75.9433	0.4271%	0.3071%	$9,647,963
IDAHO	106	0.8950	94.4245	0.5311%	0.5345%	$16,795,479
ILLINOIS	742	1.0084	748.2089	4.2082%	4.2059%	$132,153,277
INDIANA	321	0.9407	301.9578	1.6983%	1.7093%	$53,709,869
IOWA	138	0.8705	120.1328	0.6757%	0.6801%	$21,368,268
KANSAS	156	0.8837	137.4228	0.7729%	0.7779%	$24,443,683
KENTUCKY	228	0.9366	213.5493	1.2011%	1.2089%	$37,984,461
LOUISIANA	390	0.8835	344.5769	1.9380%	1.9506%	$61,290,629
MAINE	59	0.9232	54.4711	0.3064%	0.3084%	$9,688,881
MARYLAND	182	1.0394	189.1728	1.0640%	1.0709%	$33,648,564
MASSACHUSETTS	316	1.0587	334.5540	1.8817%	1.4704%	$46,201,047
MICHIGAN	531	1.0132	538.0047	3.0259%	3.0456%	$95,696,032
MINNESOTA	203	1.0090	204.3269	1.1492%	0.9747%	$30,626,504
MISSISSIPPI	237	0.8956	211.7977	1.1912%	1.1990%	$37,672,898
MISSOURI	263	0.9300	244.1355	1.3731%	1.3820%	$43,424,901
MONTANA	74	0.8605	63.6780	0.3581%	0.3605%	$11,326,534
NEBRASKA	98	0.8888	86.6595	0.4874%	0.4906%	$15,414,316
NEVADA	147	1.1640	171.1143	0.9624%	0.9687%	$30,436,463
NEW HAMPSHIRE	50	1.0011	50.0570	0.2815%	0.2834%	$8,903,739
NEW JERSEY	353	1.1060	389.8649	2.1927%	2.2070%	$69,346,099
NEW MEXICO	195	0.9390	182.6395	1.0272%	1.0435%	$32,788,606
NEW YORK	1,203	1.0633	1,279.1047	7.1942%	7.2409%	$227,517,050
NORTH CAROLINA	463	0.9937	459.5901	2.5849%	2.6017%	$81,748,254
NORTH DAKOTA	46	0.8730	40.1576	0.2259%	0.1730%	$5,436,695
OHIO	672	0.9589	644.3632	3.6241%	3.6477%	$114,614,244
OKLAHOMA	237	0.8548	202.5861	1.1394%	1.4201%	$44,621,756
OREGON	224	1.0217	228.8650	1.2872%	1.2956%	$40,708,703
PENNSYLVANIA	573	0.9903	566.9559	3.1888%	3.2095%	$100,845,639
RHODE ISLAND	42	0.9797	41.1457	0.2314%	0.2329%	$7,318,673
SOUTH CAROLINA	238	1.0068	239.6181	1.3477%	1.3813%	$43,402,180
SOUTH DAKOTA	39	0.8868	34.5851	0.1945%	0.1958%	$6,151,723
TENNESSEE	328	1.0002	328.0700	1.8452%	1.8572%	$58,354,512
TEXAS	1,871	0.9363	1,751.2806	9.8499%	9.9138%	$311,503,988
UTAH	152	0.9164	138.8284	0.7808%	0.7859%	$24,693,700
VERMONT	35	0.8914	30.7521	0.1730%	0.1214%	$3,813,156
VIRGINIA	307	0.9802	300.4280	1.6897%	1.7007%	$53,437,771
WASHINGTON	299	0.9626	287.3461	1.6161%	1.6017%	$50,326,484
WEST VIRGINIA	116	0.8991	104.2928	0.5866%	0.5904%	$18,550,788
WISCONSIN	265	0.9687	256.2301	1.4411%	1.3948%	$43,824,792
WYOMING	34	0.9063	30.8129	0.1733%	0.1744%	$5,480,750
TOTAL STATES ONLY			17,779.7535	100.0000%	100.0000%	$3,142,125,000
ALLOTMENTS FOR COMMONWEALTHS AND TERRITORIES (2)						
PUERTO RICO				91.6%		$30,296,700
GUAM				3.5%		$1,157,625
VIRGIN ISLANDS				2.6%		$859,950
AMERICAN SAMOA				1.2%		$396,900
N. MARIANA ISLANDS				1.1%		$363,825
TOTAL COMMONWEALTHS AND TERRITORIES ONLY				100.0%		$33,075,000
TOTAL STATES AND COMONWEALTHS AND TERRITORIES						$3,175,200,000

FOOTNOTES

The numbers in Columns B - F are rounded for presentation purposes; the actual numbers used in the allotment calculations are not rounded

(1) Total amount available for allotment to the 50 States and the District of Columbia is $3,142,125,000; determined as the fiscal year appropriation ($3,150,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories under section 2104(c) of the Act ($7,875,000) and amounts for Special Diabetes Grants under sections 4921 ($0,000) and 4922 ($0,000) of BBA

(2) Total amount available for allotment to the Commonwealths and Territories is $7,875,000 (.25 percent of $3,150,000,000, the fiscal year appropriation), plus $25,200,000, as specified in section 2104(c)(4)(E) of the Act

(3) Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Act

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IV. Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Public Law 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rules are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). We believe that this notice is consistent with the regulatory philosophy and principles identified in the Executive Order. The formula for the allotments is specified in the statute. Since the formula is specified in the statute, we have no discretion in determining the allotments. This notice merely announces the results of our application of this formula, and therefore does not reach the economic significance threshold of $100 million in any 1 year.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 to $29 million in any one year. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before publishing any notice that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $110 million or more (adjusted each year for inflation) in any 1 year. Because participation in the SCHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the Federal government are made voluntarily. This notice will not create an unfunded mandate on States, tribal, or local governments because it merely notifies States of their SCHIP allotment for FY 2003. Therefore, we are not required to perform an assessment of the costs and benefits of this notice.

Low-income children will benefit from payments under SCHIP through increased opportunities for health insurance coverage. We believe this notice will have an overall positive impact by informing States, the District of Columbia, and U.S. Territories and Commonwealths of the extent to which they are permitted to expend funds under their child health plans using their FY 2003 allotments.

Under Executive Order 13132, we are required to adhere to certain criteria regarding Federalism. We have reviewed this notice and determined that it does not significantly affect States' rights, roles, and responsibilities because it does not set forth any new policies.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Section 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: August 6, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 23, 2002.

Tommy G. Thompson,

Secretary of Health and Human Services.

[FR Doc. 02–24846 Filed 9–27–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0405]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for medical device reporting: Manufacturer reporting, importer reporting, user Facility reporting, and distributor reporting.

DATES: Submit written or electronic comments on the collection of information by December 2, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the

burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting (OMB Control Number 0910–0437)—Extension

Section 519(a), (b), and (c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(a),(b), and (c)) requires user facilities, manufacturers, and importers of medical devices to report adverse events involving medical devices to FDA. On December 11, 1995 (60 FR 63597), FDA issued part 803 (21 CFR part 803) that implemented section 519 of the act. The regulation was amended to conform with the changes reflected in the 1997 FDA Modernization Act.

Information from these reports will be used to evaluate risks associated with medical devices and to enable FDA to take appropriate regulatory measures to protect the public health.

Respondents to this collection of information are businesses or other for profit and non-profit organizations including user facilities, manufacturers, and importers of medical devices.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
803.19	25	1	25	3	75
803.30	1,000	3	3,000	1	3,000
803.33 FDA Form 3419	1,000	1	1,000	1	1,000
803.40	50	10	500	1	500
803.50	1,500	34	51,000	1	51,000
803.55 FDA Form 3417	700	5	3,500	1	3,500
TOTALS					59,075

[1] There are no capitol costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
803.17	3,200	1	3,200	3.3	10,560
803.18[2]	39,000	1	39,000	1.5	58,500
TOTAL					69,060

[1] There are no capitol costs or operating and maintenance costs associated with this collection of information.
[2] Include an estimated 35,000 medical device distributors. Although they do not submit MDR reports, they must maintain records of complaints.

The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information to meet the MDR requirements as part of their internal quality control system.

Part 803 requires user facilities to report incidents where a medical device caused or contributed to a death or serious injury to the device manufacturer and to FDA (in case of death). Manufacturers of medical devices are required to report to FDA when they become aware of information indicating that one of their devices may have caused or contributed to death or serious injury or has malfunctioned in such a way that should the malfunction recur, it would be likely to cause or contribute to death or serious injury. Device importers report deaths and serious injuries to the manufacturers and FDA. Importers report malfunctions only to the manufacturers, unless they are unknown. If the manufacturer is unknown, the importer sends the reports to FDA.

The agency has estimated that on average, 1,800 entities annually would be required to establish new procedures or revise existing procedures in order to comply with medical device report (MDR) provisions. For those entities, a one-time burden of 10 hours is estimated for establishing written MDR procedures. The remaining manufacturers, user facilities, and importers which are not required to revise their written procedures to comply with this provision are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered ''usual and customary'' under 5 CFR 1320.3(b)(2).

Dated: September 24, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–24811 Filed 9–30–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Dates and Time: The meeting will be held on October 21, 2002, from 8:30 a.m. to 5 p.m. and October 22, 2002, from 8:30 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee conference rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Kathleen Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail: REEDYK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 21, 2002, the committee will: (1) Receive summary reports and provide direction for the Nonclinical Studies Subcommittee and the Process Analytical Technologies Subcommittee; (2) receive updates on risk-based chemistry manufacturing control review and blend uniformity; and (3) discuss and provide comments on regulatory issues related to crystal habits—polymorphism. On October 22, 2002, the committee will: (1) Discuss and provide direction for future subcommittee—Good Manufacturing Practices/Manufacturing Subcommittee; and (2) discuss manufacturing issues; sterile drug products produced by aseptic processing.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 14, 2002. Oral presentations from the public will be scheduled between approximately 11:45 a.m. and 12:45 p.m. on October 21, 2002, and 1 p.m. and 2 p.m. on October 22, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 14, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kathleen Reedy at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 22, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–24812 Filed 9–30–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Process Analytical Technologies Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Process Analytical Technologies Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 23, 2002, from 8:30 a.m. to 5 p.m.

Location: Ramada Inn, Georgetown and Montrose Conference Rooms, 1775 Rockville Pike, Rockville, MD.

Contact Person: Kathleen Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: REEDYK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss: (1) Computer systems validation—21 CFR part 11 issues pertinent to process analytical technologies (PAT), (2) a PAT case study, and (3) rapid microbiology testing.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by October 14, 2002. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 14, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kathleen Reedy at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 22, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–24813 Filed 9–30–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AI55

Fiscal Year (FY) 2002 Landowner Incentive Program (Non Tribal Portion) for States, Territories and the District of Columbia; Final Policy With Implementation Guidelines, and Request for Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final policy with implementation guidelines; notice of request for proposals.

SUMMARY: The Department of the Interior and Related Agencies Appropriations Act 2002 allocated $40 million from the Land and Water Conservation Fund for conservation grants to States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, and American Samoa (hereafter referred to collectively as States), and Tribes under a Landowner Incentive Program (LIP).

This notice provides the final guidelines for how the U.S. Fish and Wildlife Service (Service) will implement LIP with the States and serves as the Request for Proposals for the FY 2002 LIP funds. The Service will address the Tribal component of LIP under a separate **Federal Register** notice.

DATES: This Policy and these Implementation Guidelines are effective October 1, 2002. We must receive your grant proposal no later than December 2, 2002. We will not accept facsimile grant proposals.

ADDRESSES: Submit grant proposals to the Division of Federal Aid, 4401 North Fairfax Drive, Suite 140, Arlington, VA 22203–1610. The administrative record for this notice, including copies of comments received, is available for viewing at this location Monday through Friday, 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tim Hess, Biologist, U.S. Fish and Wildlife Service, Division of Federal Aid, 4401 North Fairfax Drive, Suite 140, Arlington, VA 22203–1610; telephone (703) 358–2156; fax (703) 358–1837; e-mail *tim_hess@fws.gov*, or the Regional Office contact persons identified in the answer to Question 25 in the Implementation Guidelines.

SUPPLEMENTARY INFORMATION:

Background

In recent years, natural resource managers have increasingly recognized that private lands play a pivotal role in linking or providing important habitats for fish, wildlife, and plant species. To protect and enhance these habitats through incentives for private landowners, the President's Budget for Fiscal Year 2002 requested funding to address this need and Congress responded by appropriating $40 million from the Land and Water Conservation Fund for the Service to establish and administer a new Landowner Incentive Program (LIP). The Service will award grants to States for programs that enhance, protect, or restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on private lands. A primary objective of LIP is to establish, or supplement existing, State landowner incentive programs that provide technical and financial assistance, including habitat protection and restoration, to private landowners for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on private lands as stated in the appropriations language. LIP complements other Federal private lands conservation programs that focus on the conservation of habitat.

Introduction

The Federal (Service) role in implementation of LIP is to provide policy, guidance, funds, and oversight to States who seek to develop and implement a qualifying landowner incentive program. The State role in implementation of LIP is to provide technical and financial assistance to private landowners for projects for the protection and management of habitat for species-at-risk. The private landowners' role is to provide the habitat necessary to accomplish the objectives of LIP and assist in project implementation.

The Service is soliciting grant proposals for Federal funding under LIP through the publishing of this policy and guidelines. The remainder of this document is divided into three sections: (1) our Final LIP Implementation Guidelines that contain direction on grant proposal submission; (2) the comments received concerning the Proposed LIP Policy and Implementation Guidelines published in the **Federal Register** on June 7, 2002 (67 FR 39414), and our responses; and (3) a description of the regulatory requirements associated with issuing the Final LIP Policy with Implementation Guidelines.

LIP Final Implementation Guidelines

Definitions of Terms Used in These Guidelines

''Species-at-risk'' is defined as any Federally listed, proposed, or candidate animal or plant species or other species of concern as determined and documented by a State. Species classified by the State as a ''species-at-risk'' must be identified as such in its grant proposal.

''Private land'' is considered any nongovernment-owned land.

A ''project'' is a discrete task to be undertaken by or with private landowners for the accomplishment of the defined LIP objectives.

Program Requirements

1. What is the objective of this program? The primary objective of this program is to establish or supplement State landowner incentive programs that protect and restore habitats on private lands, to benefit Federally listed, proposed, or candidate species or other species determined to be at-risk, and provide technical and financial assistance to private landowners for habitat protection and restoration.

2. How will the Tribes participate in LIP? The Service is allocating $4 million of the total funds appropriated under LIP to Tribes for a competitive grant program that we will describe in a separate **Federal Register** notice. For Tribal LIP grant information contact Pat Durham, U.S. Fish and Wildlife Service, Office of Native American Liaison, 1849 C Street NW., Mail Stop 3251, Washington, DC 20240 or call (202) 208–4133.

3. Does LIP require plans to be developed like the State Wildlife Grant Program (FY 2002) and the Wildlife Conservation and Restoration Program? No.

4. Who can apply for an LIP grant? The State agency with primary responsibility for fish and wildlife will be responsible for submitting all proposals to the U.S. Fish and Wildlife Service, Division of Federal Aid (FA). All other governmental entities, individuals, and organizations, including Tribes, may partner with or serve as a subgrantee to that fish and wildlife agency.

Fiscal Issues

5. How will the Service distribute the available $40 million? The Service will allocate $34.8 million for competitive grants to States, $4.0 million for Tribes, and $1.2 million for program administration by the Service.

6. What is the non-Federal match requirement for LIP grants? The Service requires a minimum of 25% non-Federal match for LIP grants (*i.e.* at least 25 percent of the total costs must come from sources other than LIP or other federal funds). The U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are exempt from matching requirements for this program (based on 48 U.S.C. 1469a. (d)).

7. May the required non-Federal match be in-kind contributions? Yes. Allowable in-kind contributions are defined in Title 43 of the Code of Federal Regulations (43 CFR) part 12.64. The following Web site provides additional information *http://www.nctc.fws.gov/fedaid/toolkit/4312c.pdf.*

Grant Administration

8. How will the Service award grants to States? The Service will use a two-tiered award system. We will assess Tier-1 grant proposals to see that they meet minimum eligibility requirements. The Service will rank Tier-2 grants based on criteria described in this notice and award grants after a national competition.

9. What are the intended objectives of Tier-1 grants? The Service intends that Tier-1 grants fund staff and associated support necessary to develop or

enhance an existing landowner program. Through the development of plans, outreach, and associated activities that assist in the accomplishment of projects on private lands, these programs should benefit private landowners and other partners to help manage and protect habitats that benefit species-at-risk.

10. What are the eligibility requirements for Tier-1 grants? To receive a Tier-1 grant a State program must demonstrate in its proposal that it can meet all of the following:

(a) Deliver technical and financial assistance to landowners;

(b) Provide for appropriate administrative functions such as fiscal and contractual accountability;

(c) Use LIP grants to supplement and not replace existing funds;

(d) Distribute funds to landowners through a fair and equitable system;

(e) Provide outreach and coordination that assist in administering the program; and

(f) Describe a process for the identification of species-at-risk, and a process for the identification of clear, obtainable and quantified goals and performance measures that will help achieve the management goals and objectives of LIP. Through this program, the States' efforts and leadership will help the Service meet its Long-Term and Annual Performance Goals.[1]

11. What are the intended objectives of Tier-2 grants? The objective of a Tier-2 grant should place a priority on the implementation of State programs that provide technical and financial assistance to the private landowner. Programs should emphasize the protection and restoration of habitats that benefit Federally listed, proposed, or candidate species, or other species-at-risk on private lands. The Service generally intends a Tier-2 grant to fund the expansion of existing State landowner incentive programs or those created under Tier-1 grants.

12. What criteria will the Service use to rank Tier-2 grants? The Service proposes to use the following criteria to rank Tier-2 proposals:

(a) Proposal provides clear and sufficient detail to describe the program. States are encouraged to describe any projects that are part of a broader scale conservation planning effort at the State or regional level. (0–10 points)

(b) Proposal describes adequate management systems for fiscal, contractual and performance accountability (State), including annual monitoring and evaluation of progress toward desired program objectives and performance measures and goals identified in the ''expected results or benefits'' section of the grant application (landowner and State). (0–10 points)

(c) Proposal describes the State's fair and equitable system for fund distribution. For example, States develop their own process to evaluate and prioritize their project proposals based on criteria such as species needs, priority habitats, compliance with State and Federal requirements, and feasibility of success and select projects for grant proposal funding based on their highest priority standing. (0–10 points)

(d) Proposal describes outreach efforts used to effect broad public awareness, support, and participation. (0–10 points)

(e) Proposal identifies by name the species-at-risk to benefit from the proposal. Points increase from zero to 10 as the State identifies more species.

(f) Proposal describes the percentage of the State's total LIP Tier-2 program funds identified for use on private land projects as opposed to staff and related administrative support costs. Points increase from zero to five as the percentage of funds identified for staff and related administrative costs decreases in comparison to the total program costs.

(g) Proposal identifies the percentage of total nonfederal fund cost sharing. Points increase from zero to five as the percentage of nonfederal cost sharing on the grant increases above the minimum cost share.

(h) Proposal demonstrates the urgency of the projects or actions that are to benefit the species targeted, and the short-term and long-term benefits anticipated to be gained. (0–5 points)

13. Are there funding limits (caps) for LIP? Yes.

(a) The Service will cap Tier-1 grants at $180,000 for State fish and wildlife agencies, and $75,000 for Territories and the District of Columbia.

(b) In addition, no State may receive more than $1.74 million Tier-1 and Tier-2 funds combined from the FY 2002 appropriation.

14. May a State submit more than one proposal? States may submit one proposal each for Tier-1 and Tier-2 grants under this notice. However, funding limits still apply, as described in the answer to Question 13.

15. If some FY 2002 funds remain after awarding Tier-1 and Tier-2 grants, how will the Service make them available to the States? We will announce subsequent requests for proposals until all LIP funds are obligated. States that have not reached the cap may submit an additional proposal during future requests for proposals.

16. Will interest accrue to the account holding LIP funds and if so how will it be used? No. LIP funds were not approved for investing, and as a result no interest will accrue to the account.

17. What administrative requirements must States comply with in regard to LIP? States must comply with 43 CFR part 12 that provides the administrative regulations (*http://www.nctc.fws.gov/fedaid/toolkit/4312c.pdf*) and OMB Circular A–87 that provides cost principles (*http://www.whitehouse.gov/omb/circulars*).

18. What information must a State include in a grant proposal? An LIP grant proposal must include an Application for Federal Assistance (SF–424) and must identify whether it is a Tier-1 or Tier-2 proposal. The proposal must also include statements describing the need, objectives, expected results or benefits, approach or procedures, location, and estimated cost for the proposed work (OMB Circular A–102). The expected results or benefits section must identify the State's discrete, obtainable and quantified performance measures to be accomplished (for example, the anticipated number of acres of wetlands or stream miles to be restored, or the number of at-risk species with improved status) that will address the goals of LIP and, at the same time, the Service's Long-Term Goals of Sustainability of Fish and Wildlife Population [2] (Goal 1.2) and Habitat Conservation [3] (Goal 2.3).

The grant proposal should also clearly identify how each of the minimum eligibility requirements (Tier-1) and ranking criteria (Tier-2) are addressed. The SF–424 is available from FA at any Service Regional Office or at *http://www.nctc.fws.gov/fedaid/toolkit/formsfil.pdf*.

19. Where should a State send grant proposals? States should submit all LIP

[1] The two relevant Service goals are the Sustainability of Fish and Wildlife Populations (Goal 1.2) and Habitat Conservation (Goal 2.3), which can be found in the Service's Long Term Strategic Plan for 2000 to 2005 at *http://planning.fws.gov/usfwstrategicplanv3.pdf*. Related Service planning and results reports can be found at *http://planning.fws.gov*.

[2] By the end of 2005, 404 species listed under the Endangered Species Act as threatened or endangered for a decade or more will be stable or improving, 15 species will be delisted due to recovery, and a listing of 12 species at risk is made unnecessary due to conservation.

[3] By 2005, trust fish and wildlife populations, threatened and endangered species, and species of special concern will be improved by enhancing and/or restoring or creating 550,000 acres of wetlands habitat, restoring 1,000,000 acres of upland habitats, and enhancing and/or restoring 9,800 riparian or stream miles of habitat off Service land through partnerships and other conservation strategies.

proposals to the U.S. Fish and Wildlife Service, Division of Federal Aid, 4401 North Fairfax Drive, Suite 140, Arlington, VA 22203–1610.

20. When are proposals due to the Service? The Service will accept proposals between October 1, 2002 and December 2, 2002.

21. What process will the Service use to evaluate and select proposals for funding? The Service will evaluate all proposals that are received by the end of the period set forth in the answer to Question 20, above. Successful proposals will then be selected based on the final eligibility and selection criteria in the Implementation Guidelines, and will be subject to the final approval of the Assistant Secretary for Fish and Wildlife and Parks. The Service will notify all applicants of the results as soon as practicable but within 60 days of the deadline for submission of proposals.

22. Once a proposal is selected for funding, what additional grant documents must the applicant submit and to whom? In addition to the Application for Federal Assistance submitted with the original proposal, the Service requires the following documents: a Grant Agreement (Form 3–1552) and a schedule of work the State proposes to fund through this grant. Additionally, the Service, in cooperation with the applicants, must address Federal compliance issues, such as the National Environmental Policy Act, the National Historic Preservation Act, and the Endangered Species Act. Regional Office FA staff can assist in explaining the procedures and documentation necessary for meeting these Federal requirements. The States must send this additional documentation to the appropriate Regional Office where FA staff will approve the grant agreement to obligate funds. See the answer to Question 25 for Regional Office locations and *http://www.nctc.fws.gov/fedaid/toolkit/fagabins.pdf* for additional information.

23. What reporting requirements must States meet once funds are obligated under an LIP grant agreement? The Service requires an annual progress report and Financial Status Report (FSR) for grants longer than one year. In addition, a final performance report and FSR (SF–269) are due to the Regional Office within 90 days of the grant agreement ending date.

In its annual report, the State must include a list of project accomplishments in relation to those which were planned in the grant agreement. The number of upland and wetland acres and the number of riparian/stream miles restored or improved (performance measures), and the species benefitted should be provided. This information will help demonstrate the States' efforts and leadership in helping the LIP meet the Service's national goals for Fish and Wildlife Sustainability (1.2) and Habitat Conservation (2.3). The effectiveness of each State's program, as reported in its annual progress reports, will be an important factor considered during the grant award selection process in subsequent years.

24. Will landowners who have LIP projects implemented on their property be required to leave project improvements in place for a specific period? States should address this issue in their grant proposals, landowner incentive programs, and agreements with individual landowners. Habitat improvements should remain in place to realize the desired benefits for species-at-risk.

25. Whom can I contact in the Service about the LIP program in my local or regional area? Correspondence and telephone contacts for the Service are listed by Region below.

Region 1. Hawaii, Idaho, Oregon, Washington, California, Nevada, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands.

Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181, LIP Contact: Jim Greer, (503) 231–6128

Region 2. Arizona, New Mexico, Oklahoma, and Texas.

Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, 500 Gold Avenue SW, Room 4012, Albuquerque, New Mexico 87102, LIP Contact: Bob Anderson, (505) 248–7459

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056, LIP Contact: Lucinda Corcoran, (612) 713–5135

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.

Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, LIP Contact: Marilyn Lawal, (404) 679–7277

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589, LIP Contact: Vaughn Douglas, (413) 253–8502

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486, LIP Contact: Jacque Richy, (303) 236–8155 ext. 236

Region 7. Alaska.

Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199, LIP Contact: Al Havens (907) 786–3435

Analysis of Public Comment and Changes Made to the Proposed LIP Implementation Guidelines

On June 7, 2002, the Service published a notice in the **Federal Register** (67 FR 39414) and requested comments on the proposed implementation guidelines for the FY 2002 Landowner Incentive Program (Non Tribal Portion) for States, Territories, and the District of Columbia. The Service received 25 written responses by the close of the comment period on July 8, 2002. The responses came from the following: Arizona Game and Fish Department; Delaware Department of Natural Resources and Environmental Control; Ducks Unlimited; Georgia Department of Natural Resources; Hawaii Department of Land and Natural Resources; International Association of Fish and Wildlife Agencies; Louisiana Forestry Association; Michigan Department of Natural Resources; Montana Fish, Wildlife and Parks; National Association of Conservation Districts; Nebraska Game and Parks Commission; Ocean Nature and Conservation Society; Ohio Department of Natural Resources; Oregon Department of Fish and Wildlife; Red Lake Band of Chippewa Indians; Texas Farm Bureau; Texas Parks and Wildlife Department; The Nature Conservancy; Turner Endangered Species Fund; U.S. National Park Service; Vermont Agency of Natural Resources; Walla Walla County Conservation District; Wapiti Ridge Coordinated Resource Management; Wildlife Management Institute; and

Wisconsin Department of Natural Resources.

We received a total of 50 substantive comments from the 25 written responses covering a wide range of topics. Of these, 26 comments dealt with the ranking criteria and scoring process. Six organizations or agencies wrote letters that indicated their overall support for LIP with no additional comments that required a response. The following is a list of substantive comments received and our responses to those comments.

Comments Not Directly Related to the Scoring Process and Ranking Criteria

Comment 1. We recommend that the final guidelines for LIP clearly indicate that projects that advance imperiled species recovery through means other than habitat management are considered appropriate for LIP.

Response: The Interior Appropriations bill language states that the grants are to be used to provide technical and financial assistance to private landowners for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on private lands. The projects therefore must have a clear relationship to habitat, and this relationship must be spelled out in a State's grant proposal.

Comment 2. ''Species-at-risk'' needs to be better defined.

Response: We believe the intent of Congress was to address species such as those found on Federal and State protected species lists, while at the same time allowing the States to determine if additional species should also be considered at-risk (that have similar biological concerns as those already listed) and covered by their LIP program. States should include their current LIP list of species-at-risk in their grant proposal.

Comment 3. We encourage the Service to take a flexible, progressive perspective in working with the States to define ''at-risk'' species.

Response: Each State wildlife agency has full authority in determining its species-at-risk, and in justifying their focus on those species identified in the grant proposal. (Also see response to Comment 2).

Comment 4. It should be made clearer in the guidelines that LIP programs can also be applied to riparian and shoreline private lands that provide habitat for aquatic species-at-risk found in adjoining public waters.

Response: Riparian and shoreline protection and restoration activities, and also fish migration barrier removal activities, on private lands qualify if the habitat benefits for the species-at-risk are clearly identified no matter the ownership where the species reside.

Comment 5. Private land initiatives should promote a holistic view of the habitat needs of species * * * we feel that practices and actions taken on private lands should consider an array of species.

Response: The program's objective is to benefit species-at-risk, so the grant proposal must identify those species. One criterion used to rank proposals ((e) in the answer to Question 12) involves the number (array) of species-at-risk benefitted, with a greater number of species benefitted leading to a higher score.

Comment 6. The Service should encourage and make it possible for the States to approach assistance to landowners with administrative flexibility.

Response: The Service is requiring compliance with only those administrative rules mandated for this program by existing Federal Regulations in 43 CFR part 12. State agencies will determine administrative procedures involving private landowners and other partners.

Comment 7. We encourage the Service to give preference to applications for projects that are part of a broad-scale conservation planning effort.

Response: We have added to our description of the first proposed ranking criterion ((a) in the answer to Question 12) to address this point.

Comment 8. It would make sense to allow the ''lead entities'' designated by the Salmon Recovery Fund Board [in Washington] to submit grant proposals directly to the Service and compete for this funding.

Response: Congress stipulated that LIP grants were available for States and Territories only. The Service will utilize the State fish and wildlife agencies as the eligible grantees due to their primary responsibility for wildlife conservation among State agencies. All other agencies, organizations, and individuals working with private landowners on species-at-risk habitat issues are encouraged to establish partnerships with the State fish and wildlife agencies.

Comment 9. In cases where a State wildlife agency does not apply for funding under this initiative, we believe that other State agencies involved in wildlife management should be permitted to apply.

Response: At this time, we are not aware of any State fish and wildlife agencies that are not considering the submission of an LIP grant proposal. If notified, the Service would consider another State agency designated by the Governor.

Comment 10. Are nongovernmental (nonprofit) individuals and organizations allowed to partner with or serve as a subgrantee to the fish and wildlife agency?

Response: Yes, both governmental and nongovernmental organizations and individuals may partner with or serve as a subgrantee of a State fish and wildlife agency.

Comment 11. We suggest that LIP implementation guidelines use the same regional allocation formula as has been proposed in the Service's Private Stewardship Grant Program.

Response: The Congressional language for LIP requires the program to be competitive, which we interpret to be competitive at the national level. We believe the disbursement of FY 2002 LIP funds can be done efficiently and achieve a broad geographic distribution through a national review and selection process rather than a regional allocation process.

Comment 12. A requirement for State agencies to provide in excess of a 25 percent match for grants may prove so costly as to discourage participation.

Response: LIP grants require only a 25% nonfederal match (see the answer to Question 6 in the Implementation Guidelines). Increased nonfederal matching shares beyond 25% are scored more favorably under one of the ranking criteria (see (g) in the answer to Question 12), but a match greater than 25% is not required.

Comment 13. Accounting requirements and processes for in-kind and matching contributions that are too cumbersome and costly may cause motivated State agencies to decline to participate in this initiative.

Response: Matching contribution (including in-kind) administrative and audit requirements are provided in Title 43 of the Code of Federal Regulations, Part 12 for all Department of the Interior assistance programs, including LIP. Based on our experience working with the States in other Federal Aid grant programs, we believe the partnership and accountability benefits outweigh the administrative burdens associated with the use of in-kind match.

Comment 14. We recommend that you establish a Tier 3 program * * * that would address a multi-state concern with respect to at-risk species * * * and we recommend a fund match of 90%/10% (Federal/State).

Response: Rather than creating a third tier for LIP to address multistate projects, the Service will retain a two-tiered program during this program implementation period and consider

evaluating other options in future years based on identified State needs.

Comment 15. We received two comments that encouraged the Service to focus proposal review and funding at the ''program'' level and not at the activity or project level.

Response: Service review of grant proposals will be primarily at the program level to determine how well the States address the eligibility requirements for Tier-1 and the criteria for the competitive scoring process in Tier-2. In addition, we will evaluate and score the State Tier-2 grant proposals based upon the level of detail provided, which may focus on projects. Once funds are awarded to a State, however, the Service will need to evaluate projects to see that they meet Federal environmental compliance requirements.

Comment 16. We suggest that the proposal selection process make use of the ''diverse panel of interested and affected parties'' proposed for the Private Stewardship Grant Program.

Response: The Service intends to create a diverse panel of professional Service staff to review, rank, and recommend funding to the Director. They will be knowledgeable about the LIP program, its objectives, and implementation requirements as well as how other Federal grant programs are implemented. The Service's expectation is that the panel will perform in a fair, efficient, and effective manner.

Comment 17. We wish that the program had chosen to allocate funds based on need and opportunity, rather than a set finite limit of $1.74 million [5% maximum for each State] regardless of opportunity.

Response: The Service proposed limits to ensure opportunities to all States during this important initial phase of program building. Since needs and opportunities vary from State to State based upon many factors, the Service believes that it is important this first year to encourage national program development and acceptance in as many States as practical. We believe the 5% maximum per State will lead to a greater number of species and habitats positively impacted, but will revisit the cap issue in subsequent years should it appear to be constraining.

Comment 18. At the very least, the outreach and fund distribution system are likely to be the same for every Tier-2 grant submitted by each State, so it would be better to have these aspects described in a cover letter to the Tier-2 grant package that each State submits.

Response: It is difficult to determine at this time what the States will submit regarding their plans for outreach and fund distribution. We believe these are important factors involved with the development of a strong program. The States will need to describe clearly how they intend to meet this eligibility requirement for Tier-1 and scoring criterion for Tier-2 grants in their grant proposal document.

Comment 19. It is unclear whether a State's proposal can include more than one discrete project, each with its own requested funding level.

Response: The purpose of the LIP is to help establish or support State programs that provide, enhance or conserve habitats for at risk species. States may submit one or more projects within their grant proposal. Additionally, one or more grant agreement segments may be used to implement and obligate funds for projects within a grant proposal. See also the Response to Comment 15.

Comment 20. We are concerned that it will be difficult to submit proposals, receive funding, and initiate projects in the short time remaining this Federal fiscal year.

Response: No relationship exists between LIP fund initiation and expenditure and the Federal fiscal year. The only initial deadline to meet is the deadline for submission of proposals. Once proposals are received, approved, and ranked, the Director will announce grant awards to the States. The obligation of funds for States awarded grants takes place when the Service approves a grant agreement. One or more projects may then be initiated, but there is no specific deadline by which work must begin or end other than that described in the grant agreement.

Comment 21. We believe it is too late in the fiscal year to solicit proposals and allocate funds. We believe that efficiency and effectiveness would be greatly enhanced * * * if the FY 02 funds were rolled over and combined with FY 03 funds, with a single proposal solicitation used for the combined funds.

Response: Many program commenters and supporters have expressed their desire to see the program implemented quickly. In addition, it is possible that no funds will be appropriated by Congress in FY 2003 or funds may be appropriated with additional or differing requirements. For these reasons, it is important to proceed with implementation of LIP for FY 2002 at this time.

Comment 22. The short timeframe for this program will require a simplified application procedure to allow State agencies time to develop a timely and complete application.

Response: The application procedure is limited to filling out a one-page Application for Federal Assistance form and a narrative describing the key components of the proposal as outlined in these LIP Final Implementation Guidelines. The proposed 60-day period we are allowing for submission of grants seems acceptable to most States.

Comment 23. The **Federal Register** notice states that the Service will ensure that the funded State projects will comply with the NEPA. This compliance should be addressed through a categorical exclusion or the development of a generic environmental analysis finding that precludes the need for a detailed Environmental Assessment (EA) or Environmental Impact Statement (EIS).

Response: A generic nationwide EA or EIS is not possible at this time due to the anticipated variability in the grant proposals submitted by each State. The Service must review each grant agreement developed by the States for NEPA compliance. We would apply categorical exclusions where warranted.

Comment 24. We strongly recommend that the Service monitor this program and ensure that it does not become bogged down in bureaucratic red tape and overhead.

Response: The Service will administer the LIP program in a manner that will move grants quickly through the administrative process and provide efficient reimbursement processing and project monitoring. Regional Service contacts will work closely with the States, and their partner landowners and organizations as needed, to achieve on-the-ground results.

Comments Related to the Scoring Process and Ranking Criteria

Comment 25. Tier-2 ranking criterion 12(a) regarding detail and clarity * * * likely will not contribute significantly to discriminating the value of competing proposals.

Response: The Service believes it is important for proposals to be well written and clearly describe what the State or territory intends to accomplish with a grant. This is an important part of the evaluation process.

Comment 26. Question 24 [of the first LIP notice] addresses the issue of length of time during which the project improvements are to be left in place in order to realize the desired benefits. We recommend adding this to the Tier-2 grant proposal ranking criteria in answer to Question 12.

Response: We have added an additional ranking criterion (h) (in the answer to Question 12), that focuses on the anticipated length of project

benefits, as well as the urgency of the proposed projects.

Comment 27. In regard to Tier-2 ranking criterion 12(b) on fiscal management systems, we do not believe that ranking proposals using this criterion will enhance the program or help insure that the proposals that contribute most to conservation of at-risk species will be selected.

Response: Fiscal management and related systems used by agencies receiving Federal funds and the required accounting for their use are critical to meeting accountability expectations and implementing an effective program administratively.

Comment 28. Question 12(b) includes as a Tier-2 grant proposal ranking criterion ''* * * annual monitoring and evaluation of progress toward desired project and program objectives (landowner and State).'' We suggest alternate wording, ''* * * desired project objectives [deleting ''and program'']. '' Particularly when funding for the program must be authorized annually, it seems that LIP objectives would be met if project objectives are monitored and evaluated.

Response: We disagree. Since LIP is really focused primarily on establishing and funding programs, the proper barometer is at the programmatic level which synthesizes project level results. States will undoubtedly need to conduct monitoring and evaluation at the project level to determine progress toward program goals and objectives. Therefore, we have changes in the LIP Final Implementation Guidelines to reflect the emphasis on program level focus.

Comment 29. I believe that these two criteria (public awareness/outreach 12(d) and fund distribution 12(c)) are more valuable for a Tier-1, LIP setup grant than for each individual Tier-2 grant that you will be evaluating. At the very least they are likely to be the same for every Tier-2 grant submitted by each State so it would be better to have these aspects described in the cover letter to the Tier-2 grant package that each State submits.

Response: The Service believes there could be a high degree of variability in what States propose for their outreach efforts ((d) in answer to Question 12). We also recognize the importance public outreach can have in developing an effective program with good landowner participation. The Service believes outreach provides a legitimate area of focus for Tier-1 and as a ranking criterion for Tier-2. We also believe that fund distribution is an important aspect of the program and should be a ranking criterion.

Comment 30. It's unclear if a state wildlife agency will be required to describe cost/benefit components or if this reference is used merely as an example. The benefits of habitat conservation are many, but often extremely difficult to quantify. We suggest the portion of 12(c) * * * cost/benefit components including duration of costs and benefits be removed from the list of scoring criteria for Tier-2 grants.

Response: Cost/benefit analysis is only one of many ways that a State may wish to establish, singly or in combination with other criteria, a fair and equitable system for fund distribution. The Service will retain this suggested criteria as a potential option to the States in the answer to Question 12(c).

Comment 31. Two comments suggested that the Tier-2 ranking criterion 12(g) regarding matching nonfederal funds was rarely an important factor in program success and had built-in bias against States not capable of increasing their nonfederal matching funds. They suggest that it should either be eliminated or reduced in its allocation of scoring points. Another comment was made suggesting an alternate [to using matching funds as a ranking criterion] would be to award more points to those proposals with a higher number of State, Federal, or private partners.

Response: The Service grant programs serve as vehicles for States and other entities to accomplish conservation and management activities that would otherwise not have funding. Encouraging the leveraging of Federal dollars has served as an important tool in bringing partners together and developing support for these activities. We believe those States maximizing this effort should be recognized to some degree in the ranking process. Nonetheless we have reduced the total number of points that can be scored in this category to acknowledge the challenge confronted by some agencies.

Comment 32. We recommend Tier-2 ranking criterion 12(e) be modified to consider the proportion of at-risk species within the State, territory, or district [that is to be addressed by the grant proposal].

Response: To consider this modification, it would require each State to develop a complete list of all species they deem to be at-risk within their jurisdiction prior to applying for any grant. We believe that this requirement would likely result in a long deliberative process, with large variability among States, with minimal benefit to the program.

Comment 33. A [new] ranking criterion for Tier-2 grants should consider the urgency of the project to the target species. We encourage scoring criterion 12(e) for Tier-2 grants be modified to represent more a measure of the overall contributions of the project to conservation of the species benefitted.

Response: We have created an additional ranking criterion 12(h) to address the urgency and duration of benefits for species identified in the proposed projects.

Comment 34. Individual projects in Hawaii and California are very likely to benefit over a dozen listed species * * * [thus restructuring the scoring for Tier-2 criterion (e)] would be more useful if it was 1–4 species (1 point), 5–10 species (2 points), and >10 species (3 points). And, reduce the total points possible for all criteria.

Response: We believe a large number of total points possible will enable reviewers to more accurately discern true differences between grossly similar grant proposals. We also believe the number of species benefitted is a valid scoring criterion. We have, however, added another species-related ranking criterion (h) that will expand the scoring to also include the urgency of the project to the species benefitted.

Comment 35. Tier-2 ranking criterion 12(e) should be expanded to include the relative conservation risk of the species identified in the application.

Response: As stated previously in the response to Comment 34, we have created an additional ranking criterion 12(h) to address the urgency and duration of benefits for species identified in the proposed projects.

Comment 36. More qualitative flexibility to allow consideration of this broader State context (relative to administration) needs to be incorporated into ranking criterion 12(f) for Tier-2.

Response: We have reduced the weighting of this criterion due to this comment and others that indicate a need to consider the variation in current capabilities of some State agencies to address their administrative needs.

Comment 37. We suggest that this criterion (12(f)) be amended to consider the percentage of the State's total Tier-2 program funds rather than the percentage of the State's total LIP program funds (which we assume would include the combined funds from Tier–1 and Tier–2 grants).

Response: We agree this is not clear and have made the suggested changes to ranking criterion 12(f) in this final notice.

Comment 38. We feel the scoring criterion 12 (f) (for Tier-2 grants) unfairly benefits those State wildlife agencies with the greatest capacity to deliver private lands programs. We recommend it be removed or its scoring weight reduced by at least 50%.

Response: Based on this and related comments we have reduced the weighting of this criterion from 10 possible points to five.

Comment 39. Comments on Tier-2 scoring criterion 12 (h) [of the first LIP notice], regarding proposals identifying performance measures that support the Service performance goals, ranged from replacing this scoring criterion with one that focuses on specific species reproductive improvements, to deleting the criterion entirely.

Response: President Bush has launched a new strategy for improving the management and performance of the Federal Government. The quantified measures to be included with each proposal to be eligible under LIP will help achieve the overall program goal to conserve habitat for endangered, threatened or other at risk species on private lands. Through LIP, State programs to assist private, voluntary conservation efforts will help the Service meet its Long-Term and Annual Performance Goals as expressed in the Service's Annual Performance Plan. The LIP furthers the Service's goals for conserving imperiled species (Goal 1.2) and habitat conservation (Goal 2.3). Further information on the Service's strategic plans and performance reports is available at *http://planning.fws.gov*.

The Service believes that there is merit in evaluating LIP projects and how grants assist meeting LIP and Service goals. Rather than including performance measures in the ranking criteria, however, we are requiring the State to:

(a) for Tier-1 grant proposals—Describe the process by which the State will develop clear, obtainable, and quantified performance measures to help it meet LIP program goals and objectives; and

(b) for Tier-2 grant proposals—Identify clear, obtainable, and quantified performance measures related to the Habitat Conservation and Sustainability of Fish and Wildlife Populations goals in the expected results or benefits section of the grant proposal narrative.

Additionally, we have modified selection criteria 12(b) to require States to identify how their management systems will adequately monitor and evaluate progress in achieving its goals through these performance measures.

Comment 40. The only comments concerning the Tier-1 eligibility requirements recommended eliminating criterion (g) that would identify performance measures that support Service performance goals.

Response: See the response to Comment 39.

Comment 41. One commenter preferred reducing the total points for all scoring criteria.

Response: We have reduced total points for some ranking criteria where comments supported that reduction.

Comment 42. One commenter suggested a general or ''other proposal merits'' scoring criterion that would include how the project might complement other projects in the area, its unique qualities, enhanced nonfederal cost sharing, or other extraordinary benefits.

Response: We found it difficult to create a multifaceted ranking criterion, unlike those that have more specific and measurable components, and therefore have not included one in the Implementation Guidelines.

Comment 43. A criterion for Tier-2 ranking should include the magnitude and duration of benefits.

Response: Ranking criteria (a) and (h) (see answer to Question 12) should adequately capture the magnitude and duration of benefits of the projects.

Required Determinations

Regulatory Planning and Review

This policy document identifies eligibility and selection criteria the Service will use to award grants under LIP. The Service developed these guidelines to ensure consistent and adequate evaluation of grant proposals that are voluntarily submitted and to help perspective applicants understand how the Service will award grants. According to Executive Order (E.O.) 12866, these policy guidelines are significant and the Office of Management and Budget has reviewed them in accordance with the four criteria discussed below.

(a) LIP will not 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, jobs, the environment, public health or safety, or State or local communities. A total of $34,800,000 will be awarded in grants to State and Territorial wildlife agencies to provide financial and technical assistance to private landowners to carry out voluntary conservation actions. These funds will be used to pay for the administration and execution of actions such as restoring natural hydrology to streams or wetlands that support species of concern, fencing to exclude livestock from sensitive habitats, or planting native vegetation to restore degraded habitat. In addition, grants that are funded will generate other, secondary benefits, including benefits to natural systems (*e.g.*, air, water) and local economies. All of these benefits are widely distributed and are not likely to be economically significant in any single location. It is likely that some residents where projects are initiated will experience some level of benefit, but quantifying these effects at this time is not possible. We do not expect the sum of all the benefits from this program, however, to have an annual effect on the economy of $100 million or more.

(b) We do not believe LIP would create inconsistencies with other agencies' actions. Congress has given the Service the responsibility to administer the program.

(c) As a new grant program, LIP would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of their recipients. This policy establishes a new grant program that Public Law 107–63 authorizes, which should make greater resources available to applicants. The submission of grant proposals is completely voluntary, but necessary to receive benefits. When an applicant decides to submit a grant proposal, the eligibility and selection criteria identified in this policy can be construed as requirements placed on the awarding of the grants. Additionally, we will place further requirements on grantees that are selected to receive funding under LIP in order to obtain and retain the benefit they are seeking. These requirements include specific Federal financial management and reporting requirements and time commitments for maintaining habitat improvements or other activities described in the applicant's grant proposal.

(d) OMB had determined that these guidelines raise novel legal or policy issues, and, as a result, this document has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small

entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In this notice, we are certifying that LIP will not have a significant economic impact on a substantial number of small entities for the reasons described below.

Small entities include organizations, such as independent nonprofit organizations and local governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger impacts as a result of this program. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

The types of effects this program could have on small entities include economic benefits resulting from the purchasing of supplies or labor to implement the grant proposals in relation to habitat improvements on private lands. By law, only State and Territorial wildlife agencies are eligible grant recipients. Since this program will be awarding a total of only $34,800,000 for grants throughout the United States to benefit wildlife habitat on private lands, a substantial number of small entities are unlikely to be affected. The benefits from this program will be spread over such a large area that it is unlikely that any significant benefits will accrue to a significant number of entities in any area. In total, the distribution of the $34,800,000 will not create a significant economic benefit for small entities but, clearly a number of entities will receive some benefit.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This policy will not ''significantly or uniquely'' affect small government entities.

(b) This policy will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. LIP establishes a grant program that States may participate in voluntarily.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), LIP does not have significant takings implications. State and Territorial agencies will work with private landowners who voluntarily request technical and financial assistance for species conservation on their lands.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This policy is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism

In accordance with Executive Order 13132, this policy does not have any Federalism effects. A Federalism assessment is not required. Congress has directed that we administer grants under LIP directly to the States and Territories. The States have the authority to decide which private landowner projects to forward to the Service for consideration as their LIP.

Civil Justice Reform

In accordance with Executive Order 12988, LIP does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. With the guidance in this policy and these guidelines, the Service will clarify the requirements of LIP to applicants that voluntarily submit grant proposals.

National Environmental Policy Act

The issuance of this policy and implementation guidelines does not constitute a major Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the policy and guidelines is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1. The Service will ensure that grants that are funded through LIP are in compliance with NEPA.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis.

This policy document deals only with the LIP program as it relates to States and Territories. Under Public Law 107–63, Title I, Tribes are also eligible grantees. The Service is preparing a separate policy document which will be applicable to the tribal component of the LIP program.

Paperwork Reduction Act

We made application to OMB for approval of the information collection requirements for this program in conjunction with the above **Federal Register** notice published June 7, 2002. That application seeks to revise the Federal Grants Application Booklet (1018–0109) to include additional hours for this new burden. OMB approved this request August 12, 2002. 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.

Authority

This notice is published under the authority of the Department of the Interior and Related Agencies Appropriations Act, 2002, H.R. 2217/Pub. L. 107–63.

Dated: August 15, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–24859 Filed 9–30–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AI56

Fiscal Year 2002 Private Stewardship Grants Program; Request for Grant Proposals and Final Policy and Implementation Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals; announcement of final policy and implementation guidelines.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are soliciting project proposals for Federal assistance under the Private Stewardship Grants Program (PSGP). This document describes how you can apply for funding under the PSGP and how we will determine which project proposals will be funded. Congress appropriated $10 million from the Land and Water Conservation Fund in Fiscal Year 2002 for the Service to establish the PSGP. The PSGP provides grants and other assistance on a competitive basis to individuals and groups engaged in private, voluntary conservation efforts that benefit species listed or proposed as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), candidate species, or other at-risk species on private lands within the United States.

DATES: Project proposals must be received by the appropriate Regional Office (see Table 2 in **SUPPLEMENTARY INFORMATION**) no later than December 2, 2002.

ADDRESSES: For additional information-contact the Service's Regional Office that has the responsibility for the State or Territory in which the proposed project would occur. The contact information for each Regional Office is listed in Table 2 under **SUPPLEMENTARY INFORMATION** below. Information on the PSGP is also available from the Branch of Recovery and State Grants, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 or electronically at *http://endangered.fws.gov/grants/private_stewardship.html* or e-mail: *Privatestewardship@fws.gov.*

To submit a project proposal—send your project proposals to the Service's Regional Office that has the responsibility for the State or Territory in which the proposed project would occur (see Table 2 under **SUPPLEMENTARY INFORMATION**). You must submit one original and two copies of the complete proposal. We will not accept facsimile project proposals.

FOR FURTHER INFORMATION CONTACT: The Program Contact in the appropriate Regional Office identified in Table 2 under **SUPPLEMENTARY INFORMATION** or Martin Miller, Chief, Branch of Recovery and State Grants (703/358–2061).

SUPPLEMENTARY INFORMATION:

Background

The majority of endangered and threatened species depend, at least in part, upon privately owned lands for their survival. The help of landowners is essential for the conservation of these and other imperiled species. Fortunately, many private landowners want to help. Often, however, the costs associated with implementing conservation actions are greater than a landowner could undertake without financial assistance. The President's Budget for Fiscal Year 2002 requested funding to address this need and Congress responded by appropriating $10 million from the Land and Water Conservation Fund for the Service to establish the PSGP. The PSGP provides grants or other Federal assistance on a competitive basis to individuals and groups engaged in private, voluntary conservation efforts that benefit species listed or proposed as endangered or threatened under the Act, candidate species, or other at-risk species on private lands within the United States.

We are soliciting project proposals for Federal assistance under the PSGP. This document describes how you can apply for funding under the PSGP and how we will determine which project proposals will be funded. On June 7, 2002, we published in the **Federal Register** (67 FR 39419) our plan to implement the PSGP and solicited comments. As a result of the comments received, a number of changes have been made to the implementation guidelines. The following sections explain the PSGP. The first, Final Program Implementation Guidelines, includes the project eligibility criteria, the project selection process, and the instructions on how to apply for PSGP grants. The second, Summary of Comments and Recommendations, responds to the comments we received on the proposed implementation guidelines. The third, Required Determinations, addresses the regulatory requirements associated with issuing the final PSGP implementation guidelines.

I. Final Program Implementation Guidelines

As a result of comments received, we have made a number of changes in the implementation guidelines. Therefore, we encourage you to read the entire document before preparing a project proposal. We have revised the scoring system used to evaluate projects, provided substantially more guidance on submitting a project proposal, and clarified the eligibility criteria.

What Types of Projects May Be Funded?

Eligible projects include those by landowners and their partners who need technical and financial assistance to improve habitat or implement other activities on private lands for the benefit of endangered, threatened, proposed, candidate, or other at-risk species (plants and animals). Under the PSGP, privately owned means land that is not owned by a governmental entity.

For information on which species are endangered, threatened, proposed, or candidates, please visit the Service's Internet site at *http://endangered.fws.gov/wildlife.html.* For the purposes of the PSGP, an ''at-risk species'' is any species formally recognized as a species of conservation concern, such as species listed by a State or Territory. We recommend that you contact your State natural resources agency to determine which species are recognized as species of conservation concern (*e.g.*, State listed as endangered, threatened, special concern, or other similar designations). If your State does not identify species of conservation concern or in addition to those species identified by the State, we will also consider any species or subspecies listed by NatureServe as ''critically imperiled'' (designated by rank ''G1'' or ''T1''), ''imperiled'' (designated by rank ''G2'' or ''T2''), or ''vulnerable'' (designated by rank ''G3'' or ''T3'') to be an at-risk species for the purposes of the PSGP. For information on NatureServe rankings, please visit their Internet site at *http://www.natureserve.org/explorer/.*

The PSGP supports on-the-ground conservation actions as opposed to planning or research activities. Examples of the types of projects that may be funded include managing nonnative competitors, reintroducing imperiled species, implementing measures to minimize risk from disease, restoring streams that support imperiled species, erecting fencing to exclude animals from sensitive habitats, or planting native vegetation to restore a rare plant community. This is not an exhaustive list of the various projects that may be funded under the PSGP. We recognize that there is a multitude of ways to benefit imperiled species conservation on private lands. While we will not fund the acquisition of real property either through fee title or easements, we are not excluding any

other approach from consideration so long as it can demonstrate tangible on-the-ground benefits to the imperiled species in question and meets the other eligibility criteria established for the PSGP.

Who Can Apply for PSGP Grants?

Private landowners, individually or as a group, are encouraged to submit project proposals for their properties. Additionally, individuals or groups (for example land conservancies, community organizations, or conservation organizations) working with private landowners on conservation efforts are also encouraged to submit project proposals provided they identify specific private landowners who have confirmed their intent to participate on the project or provide other evidence in the project proposal to demonstrate landowner participation will occur. In order to receive funding, projects will need to ensure that landowners are willing to allow the Service access to the project area in order to check on its progress when necessary.

State government agencies are not eligible to receive PSGP funding (including as a subrecipient). The Service has established a separate program specifically designed to facilitate State government partnerships with private landowners, the Landowner Incentive Program. State agencies are encouraged to assist landowners in developing PSGP project proposals, to provide cost share when feasible, or to participate in other ways on project implementation. However, State agencies are not eligible to apply for PSGP funding directly.

Other non-Federal governmental entities or affiliates, including Counties or other local governments or State-supported universities, are eligible to apply for PSGP funding in order to assist private landowners in planning and implementing a project. As with other groups that apply on behalf of the private landowners, they must identify specific private landowners who have confirmed their intent to participate on the project or provide other evidence in the project proposal to demonstrate that landowner participation will occur.

Eligibility Criteria

The following criteria must be satisfied for a proposal to be considered for funding:

(1) The project must involve voluntary conservation efforts on behalf of private landowners within the United States (*i.e.*, U.S. States and Territories). As a voluntary program, we will not grant funding for projects that serve to satisfy regulatory requirements of the Act, including complying with a biological opinion under section 7 of the Act or fulfilling commitments of a Habitat Conservation Plan under section 10 of the Act, or for projects that serve to satisfy other local, State, or Federal regulatory requirements (*e.g.*, mitigation for local, State, or Federal permits).

(2) The project must benefit species listed as endangered or threatened under the Act by the Service, species proposed or designated as candidates for listing by the Service, or other at-risk species that are native to the United States. We will not award grants to fund the acquisition of real property either through fee title or easements. However, habitat improvements over and above any existing requirements for lands covered under current easements or other such conservation tools would be considered eligible for funding.

(3) The proposal must include at least 10 percent cost sharing (*i.e.*, at least 10 percent of total project cost) on the part of the landowner or other non-Federal partners involved in the project (the cost-share may be an in-kind contribution, including equipment, materials, operations, and maintenance costs). The cost share must come from sources other than the PSGP or other Federal funds.

(4) The proposal must either identify at least some of the specific landowners who have confirmed their intent to participate in the private conservation efforts (not all participating landowners need to be identified at the time of the proposal submission) or provide other information to demonstrate that the project, if funded, would have full landowner participation.

(5) The proposal must include a reasonably detailed budget indicating how the funding will be used and how each partner is contributing. A project begins on the effective date of an award agreement between you and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, we cannot reimburse you for time that you expend or costs that you incur in developing a project or preparing the application, or in any discussions or negotiations you may have with us prior to the award. We will not accept such expenditures as part of your cost share. We will also not consider fees or profits as allowable costs in your application. The total costs of a project consist of all allowable costs you incur, including the value of in-kind contributions, in accomplishing project objectives during the life of the project. The costs proposed to be funded through the PSGP may not exceed 90 percent of the total costs.

(6) The proposal must include quantifiable measures that can be used to evaluate the project's success. These quantifiable measures must be specific, clear, and provide demonstrable benefits to the target species such as increased habitat quantity or quality. The project proposal should specify in detail how the habitat quantity or quality will be improved (*e.g.*, acres, species, etc.) and the anticipated use of that habitat by the target species (*e.g.*, numbers, duration, etc.). For example, a proposal might specify the number of acres restored by planting specific native plants and the number of breeding pairs of the target species that are anticipated to use the restored habitat. Proposed methods of monitoring, evaluating, and reporting these measures in comparison to an initial baseline should also be included in the proposal.

How Does the PSGP Work?

Interested individuals and groups prepare proposals that describe their project and its benefits for the target species. See ''Project Proposals'' below for additional information. Proposals will compete at a Regional level for funding. We have established targets for the amount of funding that will be available for grants within each of the Service's Regions. These targets are based 50 percent on the number of acres of non-Federal land, as a representation of the amount of private land within each Region, and 50 percent on the number of listed, proposed, candidate, and a sample of the other at-risk species in each Region (see Table 1 for regional funding targets).

TABLE 1.—SERVICE REGIONS AND FUNDING TARGET FOR GRANTS IN EACH REGION

Region	States and territories	Total funding target for grants within region
Region 1 (Pacific)	California, Hawaii, Idaho, Oregon, Washington, Nevada, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands.	$2,821,859
Region 2 (Southwest)	Arizona, New Mexico, Oklahoma, and Texas	1,490,457
Region 3 (Great Lakes-Big Rivers)	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin	942,981
Region 4 (Southeast)	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.	1,723,690
Region 5 (Northeast)	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	634,151
Region 6 (Mountain-Prairie)	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	1,413,886
Region 7 (Alaska)	Alaska	472,976

The Service will award grants for actions and activities that protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on private lands. Additionally, the Service, in cooperation with the grantees, must address Federal compliance issues, such as the National Environmental Policy Act, the National Historic Preservation Act, and the Endangered Species Act. For the projects that are selected to receive funding, we will provide additional guidance on compliance with these requirements.

The final exact amount of funds, the scope of work, and terms and conditions of a successful award will be determined in pre-award negotiations between the prospective recipient and the Service's representatives. The prospective recipient will be asked to sign an agreement that specifies the project requirements, such as the cost share, the project design, the time commitment for maintaining the project's benefits, and the reporting requirements, and that provides for Service access to the project area in order to check on its progress. In order to receive funding, prospective recipient will also need to provide assurances and certifications of compliance with other Federal requirements (for example see Standard Form 424–B and Department of the Interior form DI–2010 available at *http://www.nctc.fws.gov/fedaid/toolkit/formsfil.pdf*). The recipient is reimbursed based on the cost-sharing formula in the Agreement. You should not initiate your project in expectation of PSGP funding until you receive the final grant award document signed by an authorized Service official.

How To Apply for a PSGP Grant

You must follow the instructions in this document in order to apply for financial assistance under the PSGP. For a description of the information that must be included in a project proposal, please see the ''The PSGP Project Proposal'' section below. Your project proposal should not be bound in any manner and must be printed on one side only. You must submit one signed original and two signed copies of your project proposal (including supporting information). Your unbound (a binder clip is allowed) project proposal must be received by the appropriate Regional Office listed in Table 2 by December 2, 2002. We encourage you to contact the Regional contact person listed in Table 2 prior to submitting a project proposal should you have questions regarding what information must be submitted with the project proposal. An incomplete proposal will not be considered for funding.

TABLE 2.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS

Service region	States or territory where the project will occur	Where to send your PSGP project proposal	Regional PSGP contact and phone No.
Region 1	Hawaii, Idaho, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands.	Regional Director, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232–4181.	Heather Hollis (503/231–6241).
Region 1	California and Nevada	Office Manager, U.S. Fish and Wildlife Service, Federal Building, 2800 Cottage Way, Room W–2606 Sacramento, CA 95825–1846.	Miel Corbett (916/414–6464).
Region 2	Arizona, New Mexico, Oklahoma, and Texas.	Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, NM 87102.	Susan MacMullin (505/248–6671).
Region 3	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal, Building One, Federal Drive, Fort Snelling, MN 55111–4056.	Peter Fasbender (612/713–5343).

TABLE 2.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS—Continued

Service region	States or territory where the project will occur	Where to send your PSGP project proposal	Regional PSGP contact and phone No.
Region 4	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.	Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345.	Noreen Walsh (404/679–7085).
Region 5	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	Regional Director, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589.	Diane Lynch (413/253–8628).
Region 6	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486.	Patty Worthing (303/236–7400 ext. 251).
Region 7	Alaska	Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199.	Susan Detwiler (907/786–3868).

The PSGP Project Proposal

The project proposal is a narrative description of your project and one required Federal form. The ultimate size of the proposal will depend on its complexity, but we request that you attempt to minimize the size of the narrative description of the proposal. Each page should be no larger than 8.5 by 11 inches. You will need to submit an original proposal and two copies; neither the original nor the copies should be permanently bound. A complete application package with detailed instructions and supplementary information can be found at our Internet site: *http://endangered.fws.gov/grants/private_stewardship.html.*

The project proposal should also indicate whether partial funding of the project is practicable, and, if so, what specific portion(s) of the project could be implemented with what level of funding. A project proposal that is a part of a longer-term initiative will be considered; however, the proposed project's objectives, benefits, and tasks must stand on their own, as there are no assurances that additional funding would be awarded in subsequent years for associated or complementary projects.

The Service, the Department of the Interior, and the Office of Management and Budget have established requirements concerning Federal financial assistance. This includes established principles for determining which costs are allowable or eligible based on the type of applicant (see ''Administrative Requirements'' below). Your project proposal must comply with these requirements.

The narrative description of your project proposal should specifically address each of the eligibility criteria and each of the ranking factors. We recommend the following format for the project narrative—

(1) *Title Page.* You should list on the Title Page a project title, objectives, duration, summary of costs (amounts of PSGP funding needed and cost sharing), and contact information (name, address and phone number).

(2) *Project Description.* The project proposal must identify which species will benefit, how they will benefit from the project, and describe the project's significance to each target species (goals and objectives for the project). We also encourage applicants to describe how the location of the project and its role in the landscape affect the conservation of the target species. The proposal must either identify at least some of the specific landowners who have confirmed their intent to participate in the private conservation efforts or provide other information to demonstrate that the project, if funded, would have full landowner participation. Explain why you need government financial assistance for the proposed work. List all other sources of funding you have or are seeking for the project. List any existing Federal, State, Tribal, or local government programs or activities that this project would affect.

(3) *Project statement of work.* The statement of work is an action plan of activities you will conduct during the period of the project. You must prepare a detailed narrative, fully describing the work you will perform to achieve the project goals and objectives. The narrative should respond to the following questions:

(a) What is the project design? What specific work, activities, and procedures will you undertake?

(b) Who will be responsible for carrying out the various activities? Describe how the project will be organized and managed. Identify the person(s) responsible for the project and other project participants.

(c) What are the project milestones? Each project should first clearly describe the base-line conditions as they exist prior to project implementation. List milestones, describing the specific activities and associated time lines to conduct the scope of work. Describe the time lines in increments (*e.g.*, month 1, month 2), rather than by specific dates.

(d) Specify the criteria and procedures that you will use to evaluate the relative success or failure of a project in achieving its objectives.

(e) For what amount of time will you commit to maintain the habitat improvements or other benefits from the project? Describe the steps you will take to ensure that the benefits of the project continue throughout this time period.

(4) *Project Budget.* You must submit a reasonably detailed budget for the project. The budget should indicate the breakdown of costs proposed to be funded through the PSGP and other costs, through both cash and in-kind contributions. To support your project's budget, also describe briefly the basis for estimating the value of the cost sharing derived from in-kind contributions.

(5) *Supporting Documentation.* You should include any relevant documents and additional information (maps, background documents) that will help

us to understand the project and the problem/opportunity you seek to address.

One Federal form, Standard Form-424 ''Application for Federal Assistance,'' must also be completed and submitted with your project narrative description. Detailed instructions for filling out this form are included in the application package available on our Internet site at: *http://endangered.fws.gov/grants/private_stewardship.html* or see **FOR FURTHER INFORMATION CONTACT** above. This form is also available on the Internet at *http://www.gsa.gov/forms/*, at *http://www.nctc.fws.gov/fedaid/toolkit/toolkit.pdf*, or from the Regional PSGP Contact Person.

Administrative Requirements

Listed in the table below are the administrative requirements that will apply to your project if funded through the PSGP. The documents listed below establish principles for determining which costs are allowable or eligible (''cost principles'') and describe other requirements that apply to receiving PSGP funding. These requirements apply to recipients and subrecipients of PSGP funding. In some cases, the requirements vary depending upon the type of organization receiving the funding or that is a subrecipient of the funding. Each of these documents can be found at our Internet site: *http://endangered.fws.gov/grants/private_stewardship.html*. For projects that are selected for funding, we will also offer additional technical assistance to facilitate the prospective recipients' understanding of the financial requirements.

TABLE 3.—ADMINISTRATIVE REQUIREMENTS FOR PSGP FUNDING AWARDS

Category	Specific requirements
Individuals, private firms, and other non-profits excluded from coverage under OMB Circular No. A–122.	* Federal Acquisition Regulation Subpart 31.2. * 43 CFR 18 (New Restrictions on Lobbying). * 48 CFR 31 (Contracts with Commercial Organizations).
Non-Profit Organizations covered under OMB Circular No. A–122.	* 43 CFR 12 (Administrative and Audit Requirements and Cost Principles for Assistance Programs). * 43 CFR 18 (New Restrictions on Lobbying). * OMB Circular No. A–110 (Administrative Requirements for Grants). * OMB Circular No. A–122 (Cost Principles). * OMB Circular No. A–133 (Audits).
Educational Institutions (even if part of a State or local government).	* 43 CFR 12 (Administrative and Audit Requirements and Cost Principles for Assistance Programs). * 43 CFR 18 (New Restrictions on Lobbying). * OMB Circular No. A–21 (Cost Principles). * OMB Circular No. A–110 (Administrative Requirements for Grants). * OMB Circular No. A–133 (Audits).
States, local governments, and Indian Tribes	* 43 CFR 12 (Administrative and Audit Requirements and Cost Principles for Assistance Programs). * 43 CFR 18 (New Restrictions on Lobbying). * OMB Circular No. A–87 (Cost Principles). * OMB Circular No. A–102 (Grants and Cooperative Agreements). * OMB Circular No. A–133 (Audits).

Who Can Help Plan and Implement a Project?

The Service may be able to assist landowners in planning or implementing projects. Through multiple programs, we offer a variety of expertise to assist landowners in planning and implementing projects on private lands. Among others, the Service's Endangered Species program and the Fish and Wildlife Management and Habitat Restoration program have worked hand-in-hand with a variety of partners on private lands. The Service's ability to assist landowners will depend upon the type of project proposed and an assessment of how the project fits into our existing workloads and priorities. Due to the limited time available for such assistance, it may be necessary to submit the project proposal for funding under a future PSGP Request for Proposals. For additional information on how the Service may be able to assist you, contact the Program Contact in the appropriate Regional Office identified in Table 2. Information is also available from the Service's Internet site at *www.fws.gov.*

In addition, many other Federal, State, Territory, or Tribal agencies, as well as conservation organizations, work closely with landowners and may be able to assist with planning and implementing a project. Local governments, such as your county or city, may also have personnel that could assist you in developing a project proposal.

For general guidance on developing and writing grant proposals, see the Catalog of Federal Domestic Assistance's Internet site at *http://www.cfda.gov/public/cat-writing.htm.*

How Will Proposals Be Selected?

Proposals will compete at a Regional level for funding. Within each Region, a diverse panel of representatives from State and Federal government, conservation organizations, agriculture and development interests, and the science community will assess the applications and make funding recommendations to the Service. The Service's Regional Offices will invite and select the individuals to participate on the panels. The purpose of using the diverse panels is to obtain individual advice on project selection from an array of interests involved with conservation efforts on private lands. The Service will use the individual panel member recommendations in selecting projects, although geographic distribution of projects, the amount of funding requested for a project compared with the total amount of funding available, and other such factors may also be considered. Partial funding of one or more projects, when practicable, may be considered. After reviewing the individual panel member recommendations and the other factors, the Service's Director will make funding selections, subject only to the final approval of the Assistant Secretary for Fish and Wildlife and Parks.

Members of each diverse panel will individually score each proposal based on a set of ranking factors, which include (1) the number of endangered or threatened species, species proposed or

candidates for such listing, and at-risk species that will benefit from the project; (2) the importance of the project to the conservation of those species, including the duration of the benefits, the magnitude of the benefits, and the urgency of the project; and (3) other proposal merits, such as whether the project complements other conservation projects in the area, the project's unique qualities, feasibility of the project, or any other appropriate justifications, including particular strengths in the above categories (*e.g.*, extraordinary benefits).

Due to the wide variety of project proposals that will likely be submitted, the scoring system must provide a relatively high degree of flexibility. Therefore, a scoring system that is relatively simple, but allows project proposals to be evaluated qualitatively as well as quantitatively is desired. The three ranking factors will be scored as described in Table 4 below.

TABLE 4.—PROJECT PROPOSAL SCORING GUIDELINES

[10 points maximum]

Ranking factor	Project proposal assessment	Number of points
(1) The number of federally listed, proposed, candidate, or at-risk species that will directly benefit from the project.	5 or fewer species	1
	6 or more species	2
(2) The importance of the project to the conservation of the target species, including the duration of the benefits, the magnitude of the benefits, and the urgency of the project.	Qualitative	1–5
(3) Other Proposal Merits. Whether the project complements other projects in the area, the project's unique qualities, feasibility of the project, or any other appropriate justifications, including particular strengths in the above categories (*e.g.*, extraordinary benefits).	Qualitative	0–3

How Does the PSGP Further the Mission of the Service?

President Bush has launched a new strategy for improving the management and performance of the Federal Government. The PSGP will reflect the President's strategy and embody the Secretary's commitment to citizen-centered government around ''four Cs': Conservation through Cooperation, Consultation, and Communication.

The quantifiable measures required of each proposal to be eligible under the PSGP will help achieve the overall goal of the program to conserve endangered, threatened, or other at risk species. Through this program, private, voluntary conservation efforts will help the Service meet its Long-Term and Annual Performance Goals as expressed in the Service's Annual Performance Plan. In accordance with the Government Performance and Results Act of 1993 (31 U.S.C. 1115), the Service prepares a Strategic Plan. This plan describes the Service's performance goals and measures. The eligibility criteria, selection factors, and reporting requirements in the PSGP ensures that the projects funded maximize progress toward our goals and measures. Among others, the PSGP furthers the Service's goals for conserving imperiled species (Long-term Goal 1.2—Through 2005, 404 species listed under the Act as endangered or threatened a decade of more are either stable or improving, 15 species are delisted due to recovery, and listing of 12 species at risk is made unnecessary due to conservation agreements) and habitat conservation (Long-term Goal 2.3–By 2005, improve fish and wildlife populations focusing on trust resources, threatened and endangered species, and species of special concern by enhancing and/or restoring or creating 550,000 acres of wetlands habitat, restoring 1,000,000 acres of upland habitats, and enhancing and/or restoring 9,800 riparian or stream miles of habitat off-service lands through partnerships and other identified conservation strategies) as described in the Service's strategic plan. Information on the Service's strategic plans and performance reports are available on the Service's Internet site at *http://planning.fws.gov/*. These Service goals support the Department of the Interior's Long-term goals as identified in the Draft Strategic Plan. Specifically, Resource Protection Goals 1.1 (Improve health of watersheds and landscapes) and 1.2 (Sustain biological communities).

II. Summary of Comments and Recommendations

In response to our request for comments on the draft policy, we received letters from 26 entities. All comments received have been reviewed. Overall, almost all respondents expressed appreciation for the PSGP. Many offered valuable suggestions for improving or clarifying specific sections of the final implementation guidelines. Some minor editorial and other changes in the text were suggested; these comments are not included in the following analysis but all were considered, and many of the minor changes were included in the final guidelines. The comments and responses are presented below and are grouped topically.

Comments on General Program Implementation

Comment 1: Many commenters stated their support for the PSGP and the use of incentive-based approaches for conserving imperiled species.

Response 1: We appreciate these comments and look forward to working with interested parties in helping to notify landowners of the opportunities available through the PSGP.

Comment 2: Several commenters stated that the $10 million for the PSGP was not sufficient to meet the demand for project funding.

Response 2: We believe that this level of funding is appropriate to initiate the PSGP, but agree that demand may exceed this funding level in the future. As the PSGP develops, we will reevaluate our funding level requests.

Comment 3: Several commenters recommended that we find ways to make the PSGP process simple in order to encourage the voluntary participation by landowners. Several commenters recommended that the Service keep the program flexible and not restrict landowners beyond that which is

necessary to successfully implement the project.

Response 3: We have attempted to make the PSGP as simple and as flexible as possible, while meeting the established requirements for awarding Federal financial assistance. As we gain experience implementing the PSGP, we will continue to look for ways to make the program more user friendly.

Comment 4: Three commenters recommended that projects be based on the best available scientific and commercial information available.

Response 4: We agree that, to the extent practicable, projects should incorporate the best available scientific and commercial information. When assisting prospective applicants in developing project proposals, we will assist them in making use of the best information available. Additionally, the use of the best science will be considered in the selection process. However, we do not believe it is necessary to stipulate this as an eligibility requirement for a proposal to be considered for funding. There may be project proposals submitted that would provide substantial benefits, but that could be improved with modifications to the project design or methods. Therefore, for projects that are selected for funding the Service will work with the prospective recipient to ensure the scope of work and the terms and conditions for the project incorporate the best available scientific information.

Comment 5: Several commenters suggested additions to the PSGP implementation plan, including issuing multiple Requests for Proposals, awarding grants quickly, developing application and reporting forms, setting aside funding to allow for monitoring and evaluation, establishing a tracking system for project implementation, and expanding State, Tribal, and stakeholder participation in the program development process.

Response 5: We appreciate these well-reasoned suggestions and have incorporated them to the extent feasible for this first year of implementing the program. As we gain additional experience, we will consider ways to further incorporate these suggestions.

Comment 6: One commenter stated that it is important to document success stories and report those successes to Congress and the media to promote the cooperative conservation ethic.

Response 6: We agree that it is critically important that we share the successes of the PSGP, and we will make every effort to do so.

Comment 7: One commenter stated that we should integrate PSGP into the Landowner Incentive Program (LIP) and have it administered by the Service's Federal Aid program. Another commenter recommended that the PSGP be implemented through the Service's Partners for Fish and Wildlife program in cooperation with the States. Conversely, another commenter stated support for private landowners being able to apply directly to the Federal Government for a grant.

Response 7: Conserving species on private lands requires a multi-faceted approach that is exemplified by the PSGP and the LIP. These programs provide opportunities for landowners to work cooperatively with the Service, the States and Territories, and the Tribes. Some private landowners will want to work directly with the Service. For others, working with the State, Territory, or Tribe will best meet their needs. In all cases, these programs will enhance relationships with our partners and offer a diversity of approaches for addressing important habitat needs for imperiled species. The Service's Federal Aid program works primarily with State agencies, rather than directly with landowners. The Service's Partners for Fish and Wildlife program will be involved in implementing the PSGP. We will also continue to look for ways to improve the coordination of the PSGP with other Federal assistance programs.

Comment 8: One commenter stated that the Service should provide assurances that information provided to the agency will not be disseminated to others for use in ways unrelated to the project (by law enforcement personnel or to the public under the Freedom of Information Act). Other commenters stated that information generated by the PSGP should be readily available to the public.

Response 8: The commenter's concern with the confidentiality of information made available to the Service under the PSGP is understandable. Private landowners are often apprehensive that compliance with applicable Federal statutes may affect some land uses. In deciding whether to participate in the PSGP, prospective applicants should carefully consider the potential legal obligations that the landowner may face by attracting or increasing listed species or species that may become listed on their property. For those landowners where such concerns would preclude your participation in the PSGP, we encourage you to speak to the Service's PSGP contact person about the potential for the development of a Safe Harbor Agreement or a Candidate Conservation Agreement with Assurances for your project. Safe Harbor Agreements encourage voluntary management for listed species to promote recovery on non-Federal lands by giving assurances to the landowners that no additional future regulatory restrictions will be imposed under most circumstances. Candidate Conservation Agreements with Assurances provide incentives for non-Federal property owners to conserve candidate species, thus potentially making listing unnecessary and providing regulatory assurances in the event the species is listed. The feasibility of including these types of agreements will depend upon the proposed project and whether the landowner is willing to meet the additional requirements for such agreements.

Project proposals under the PSGP are subject to Freedom of Information Act requirements and will be reviewed by non-Service staff. Applicants may request that we withhold specific information from release outside the agency, which we will honor to the extent allowable by law. If you wish us to withhold specific personal or proprietary information, you must identify which information is to be withheld and state this request prominently at the beginning of your proposal.

Comment 9: One commenter asked that we clarify how we determined the number of at-risk species used to establish the Regional funding targets.

Response 9: We used the number of species and subspecies within each Region that were not listed, proposed, or candidates, but that were ranked by NatureServe as ''critically imperiled,'' ''imperiled,'' or ''vulnerable.'' Additional discussion on ''at-risk'' species is included in the ''What types of projects may be funded?'' section above. The number of species or subspecies for each Region at the time we prepared the Fiscal Year 2002 allocation targets is included below in Table 5.

TABLE 5.—NUMBER OF SPECIES OR SUBSPECIES BY SERVICE REGION WITH NO FEDERAL STATUS AND RANKED BY NATURESERVE AS ''CRITICALLY IMPERILED, IMPERILED, OR VULNERABLE'' AS OF SEPTEMBER 30, 2001

Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 7
4,374	2,024	444	1,810	637	1,430	286

Comments Related to the Eligibility Criteria

Comment 10: Two commenters recommended that the program focus on ecosystems or communities that consider an array of species, or projects at the eco-regional scale as opposed to focusing on individual, targeted species.

Response 10: In evaluating the merits of a project, we will consider the larger conservation context in which the project would occur. Thus projects that have greater benefits in the sense that they address the needs of multiple species or that are part of a larger conservation planning effort will in general score higher than projects that do not provide such benefits. However, we do not believe it is necessary to revise the eligibility criteria to exclude species-specific projects or to make the required scale of a project beyond the ability of willing private landowners. Some of the most important and most cost-effective projects for conserving an imperiled species are those done by a single landowner or a few landowners located in key portions of a species' range. Additionally in some cases, efforts to conserve a single or a small number of species can have significant benefits for the entire natural community.

Comment 11: Many commenters recommended that we should better define which species are considered at-risk and one commenter stated that the State fish and wildlife agency should be consulted in determining which species are at-risk.

Response 11: We have provided additional clarification on how to determine which species are considered at-risk for the purposes of the PSGP (see also ''What types of projects may be funded?'' above). We encourage prospective applicants to contact their State fish and wildlife agency to ascertain whether their State designates species that are of conservation concern (*e.g.*, State listed as endangered, threatened, special concern, or other similar designations). If your State does not identify species of conservation concern or in addition to those species identified by the State, we will also consider any species or subspecies listed by NatureServe as ''critically imperiled'' (designated by rank ''G1'' or ''T1''), ''imperiled'' (designated by rank ''G2'' or ''T2''), or ''vulnerable'' (designated by rank ''G3'' or ''T3'') to be an at-risk species. For information on NatureServe rankings, please visit their Internet site at *http://www.natureserve.org/explorer/.*

Comment 12: One commenter suggested that, given the limited funding available for projects, we not include at-risk species in the PSGP. Other commenters encouraged the consideration of ''at-risk'' species.

Response 12: We understand the commenter's concern over the limited funding for the PSGP and acknowledge that there are many listed species for which projects on private lands are needed. However, we also recognize that projects for at-risk species have the potential to provide large benefits as well and not only for the at-risk species. Early conservation efforts preserve management options, minimize the cost of recovery, and reduce the potential for restrictive land use policies in the future. Addressing the needs of species before the regulatory restrictions associated with listed species come into play often allows greater management flexibility to stabilize or restore these species and their habitats. This cost-effective approach also benefits species already listed by freeing up additional resources for their recovery.

Comment 13: Three commenters recommended that we establish a cap on the amount that could be funded in any single grant.

Response 13: We will consider establishing a cap on the amount of the awards in future years. However, we would first like to see the range of projects that are submitted in order to establish a context for an appropriate cap size and to enable further consideration of how a cap would affect the quality of the projects that are ultimately funded.

Comment 14: One commenter stated that partial funding often creates more problems than it solves.

Response 14: We recognize that partial funding can complicate the awards process and that for some projects partial funding is not appropriate. However, when fully funding the project is not currently practicable, we will consider providing partial funding. For example, the scale of some projects may be reduced in order to allow the efficacy of the efforts to be more fully evaluated prior to fully funding the project. In other cases, project components may have discrete benefits that would warrant individual funding. As described above in ''*The PSGP Project Proposal*,'' we request that applicants indicate in the project proposal whether partial funding of the project is practicable, and, if so, what specific portion(s) of the project could be implemented with what level of funding. We will award partial funding only where we believe it is clearly beneficial to do so. We will work with the recipient of the funding to clearly delineate what portion of the project is being funded and ensure the terms and conditions of the award are appropriate for the funding provided.

Comment 15: Two commenters indicated that a 10 percent cost share was reasonable. Two other commenters stated that the level of cost share should not be included in the project ranking system or should be deleted as an eligibility requirement. One commenter recommended that the State should provide the 10 percent match.

Response 15: We believe the 10 percent cost share is reasonable, and given that it may be met with an in-kind contribution to the project, is unlikely to inhibit the participation of interested landowners. While some States may choose to assist landowners with the cost share, we believe that the PSGP should be flexible and not specify only one source for the cost share. After additional consideration, we agree that cost share should not be included in the scoring system. We recognize that some of the most beneficial projects may involve a single landowner with limited cost share ability. Therefore, we have deleted the cost share from the project proposal scoring guidelines. However, to be considered for funding, a project proposal must demonstrate that at least 10 percent of the total costs will be provided from sources other than the PSGP or other Federal funds.

Comment 16: One commenter stated that accounting requirements for in-kind and matching contributions are too cumbersome and may cause some individuals to decline to participate.

Response 16: We do not want potential applicants to decline to participate because of the perceived burden of accounting requirements for

Federal financial assistance. In these final implementation guidelines, we have provided prospective applicants with additional information resources to document these requirements. For projects that are selected for funding, we will also offer additional technical assistance to facilitate the prospective recipient's understanding of the financial requirements. However, we are not in a position to modify the requirements for Federal financial assistance in order to simplify the PSGP process. Therefore, it is important that recipients of PSGP funding clearly understand and comply with the Federal financial assistance requirements.

Comment 17: Several commenters stated their support for the exclusion of PSGP funding for compliance with a Habitat Conservation Plan under section 10 of the Act (HCP) or other regulatory requirements. One commenter stated that the language excluding HCPs was too limited in scope and that fulfilling the commitments of an HCP should be allowed under the PSGP.

Response 17: The PSGP was specifically designed to support voluntary efforts by private landowners. As a voluntary program, we will not grant funding for projects that serve to satisfy regulatory requirements of the Act, including complying with a biological opinion under section 7 of the Act or fulfilling commitments of an HCP under section 10 of the Act. The PSGP was designed to fill a different need than assisting with HCP or other compliance efforts.

Comment 18: Two commenters suggested that it was unreasonable to require applicants to identify the private landowners that would participate at the time of project submission.

Response 18: We have revised this requirement to allow a project proposal to either identify some of the specific landowners who have confirmed their intent to participate in the private conservation efforts (not all participating landowners need to be identified at the time of the proposal submission) or to provide other information to demonstrate that the project, if funded, would have full landowner participation. In the cases where the project proposal is not submitted directly by the landowner(s), we need to know that the proposed project is highly likely to result in on-the-ground conservation actions. For example, if the project proposal does not identify which landowners will participate, then it must explain how the project will obtain landowner participation and ensure the landowner's commitment to carry-through on the conservation actions proposed.

Comment 19: One commenter requested that we require the projects to be community-based and supported by multiple entities.

Response 19: We encourage community-based projects and those that are supported by multiple partners. We believe that such projects are likely to provide the greatest benefits. However, we do not want to revise the eligibility criteria to exclude individual landowner projects. As noted above, some of the most important and most cost-effective projects for conserving an imperiled species are those done by a single or a few landowners located in key portions of a species' range.

Comment 20: Several commenters requested that we clarify who is eligible to apply for PSGP grants, specifically addressing States and Counties. In addition, others recommended we further limit eligibility, such as only funding projects that are in States not participating in the Service's Landowner Incentive Program.

Response 20: We have revised the eligibility criteria to clarify this issue. The focus of the PSGP is to provide assistance to private landowners; however, we recognize that many projects benefit from partnerships between landowners and other interested participants. Thus the PSGP allows ''groups'' to submit project proposals. As the Service has another program specifically designed to facilitate State partnerships with private landowners, the Landowner Incentive Program, we believe it is appropriate to exclude State government agencies from the eligible ''groups'' under the PSGP. State agencies are encouraged to assist landowners in developing PSGP project proposals, to provide cost share when feasible, or to participate in other ways on project implementation. However, State agencies are not eligible to submit PSGP project proposals directly. We will consider other entities, such as Counties, other local governments, or State-funded universities, to be eligible groups that may apply directly for a PSGP funding to assist private landowners. Such proposals must identify at least some of the specific private landowners who have confirmed their intent to participate with them in the conservation efforts or other evidence in the project proposal to demonstrate full participation will occur.

Comment 21: Two commenters recommended that we not fund projects intended to restore or offset habitat lost as result of incidental take permit (or other similar permit), unless it is to restore habitat above and beyond what is pre-permit (above baseline).

Response 21: We do not see a conservation benefit in categorically excluding or further defining the eligibility of lands that may have at one time been covered under an incidental take permit. As discussed above, we will not award funds for projects that serve to satisfy regulatory requirements.

Comment 22: Two commenters recommended that projects should have high probability of providing specific, demonstrable benefits to the target species, habitats, and ecosystem.

Response 22: Proposals that articulate clearly and specifically the project benefits for the species, natural communities, and ecosystems and that explain why those benefits are likely to result from the project will be more competitive and more likely to receive PSGP funding. We will fund those projects that we believe provide the greatest benefits to the target species, habitats, and ecosystems.

Comment 23: One commenter recommended that conservation easements be eligible for funding; another commenter recommended that land acquisitions or easements not be eligible.

Response 23: We recognize that easements are very important tools for conservation. However, we also know there is an equally important need to fund on-the-ground management efforts. For the PSGP, we have chosen to focus on assisting with management rather than funding land acquisition through fee-title or easements. Although, we will not fund the purchase of easements under the PSGP, habitat improvements over and above any existing requirements for lands covered under current easements or other such conservation tools would be considered eligible for funding. The Service has other programs that specifically fund the acquisition of property.

Comment 24: Many commenters made recommendations for the types of projects that should be funded through the PSGP, such as allowing flexibility in project type, suggesting specific types of projects, providing economic incentives for landowners to conserve species, including projects other than habitat management (reintroductions), or emphasizing habitat-focused projects.

Response 24: We did not intend to provide an exhaustive description of the various projects that may be funded under the PSGP. We have expanded the list of examples. However, we recognize that there is a multitude of ways to benefit imperiled species conservation on private lands. Therefore, while we will not fund the acquisition of real

property either through fee title or easements, we are not excluding any other approach from consideration so long as it can demonstrate meaningful benefits to the imperiled species in question and meets the other eligibility criteria established for the PSGP.

Comments on Program Management

Comment 25: Several commenters stated their support for the use of the diverse panels to assist with project selection. One commenter expressed concern that a diverse panel would lack focus and questioned the ability of panel members to be impartial and knowledgeable of local projects. The commenter suggested that local Service offices should decide on the prioritization of projects.

Response 25: We believe that the diverse panels will aid in the selection of projects and also help build and maintain relationships between the Service and the diverse interest groups. We believe that the diverse panel members will offer perspective on project selection from an array of interests involved with conservation efforts on private lands. We will select panel members that are willing to fairly evaluate project proposals. As our experience in implementing the PSGP increases, we will consider how the diverse panels may be better used to improve the project selection process.

Comment 26: Several commenters made specific recommendations for managing the diverse panels, including that the scientific community, agricultural interests, private landowners, and individuals with local knowledge should each play important roles on the panel. It was further recommended that the process used by panels should be systematic and objective, follow Federal requirements for public participation, ensure confidentiality and fairness, include a diversity of stakeholders on the panel, and be balanced with respect to the number of participants from various groups.

Response 26: We will seek to implement the program using the concepts described in the President's Budget request and to ensure compliance with applicable Federal requirements. The size of each diverse panel will be largely at the discretion of the individual Service Regions. If more than one representative from each group is invited to participate on a panel, the Service will also seek a balance among the various interest groups on the panel. In order to minimize administrative costs associated with the panel and to keep the panel to a manageable size, the number of participants may need to be limited. For additional information on the use of the diverse panels, see the *''How will proposals be selected?'' section above.*

Comments on the Eligibility Criteria

Comment 27: Several commenters made recommendations concerning the performance measures used to evaluate the success of the projects and requested that we provide greater specificity as to what should be included in a project proposal and what is required to obtain funding. One commenter recommended that we fully articulate all of the program requirements for prospective applicants.

Response 27: We have revised and significantly expanded upon the project performance measures that must be included with each project proposal (see ''Project Proposals'' above). We have provided examples of measures as well as identified the specific Long-term and Annual Service goals that these measures will help the Service achieve. We have also provided expanded information on the requirements for obtaining Federal financial assistance (see ''Administrative Requirements'' above).

Comment 28: Several commenters recommended that projects be required to include habitat baseline information, as well as monitoring and adaptive management protocols.

Response 28: We agree with the commenters that this information would facilitate an evaluation of the project. However, this information is not always readily available to landowners. We encourage incorporation of this information when feasible. We have revised the proposal requirements (see ''Project Proposal'' above) to reflect this suggestion. Performance measures should be related to baselines when possible.

Comment 29: One commenter stated that collecting information on effectiveness would have limited value since individuals collecting the data would not have necessary expertise, ability, and time, and the wide variety of projects would make comparisons of the project data impracticable. In addition, the commenter recommended that activity reporting should be limited to progress on time-lines or specific goals reached.

Response 29: We agree that there are practicable limits to what information landowners may be able to collect. However, we also recognize that landowners often have an excellent understanding of the natural systems on their property and can provide significant information that will assist the Service in evaluating the effectiveness of the projects that are funded. We will work with funding recipients in the pre-award negotiations to identify what information is practicable and useful to collect to enable meaningful project evaluation. We agree that activity reporting should include progress on meeting time-lines or specific goals reached.

Comment 30: One commenter recommended that performance measures should be based on objectives that will promote recovery and delisting of the target species.

Response 30: We encourage project proposals to identify how the project will further the recovery goals for listed species or further the goals of other applicable conservation strategies. We believe that describing the performance measures in terms of the recovery needs of the species will strengthen the project proposal. The context for evaluating how the PSGP functions will be based on how the projects funded have contributed to the conservation of the target species.

Comment 31: One commenter stated that in cases where the PSGP funds habitat restoration or management on lands currently under an easement, easement compliance should be one of the measures used to evaluate the project.

Response 31: We agree with the commenter that a project proposal to enhance an existing easement should identify how easement compliance will be incorporated into the project's performance measures. The terms and conditions of funding will incorporate this information.

Comment 32: One commenter stated that performance measures should be consistent with any applicable performance measures developed by the State, Federal, and Tribal managers. In addition, the Service should consult with Tribal, State, and Federal managers on the measures to ensure they do not conflict or undermine other programs.

Response 32: We encourage applicants to develop project proposals that are consistent with existing conservation programs. We will consult with others on project selection through the participation of the diverse panels. In addition, the Service will notify the States and Territories of project selections and share with the Tribes any information concerning projects that may affect Tribal trust resources.

Comments on the Selection Factors and Scoring System

Comment 33: One commenter stated that we should give priority to longer-term commitments, though exceptions may be warranted in some

circumstances, and suggested that the relevant minimum timeframe might be the time required to recover the species. Another commenter stated that projects under a Safe Harbor Agreement should be given a lower priority, unless commitment to maintain improvement is for a substantial time period. One commenter stated that, in order to strengthen the duration of the benefits, the Service should establish a minimum time commitment.

Response 33: Each project proposal should indicate the amount of time the habitat improvements or other project benefits will be maintained. In evaluating project proposals, we will consider the duration of the benefits (commitment for maintaining the project). When the Service makes the funding award, we will specify the terms and conditions of the award, including the time commitment for maintaining the project. We may consider establishing a minimum time commitment in the future as we gain experience implementing this program.

Comment 34: Two commenters recommended that we consider the project's landscape context. It was also recommended that we give priority to projects in locations that are most beneficial to the conservation and recovery of the target species and include mechanisms to avoid enhancing ''habitat sinks.''

Response 34: We agree with the comments that the landscape context of the project is critically important. We encourage applicants to describe in the proposal how the location of the project and its role in the landscape contribute to conservation of the species. For example, where is the project located in relation to other existing habitat? Does it promote connectivity between habitats? What is the size of the project area in relation to the habitat needs of the target species? We believe that proposals that include this type of information will better describe the project's benefits. ''Sinks'' are generally considered marginal habitat areas where the mortality in a population exceeds production. We disagree with the commenters that the PSGP should always avoid enhancing ''habitat sinks.'' Improving habitat conditions in ''sinks'' may provide substantial benefits to a population by reducing mortality rates. We agree project designers should carefully plan their projects to reduce the chances of unintended negative effects on local populations. As we consider projects for funding, we will be mindful of the important role landscape context plays in species conservation.

Comment 35: One commenter recommended that in order to demonstrate results quickly the program should be tiered to separately consider projects underway and new programs.

Response 35: We appreciate the commenter's suggestion, as it is important to demonstrate the effectiveness of the program. However, given the diversity of projects that are likely to be funded through the PSGP, we do not believe it is necessary to tier the program. Some projects will build upon existing efforts and show results more quickly, while others may require additional time.

Comment 36: Several commenters recommended that we develop a selection factor that provides a higher priority to maintaining at-risk unique habitats or for projects that are part of large-scale planning efforts. Two commenters recommended that projects at an eco-regional scale, or that have benefits for habitats/natural communities of high conservation concern, should receive a higher ranking than more localized projects.

Response 36: As previously discussed, the proposal evaluation will consider the benefits of the project. This will include a consideration of the larger conservation context in which the project would occur.

Comment 37: Several commenters recommended changes to the project ranking factors and scoring system. These recommendations included expanding the point range, dividing or combining the ranking factors, adding considerations to the project assessment for each scoring factor, decreasing the subjectivity, and increasing the flexibility of the scoring system.

Response 37: We do not believe simply expanding the point range would necessarily result in a better prioritization of projects. We believe it is important to maintain a simple scoring system in order to facilitate the review by the diverse panel members. Maintaining the 10-point scoring system and relatively broad ranking factors will allow the diverse panel to quickly assess all the project proposals. They will then be able to focus further consideration on the higher ranking projects, from which to make their individual recommendations. Furthermore, as a new program, we would like to see the range of proposals that are submitted before increasing the complexity of the ranking factors or scoring system. As we gain experience working with the diverse panels and evaluating project proposals, we will consider revising the scoring system. We believe that the scoring system is sufficiently flexible to allow proposals of a variety of merits to stand out.

Comment 38: Several commenters recommended that the number of species should not be used in the scoring system. Other commenters suggested it should be modified to include greater numbers of species, to weigh the benefits for each species, or to be combined with the importance of the project to better represent the overall contributions of the project.

Response 38: We agree with the commenters that simply counting the number of species is of limited value when evaluating a project proposal. However, we believe it does serve an important function, which is to emphasize the requirement that projects must address the needs of listed, proposed, candidate, and other at-risk species. Therefore, we have maintained the number of species as part of the scoring system with a slight modification to more realistically reflect the number of species that are likely to be included in project proposals. We encourage applicants to include in their project proposal a discussion of the benefits for each species. The better a proposal articulates the benefits of the project, the more likely it will be selected for funding.

Comments Related To Awarding Funding

Comment 39: Two commenters stated that ''No Surprises'' assurances should not be issued to landowners in association with PSGP funding. One recommended that if landowners desire regulatory assurances for their project they should seek Safe Harbor Agreements.

Response 39: No Surprises assurances are related to fulfilling commitments of a Habitat Conservation Plan under section 10 of the Act. We will not be using the PSGP to fund activities related to fulfilling commitments of a Habitat Conservation Plan under section 10 of the Act. We agree with the commenter that Safe Harbor Agreements and Candidate Conservation Agreements with Assurances may be appropriate for some landowners that are concerned about potential land-use restrictions and would like regulatory assurances in connection with their project.

Comment 40: One commenter stated a concern that large conservation groups will receive the bulk of the funding at the expense of local community groups; alternatively, another commenter stated that the Service should reach out to national conservation organizations that can leverage public funds before they are put into local projects.

Response 40: While we strongly encourage project proposals that are based on cooperative efforts, we will

focus the PSGP on selecting projects that provide the greatest benefits. In our experience, some of the best conservation projects, both those by local groups and larger organizations, are those that effectively engage local communities. Therefore, we believe the PSGP will reach local community levels, whether through individuals, local groups, or larger organizations. As we gain experience implementing the PSGP, we will continue to look for ways to encourage all types of project proposals.

Comment 41: One commenter recommended that the format for agreements with landowners be flexible or appropriate for specific circumstances for which the grant has been awarded.

Response 41: We will seek to have the terms and conditions of an award, and if appropriate for the project, any landowner agreements address the specific circumstances of the funded project.

Comment 42: Two commenters stated that all projects should comply with the requirements of the Act and the National Environmental Policy Act (NEPA). One commenter indicated that NEPA compliance would be beyond the ability of private landowners.

Response 42: The Service, in cooperation with the grantees, must address Federal compliance issues, such as the NEPA, the National Historic Preservation Act, and the Endangered Species Act. For the projects that are selected to receive funding, we will work with the recipient to ensure compliance with these requirements.

Comment 43: Several commenters expressed their support for time commitments, and one commenter recommended that recipients sign agreements that stipulate (1) activities to be carried out, (2) time commitment, and (3) return of pro-rated funding for default of commitment.

Response 43: The scope of work, as well as the terms and conditions for an award, will specify the activities to be carried out and time commitments for the project, and require compliance with applicable rules for receiving Federal financial assistance.

III. Required Determinations

Regulatory Planning and Review

This policy document identifies the eligibility criteria and selection factors that will be used to award grants under the PSGP. The Service developed this policy to ensure consistent and adequate evaluation of project proposals that are voluntarily submitted and to help perspective applicants understand how grants will be awarded. In accordance with Executive Order (E.O.) 12866, this policy document is significant and has been reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) The PSGP will not 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, jobs, the environment, public health or safety, or State, local or tribal communities. A total of $9,500,000 will be awarded in grants to private landowners or their partners to implement voluntary conservation actions. These funds will be used to pay for actions such as restoring natural hydrology to streams or wetlands that support imperiled species, fencing to exclude animals from sensitive habitats, or planting native vegetation to restore degraded habitat. In addition, the projects that are funded will generate other secondary benefits, including benefits to natural systems (*e.g.*, air, water) and local economies. All of these benefits are distributed widely and are not likely to be significant in any one location. It is likely that local residents near projects where grants are awarded will experience some level of benefit, but it is not possible to quantify these effects at this time. However, the sum total of all the benefits from this program is not expected to have an annual effect on the economy of $100 million or more.

(b) We do not believe the PSGP would create inconsistencies with other agencies' actions. Congress has given the Service responsibility to administer the program.

(c) As a new grant program, the PSGP would not materially not affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The submission of project proposals is completely voluntary. However, when an applicant decides to submit a project proposal, the proposed eligibility criteria and selection factors identified in this policy can be construed as requirements placed on the awarding of the grants. Additionally, we will place further requirements on proponents of projects that are selected to receive funding under the PSGP. These requirements include specific Federal financial management requirements and time commitments for maintaining habitat improvements or other activities described in the applicant's project proposal in order to obtain and retain the benefit they are seeking.

(d) OMB has determined that this policy raises novel legal or policy issues and, as a result, this document has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In this notice, we are certifying that the PSGP will not have a significant economic impact on a substantial number of small entities for the reasons described below.

Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger impacts as a result of this program. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

The types of effects this program could have on small entities include economic benefits resulting from the purchasing of supplies or labor to implement the project proposals. However, since this program will be

awarding a total of only $9,500,000 for projects throughout the United States, a substantial number of small entities are unlikely to be affected. The benefits from this program will be spread over such a large area that it is unlikely that any significant benefits will accrue to a significant number of entities in any area. In total, the distribution of $9,500,000 will not create a significant economic benefit for small entities, but clearly a number of entities will receive some benefit.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

(a) We believe this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. This program provides benefits to private landowners.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The PSGP imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), the PSGP does not have significant takings implications. While private landowners may choose to directly or indirectly implement actions that may have property implications, they would do so as a result of their own decisions, not as result of the PSGP. The PSGP has no provisions that would take private property rights.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. Congress has directed that we administer grants under the PSGP directly to private landowners.

Civil Justice Reform

In accordance with Executive Order 12988, the PSGP does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. With the guidance provided in this policy document, the requirements of the PSGP will be clarified to applicants that voluntarily submit project proposals.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501), the Office of Management and Budget has approved, and assigned clearance number 1018–0118, to this information collection authorized by the Department of the Interior and Related Agencies Appropriations Act, 2002, H.R. 2217/ Public Law 107–63 and subsequent Appropriations Acts. The reporting burden is estimated to average 8 hours per respondent for the project proposal and 4 hours per respondent for reporting activities. The total annual burden is 4,000 hours for the project proposals and 200 hours for reporting activities; the number of respondents is estimated to average 500 respondents for submitting project proposals and 50 respondents for the reporting requirements. The information collected does not carry a premise of confidentiality. Your response is voluntary. 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 public is invited to submit comments on the accuracy of the estimated average burden hours for application preparation and to suggest ways in which the burden may be reduced. Comments may be submitted to: Information Collection Clearance Officer, Mail Stop 222 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240 and/or Desk Officer for Interior Department (1018–0118), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act

We have analyzed this policy in accordance with the criteria of the National Environmental Policy Act (NEPA) and the Department of the Interior Manual (516 DM 2 and 6). This draft policy does not constitute a major Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the policy is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1. The Service will ensure that projects that are funded through the PSGP are in compliance with NEPA.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. The effect of this policy document on Native American Tribes would be determined on a case-by-case basis with the individual evaluation of project proposals. Under Secretarial Order 3206, the Service will, at a minimum, share with the tribes any information concerning project proposals that may affect Tribal trust resources. After consultation with the Tribes and the project proponent, and after careful consideration of the Tribe's concerns, the Service must clearly state the rationale for the recommended final decision and explain how the decision relates to the Service's trust responsibility. Accordingly:

a. We have not yet consulted with the affected Tribe(s). This requirement will be addressed with individual evaluations of project proposals.

b. We have not yet treated Tribes on a government-to-government basis. This requirement will be addressed with individual evaluations of project proposals.

c. We will consider Tribal views in individual evaluations of project proposals.

d. We have not yet consulted with the appropriate bureaus and offices of the Department about the identified effects of this draft policy on Tribes. This requirement will be addressed with individual evaluations of project proposals.

Authority

This notice is published under the authority of the Department of the Interior and Related Agencies Appropriations Act, 2002, H.R. 2217/ Public Law 107–63.

Dated: August 15, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–24860 Filed 9–30–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for Student Transportation Mileage Form, OMB Control #1076–0134, has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 25). You may submit comments on this information collection. 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 number for this collection is 1076–0134.

DATES: Submit comments and suggestions on or before October 31, 2002.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503. Send copy of your comments to Dalton J. Henry, Bureau of Indian Affairs, Office of Indian Education Programs, 1849 C Street, NW, MS–3512 MIB, Washington, DC 20240–0001.

FOR FURTHER INFORMATION CONTACT: Copies of the collection of information may be obtained by contacting Dalton J. Henry, (202) 208–5820.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to collect transportation mileage for Bureau funded schools for the purpose of allocating transportation funds. A request for comments on this information collection was published in the **Federal Register** on June 4, 2002 (67 FR 38517). No comments were received by the Bureau. After a review of the Burden of Hours, decision was made to estimate 6 hours of completion time to complete the set of forms.

II. Request for Comments

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted in response to this notice should be submitted to OMB within 30 days in order to assure their maximum consideration.

III. Data

Title: Office of Indian Education Programs Indian School Equalization Program (ISEP) Student Transportation.

OMB approval number: 1076–0134.

Frequency: Annually, during student count week,

Description of respondents: Tribal schools administrators.

Estimated completion time: 6 hours.

Annual responses: 121.

Annual burden hours: 726.

Bureau Clearance Officer: Ruth Bajema, 202–208–2574.

Dated: September 6, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–24911 Filed 9–30–02; 8:45 am]

BILLING CODE 4310–6W–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–757 and 759 (Review)]

Collated Roofing Nails From China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on collated roofing nails from China and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on collated roofing nails from China and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is November 20, 2002. Comments on the adequacy of responses may be filed with the Commission by December 16, 2002. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background. On November 19, 1997, the Department of Commerce issued antidumping duty orders on imports of collated roofing nails from China and Taiwan (62 FR 61729). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 02–5–074, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission defined the *Domestic Like Product* as all steel wire nails of the dimensions described in Commerce's scope of the investigations that are collated with two wires.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all producers of the domestic like product.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the *Order Date* is November 19, 1997.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. appendix.

Written submissions. Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 20, 2002. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 16, 2002. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent

Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since 1996.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2001 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Countries,* provide the following information on your firm's(s') operations on that product during calendar year 2001 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Countries,* provide the following information on your firm's(s') operations on that product during calendar year 2001 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 25, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–24930 Filed 9–30–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2235–02; AG Order No. 2616–2002]

RIN 1115–AE26

Designation of Liberia Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Attorney General is authorized to grant Temporary Protected Status (TPS) in the United States to eligible nationals of designated foreign

states or parts thereof upon a finding that such states are experiencing ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions. Due to the ongoing armed conflict in Liberia, which prevents the safe return of Liberian nationals to that country, the Attorney General is designating Liberia for the TPS program for a period of 12 months, until October 1, 2003. This notice provides information regarding eligibility and application procedures.

DATES: This designation is effective on October 1, 2002, and will remain in effect until October 1, 2003. The registration period commences on October 1, 2002, and closes on April 1, 2003 (inclusive of such end date).

FOR FURTHER INFORMATION CONTACT: Pearl Chang, Office of Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is Temporary Protected Status?

Under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254, the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible nationals of designated foreign states or parts thereof. The Attorney General may designate a state or parts thereof upon a finding that such states are experiencing ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions. 8 U.S.C. 1254(b)(1).

Why Did the Attorney General Decide To Designate Liberia Under the TPS Program?

Based on a thorough review by the Departments of State and Justice, the Attorney General finds that there is an ongoing armed conflict in Liberia, and that requiring the return of aliens who are nationals of Liberia (as well as aliens having no nationality who last habitually resided in Liberia) would pose a serious risk to their personal safety. A Department of State memorandum on Liberia states that ''[f]ighting between government forces and the Liberians United for Reconciliation and Democracy (LURD) rebels has intensified gradually over the last two years. * * * Fighting and instability have spread to six of Liberia's 15 counties. The fighting has forced thousands of civilians to flee, both internally and to neighboring countries. Since January 2002, approximately 75,000 Liberians have fled to Guinea, Ivory Coast, and Sierra Leone. At least 120,000 Liberians have been internally displaced over the past year, in many cases repeatedly. In addition, government and rebel forces continue to commit serious human rights abuses, including extra-judicial killings, abductions, torture, beatings, and rape.'' State Department memorandum (September 5, 2002). The Department of State concludes that the return of nationals of Liberia to that country would pose a serious threat to their personal safety: ''Civilians are directly threatened by fighting between government and rebel forces, including heavy artillery shelling and small arms fire, as well as human rights abuses. At the same time, civilians suffer increasingly from deteriorating humanitarian conditions related to the fighting, and several areas of the country are inaccessible to relief organizations. Liberia's vital services, such as food, water/sanitation, shelter and health, are on the verge of collapse.'' *Id.*

Likewise, the Resource Information Center of the Immigration and Naturalization Service (Service or INS) assessed conditions in Liberia and found deteriorating security, human rights, and humanitarian situation in Liberia, thereby concluding that ''* * * conditions are not favorable for the safe return of Liberian nationals to Liberia at this time due to ongoing armed conflict which has resulted in political instability, human rights violations against perceived opponents and LURD sympathizers, insecurity leading to widespread displacement, both internally and externally, of the Liberian population, and the resulting humanitarian crisis resulting from this situation.'' INS Resource Information Center Report (September 10, 2002).

Based on these findings, the Attorney General has determined that there is an ongoing armed conflict in Liberia and, due to such conflict, requiring the return of Liberian nationals to Liberia would pose a serious threat to their personal safety. 8 U.S.C. 1254a(b)(1)(A). The Attorney General further finds that permitting such aliens to remain temporarily in the United States is not contrary to the national interest of the United States.

Who Is Eligible for TPS Under This Designation?

To be eligible for TPS under this designation, an alien must:

- Be a national of Liberia (or an alien having no nationality who last habitually resided in Liberia);
- Have been continuously physically present in the United States since October 1, 2002.
- Have continuously resided in the United States since October 1, 2002.
- Be admissible as an immigrant except as provided under section 244(c)(2)(A) of the Act, and not be ineligible for TPS under section 244(c)(2)(B) of the Act; and must
- Apply for TPS within the registration period which begins on October 1, 2002, and ends on April 1, 2003.

How Do I Register for TPS?

During the registration period that runs from October 1, 2002, through April 1, 2003, applicants for TPS must submit the following materials to the INS District Office that has jurisdiction over your place of residence:

- Form I–821, Application for Temporary Protected Status;
- Form I–765, Application for Employment Authorization;
- Two identification photographs (1½ inches x 1½ inches);
- Supporting evidence of identity, nationality, and proof of residence, as provided in the regulations at 8 CFR 244.9; and
- All applicable fees, as discussed immediately below.

Fees

- Each applicant must submit a $50 fee with the Form I–821.
- Each applicant who is 14 years of age or older must also submit a $50 fingerprint fee.

The chart below contains information regarding payment of the $120 fee for Form I–765:

If	Then
You are applying for an Employment Authorization Document valid through October 1, 2003	You must submit Form I–765 with the $120 fee.
You already have an Employment Authorization Document or do not require such a document	You must submit Form I–765 with no fee.

Employment Authorization Documentation

An applicant who seeks employment authorization documentation must submit Form I–765 with the $120 fee. An applicant who does not seek employment authorization documentation does not need to submit the $120 fee, but must still complete and submit Form I–765 for data gathering purposes.

Fee Waiver

Applicants may request that certain fees be waived, in accordance with the regulations at 8 CFR 244.20.

Fingerprints

While a complete TPS application package must include the $50 fingerprint fee for every applicant who is 14 years of age or older, applicants should NOT submit a completed fingerprint card (FD–258, Application Card) with the TPS application package. Upon receipt of the TPS application package, the Service will mail the applicant an appointment letter with instructions to appear for fingerprinting at a Service-authorized Application Support Center (ASC).

Should I Register for TPS If I Currently Receive Deferred Enforced Departure (DED) Benefits?

Many Liberians who have resided in the United States since September 29, 2001, have received benefits under a presidential directive authorizing Deferred Enforced Departure (DED), a temporary protection measure. On September 29, 2002, the Liberian DED directive expires, as do all employment authorization documents (EADs) issued to Liberians pursuant to that directive. Liberians who have no other lawful immigration status, but who wish to remain and work in the United States after September 29, 2002, should apply for TPS benefits in the manner described below.

What Is Late Initial Registration?

Certain Liberian nationals may be eligible to apply for TPS subsequent to the initial registration period if, at the time of the initial registration period, they: (1) Are nonimmigrants; (2) have been granted voluntary departure status or any relief from removal; (3) have an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal that is pending or subject to further review or appeal; (4) are parolees or have a pending request for parole; or (5) are the spouse or child of an alien currently eligible to be a TPS registrant. An applicant for late initial registration must register within a 60-day period immediately following the expiration or termination of one of the conditions described in items (1) through (5) of this paragraph. 8 CFR 244.2(f)(2), and (g).

Does Applying for TPS Affect an Application for Asylum or Any Other Immigration Benefit?

No. Any national of Liberia who has already applied for, or plans to apply for, any other immigration benefit or protection, may also apply for TPS. An application for TPS does not preclude or adversely affect an application for any other immigration benefit. Similarly, denial of an application for asylum or any other immigration benefit does not affect an alien's ability to register for TPS, although the grounds of denial of that application may also lead to denial of TPS. For example, an alien who has been convicted of an aggravated felony is not eligible for asylum or TPS.

What Happens When This TPS Designation Expires on October 1, 2003?

At least 60 days before this TPS designation expires on October 1, 2003, the Attorney General will review conditions in Liberia and determine whether the conditions that warranted designation of Liberia under the TPS program continue to exist. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If the initial TPS designation is extended at that time, an alien who has received TPS benefits must re-register under the extension in order to maintain TPS benefits. If, however, the Attorney General terminates the TPS designation, TPS beneficiaries will return to the same immigration status they maintained before TPS (unless that status had since expired or been terminated) or to any other status they may have acquired while registered for TPS. Accordingly, if an alien had no lawful immigration status prior to receiving TPS and did not obtain any status during the TPS period, he or she will revert to that unlawful status upon termination of the TPS designation.

Notice of Designation of Liberia Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244 of the Immigration and Nationality Act, as amended (8 U.S.C. 1254a), I find, after consultation with the appropriate agencies of the government, that:

(1) There is an ongoing armed conflict within Liberia and, due to such conflict, requiring the return of aliens who are nationals of Liberia (as well as aliens having no nationality who last habitually resided in Liberia) would pose a serious threat to their personal safety; and

(2) Permitting nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) to remain temporarily in the United States is not contrary to the national interest of the United States.

Accordingly, I order as follows:

(1) Liberia is designated under the TPS program, pursuant to section 244(b)(1)(A) of the Act. Nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) who have been ''continuously physically present'' and have ''continuously resided'' in the United States since October 1, 2002, may apply for TPS within the registration period, which begins on October 1, 2002, and ends on April 1, 2003.

(2) I estimate that there are approximately 15,000 to 20,000 nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) in the United States who are eligible for TPS.

(3) Except as specifically provided in this notice, TPS applications must be filed pursuant to the provisions of 8 CFR part 244. Persons who wish to apply for TPS must file: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; (3) two identification photographs (1½ inches x 1½ inches); (4) supporting evidence of identity, nationality, and proof of residence, as provided in the regulations at 8 CFR 244.9; and (5) all applicable fees.

(4) A $50 fee must accompany each Form I–821. Each applicant who is 14 years of age or older must also submit a $50 fingerprint fee. An applicant who seeks employment authorization documentation must submit a $120 fee with Form I–765. An applicant who does not seek employment authorization documentation does not need to submit the $120 fee, but must still complete and submit Form I–765 for data-gathering purposes. Applicants may request certain fee waivers in accordance with 8 CFR 244.20.

(5) At least 60 days before the expiration of the initial period of designation on October 1, 2003, and after consultation with appropriate agencies of the government, the Attorney General will review conditions in Liberia and determine whether the conditions that warranted TPS designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that

determination, including the basis for the determination, will be published in the **Federal Register**.

(6) Information concerning the TPS program for nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) will be available on the Service Web site, located at *http://www.ins.usdoj.gov,* from the INS National Customer Service Center at (1–800–375–5283) (TTY: 1–800–767–1833), and at local Service offices upon publication of this notice.

Dated: September 26, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–24992 Filed 9–27–02; 11:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 19, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Certificate of Medical Necessity (CMN).

OMB Number: 1215–0113.

Affected Public: Business or other-for-profit and not-for-profit institutions.

Frequency: On Occasion.

Number of Respondents: 12,000.

Number of Annual Responses: 12,000.

Estimated Time Per Response: Average of 20–40 minutes.

Total Burden Hours: 4,800.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: In accordance with 30 U.S.C. 932, including Section 7 of Pub. L. 803, as amended, medical treatment including services and apparatus, as required, will be furnished to eligible coal miners covered under the law for such period as the nature of the illness or process of recovery may require. Regulations 20 CFR 725.706 stipulate that there must be prior approval before ordering an apparatus for medical treatment where the purchase price exceeds $300.00. Regulations 20 CFR 725.707 provide for the ongoing supervision of the miner's medical care, including the necessity, character and sufficiency of care to be furnished; gives the authority to request medical reports and indicates the right to refuse payment for failing to submit any report required. The CMN (CM–983) is used to collection the information. It is also considered a medical prescription that requires pre-authorization. If the information on the CMN were not gathered, there would be no way of determining if the prescribed item or service would be appropriate in the care of the miner's pulmonary condition.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–24900 Filed 9–30–02; 8:45 am]

BILLING CODE 4510–CK–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 20, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King (202) 693–4129 or e-mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title: The Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers.

Type of Review: Extension of a currently approved collection.

OMB Number: 1218–0218.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Type of Response: Recordkeeping and third-party disclosure.

Frequency: Varies.

Number of Respondents: 8,780,500.

Annual Responses: 1,170,733.

Annual Burden House: 131,708.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $11,941,480.

Description: 29 CFR 1910.157(f)(16) requires employers to develop and maintain a certification record of hydrostatic testing of portable fire extinguishers. The certification record must include thee date of inspection, the signature of the person who performed the test, and the serial number (or other identifier) of the fire extinguisher that was tested. The certification record must be made available to the Assistant Secretary or his/her representative upon request. The certification records provide assure to employers, employees, and OSHA compliance officers that the fire extinguishers have been hydrostatically tested in accordance with and at the intervals specified in the provision, thereby ensuring that they will operate properly in the event employees need to use them. These records also provide the most efficient means for the compliance officers to determine that any employer is complying with the hydrostatic testing provision.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Crawler, Locomotive, and Truck Cranes Standard.

Type of Review: Extension of a currently approved collection.

OMB Number: 1218–0221.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Type of Response: Record Keeping.

Number of Respondents: 20,000.

Requirement	Frequency	Annual responses	Average response time (hours)	Annual burden hours
Inspection Records—29 CFR 1910.1800(d)(6)	Monthly	228,000	0.25	57,000
Rated Load Tests—29 CFR 1910.180(e)(2)	On occasion	40	1.00	40
Monthly Rope Inspections and Certification Record—29 CFR 1910.180(g)(1).	Monthly	228,000	0.50	114,000
Month or More and Certification Record—29 CFR 1910.180(g)(2)(ii)	On occasion	6,000	0.50	3,000
Total		462,040		174,040

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR 1910.180 requires that monthly inspections be performed on cranes and running ropes and that a certification record be prepared. Ropes that have been idle for a month or more are required to under go a through inspection and certification record generated before use. These requirements are necessary to help protect employees from potential injury or death resulting from equipment malfunctions.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Overhead and Gantry Cranes Standard.

Type of Review: Extension of a currently approved collection.

OMB Number: 1218–0224.

Frequency: On occasion, monthly, semi-annually (?) and daily.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Type of Response: Record keeping and third-party disclosure.

Number of Respondents: 35,000.

[Insert Table When ICR Corrected].

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The inspection certification records required in 29 CFR 1910.179(j)(2)(iii), (j)(2)(iv), and (m)(2) are necessary to ensure compliance with the standard for overhead and gantry cranes and are intended to ensure that these cranes have periodic and recorded maintenance checks and that they are operating in a safe and reliable condition in order to ensure optimum safety for employees. In addition, OSHA compliance officers may require employers to disclose the certification records during an inspection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Mechanical Power Presses.

Type of Review: Extension of a currently approved collection.

OMB Number: 1218–0229.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Type of Response: Recordkeeping.

Number of Respondents: 191,750.

Requirement	Frequency	Annual responses	Average response time (hours)	Annual burden hours
Inspection Records—29 CFR 1910.217(e)(1)(i)	Periodic	2,301,000	0.33	759,330
Inspection Records—29 CFR 1910.217(e)(1)(ii)	Weekly	7,670,000	0.08	613,600
Total		9,971,000		1,372,930

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The information collections required by the Mechanical Power Press Standard [29 CFR 1910.217(e)(1)(i) and (e)(1)(ii)] are needed to ensure that power presses are in safe operating condition, and that all safety devices are working properly. The failure of these devices could cause serious injury or death to an employee.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–24901 Filed 9–30–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Labor

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Department of Labor are available in final form on the DOL web site *http://www.dol.gov/informationquality.htm*.

EFFECTIVE DATE: October 1, 2002.

ADDRESSES: Information correction requests and appeals can be submitted to DOL by communicating with one of the following components: (1) Agency Point of Contact (POC) provided on the DOL web site; (2) agency specific web sites (*i.e.*, OSHA.gov); or (3) Mr. Ira L. Mills, Information Technology Center, Room N–1301, 200 Constitution Avenue, NW., Washington, DC 20210, fax (202) 693–4228, e-mail *mail to: Mills-Ira@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Ira Mills, Information Technology Center, telephone (202) 693–4122 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 22, 2002, the Office of Management and Budget (OMB) published a **Federal Register** notice (67 FR 8452–8460) Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Notice; Republication. The guidelines state that each agency must prepare a draft report, no later than May 1, 2002 (as amended, **Federal Register** Notice, 67 FR 9797, March 4, 2002), and a final report, no later than October 1, 2002, providing the agency's information quality guidelines and explaining how such guidelines will ensure and maximize the quality, objectivity, utility, and integrity of information including statistical information disseminated by the agency. These reports must also detail the administrative mechanisms developed by that agency to allow affected persons to seek and obtain appropriate correction of information maintained and disseminated by the agency that does not comply with the OMB or the agency guidelines. Each agency must publish a notice of availability of the draft and final reports in the **Federal Register**, and post the reports on the agency's website. On May 1, 2002, the DOL published a **Federal Register** notice (67 FR 21776–21777), posted the draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Labor on the DOL website, and provided the public with a 30-day opportunity to comment period. On June 6, 2002, the Department published a 30-day public comment extension notice in the **Federal Register** (67 FR 39050). The DOL has now posted the final Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Labor on the DOL website as referenced above in the Summary section of this notice.

Signed at Washington, DC this 24th day of September 2002.

Patrick Pizzella,

Assistant Secretary for Administration and Management, Chief Information Officer.

[FR Doc. 02–24741 Filed 9–30–02; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed 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. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection: Request to be Selected as Payee (CM–910). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 2, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, e-mail *pforkel@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Benefits are payable by the Department of Labor to coal miners who are totally disabled due to pneumoconiosis and to certain of the miner's survivors under the Federal Mine Safety and Health Act of 1977, as amended (U.S.C. 901). If a beneficiary is incapable of handling their affairs, the person or institution responsible for their care is required to apply to receive the benefits on the beneficiary's behalf. The CM–910 is the form completed by representative payee applicants. Regulations 20 CFR 725.504–513 require the collection of this information. This information collection is currently approved for use through February 28, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to evaluate an applicant's ability to be a representative payee and to determine that the beneficiary's best

interests would be served by approving such payee. There is no change in this form or method of collection since the last OMB clearance.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Request to be Selected as Payee.

OMB Number: 1215–0166.

Agency Number: CM–910.

Affected Public: Individuals or households; businesses or other for-profit; not-for-profit institutions.

Total Respondents: 2,000.

Frequency: On occasion.

Total Responses: 2,000.

Average Time per Response: 20 minutes.

Estimated Total Burden Hours: 667.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $800.

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; they will also become a matter of public record.

Dated: September 24, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–24899 Filed 9–30–02; 8:45 am]

BILLING CODE 4510–CK–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, October 10, 2002, and Friday, October 11, 2002, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on October 10, and at 9 a.m. on October 11.

Topics for discussion include: Medicare spending compared to other health spending indicators; monitoring beneficiary access to care; characteristics of long-term care hospitals and workplan; characteristics of hospitals by Medicare financial performance, new developments in Medicare+Choice; county level variation in Medicare per capita spending; coverage and payment for new technologies; current issues in skilled nursing facility payment policy; introduction to the post-acute care episode database; and using incentives to improve the quality of care for beneficiaries.

Agendas will be mailed on October 2, 2002. The final agenda will be available on the Commission's Web site (*www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Lu Zawistowich,

Acting Executive Director.

[FR Doc. 02–24931 Filed 9–30–02; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL INSTITUTE FOR LITERACY

Notice of Partially Closed Meeting; Correction

AGENCY: National Institute for Literacy (NIFL).

ACTION: Notice of meeting; correction.

SUMMARY: For the notice published in the **Federal Register** dated September 25, 2002, 67 FR 60260, make the following corrections:

On page 60260, under **ADDRESSES** the location of the Advisory Board Meeting has changed to: US Department of Education, 400 Maryland Avenue, SW., Secretary of Education's Conference Room 7W10, Washington, DC 20202. On page 60260, under **FOR FURTHER INFORMATION CONTACT**, please contact Rebecca Haynes at 202–205–5119 in order to be escorted in the U.S. Department of Education building.

FOR FURTHER INFORMATION CONTACT: Shelly Coles, Executive Assistant, National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006. Telephone number (202) 233–2027, e-mail *scoles@nifl.gov*.

Dated: September 26, 2002.

Sharyn M. Abbott,

Executive Officer.

[FR Doc. 02–24962 Filed 9–30–02; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Engineering: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting.

Name and Committee Code: Proposal Review Panel Engineering (#1170).

Date and Time: October 17, 2002, 8:30 a.m.–5 p.m.; October 18, 2002, 8:30 a.m.–12 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Stafford II, Room 555.

Type of Meeting: Open.

Contact Person: Dr. Elbert L. Marsh, Deputy Assistant Director for Engineering, National Science Foundation, Suite 505, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 292–4609. If you are attending the meeting and need access to the NSF building, please contact Maxine Byrd at 703–292–4601 or at *mbyrd@nsf.gov* so that your name can be added to the building access list.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: The principal focus of the forthcoming meeting will be on strategic issues, both for the Directorate and the Foundation as a whole. The Committee will also address matters relating to the future of the engineering profession, and engineering education.

Dated: September 24, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–24823 Filed 9–30–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education (9487).

Dates: October 16, 2002, 8:30 a.m.—4:30 p.m. and October 17, 9 a.m.—2:30 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. Margaret Cavanaugh, Office of the Director, National Science Foundation, Suite 1205, 4201 Wilson Blvd, Arlington, Virginia 22230, Phone 703–292–8002.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda:

October 16—Discussion of the 10-year Agenda for Environmental Research and Education, Update on recent NSF environmental activities, Panel presentations and discussion of Environmental Cyberinfrastructure.

October 17—Discussion of developments in freshwater resources, AC–ERE task group meetings and reports, Meeting with the Deputy Director.

Dated: September 24, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–24822 Filed 9–30–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, October 8, 2002.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one Item is open to the public.

MATTER TO BE CONSIDERED:

7264A Pipeline Accident Report—Pipeline Rupture and Subsequent Fire in Bellingham, Washington, on June 10, 1999.

New Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan (202) 314–6305 by Friday, October 4, 2002.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: September 27, 2002.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 02–24999 Filed 9–27–02; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[IA–02–017]

Perry M. Beale; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

Perry M. Beale, a consultant in the field of health physics, provided consulting services to City Hospital in Martinsburg, West Virginia, Warren Memorial Hospital in Front Royal, Virginia, Culpeper Memorial Hospital in Culpeper, Virginia, Fauquier Hospital in Warrenton, Virginia, and Prince William Hospital in Manassas, Virginia (Licensee or Licensees). City Hospital holds License No. 47–15501–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 35, last amended on June 25, 2001. Warren Memorial Hospital holds License No. 45–19566–01 issued by the NRC pursuant to 10 CFR part 35 on January 12, 1981, and last amended on October 12, 2001. Culpeper Memorial Hospital holds License No. 45–23040–01 issued by the NRC pursuant to 10 CFR part 35 on September 19, 1984, and last amended on June 12, 2002. Fauquier Hospital holds License No. 45–19484–01 issued by the NRC pursuant to 10 CFR part 35 on November 20, 1980 and last amended on August 2, 2001. Prince William Hospital holds License No. 45–19485–01 issued by the NRC pursuant to 10 CFR part 35 on October 27, 1980, and last amended on October 12, 2001. The licenses for each Licensee authorize the medical use of byproduct material in accordance with the conditions specified therein.

In March 2001, NRC inspections of licensed activities were conducted at City Hospital and Warren Memorial Hospital, and an in-office review was conducted of the Culpeper Memorial Hospital license file. Based on the results of the inspections and in-office review, the NRC's Office of Investigations (OI) initiated an investigation in April 2001, to review the circumstances surrounding the potential falsification of xenon gas clearance rate calculations, and dose calibrator accuracy evaluations. Xenon gas clearance rate calculations, required by 10 CFR 35.205(c), determine the amount of time that would be needed to clear accidentally spilled radioactive xenon gas from rooms where it was to be used. Dose calibrator accuracy tests, required by 10 CFR 35.50(b)(2), compare a known radiation activity to that measured by the calibrator. Mr. Beale had provided consulting services to each of the licensed facilities with respect to the foregoing calculations and evaluations. On March 27, 2002, OI completed its review of the matter. A predecisional enforcement conference was held between the NRC Staff and Mr. Beale on July 15, 2002, to discuss these matters.

Mr. Beale admitted that he had knowingly prepared and submitted inaccurate xenon gas clearance rate calculations to City Hospital, Warren Memorial Hospital and Culpeper Memorial Hospital, and had knowingly prepared and submitted inaccurate dose calibrator accuracy evaluations to Culpeper Memorial Hospital. Specifically, Mr. Beale submitted numerous reports to City Hospital,[1] to Warren Memorial Hospital,[2] and to Culpeper Memorial Hospital,[3] stating that he had calculated xenon gas clearance rates according to the procedure specified in Appendix O to NRC Regulatory Guide 10.8, ''Guide for the Preparation of Applications for Medical Use Programs.'' The reports stated that the rooms in question at the three hospitals all had the same volume of 0.697 x 107 ml, although in fact they each had different volumes. The reports further stated that all rooms at the three hospitals had a total room air exhaust rate of 1.5 x 10^7 ml per minute, although Mr. Beale did not measure or calculate that value. Although the values purportedly used to make the calculations were the same, reported calculated xenon gas clearance rates varied. Mr. Beale told OI investigators and NRC Staff, that in fact he had measured airflows into and out of the rooms at each of the three hospitals to determine that the rooms were under negative pressure, performed no calculations, and then ''guessed'' the clearance rates. In addition, Mr. Beale admitted that on a day after May 6, 1999, he had generated three dose calibrator accuracy evaluation reports for Culpeper Memorial Hospital dated May 16, 1998, December 10, 1998, and May 6, 1999. Mr. Beale stated that he had used published decay tables to determine the remaining activity in a calibration source, but the values he reported were markedly inconsistent with the values which would have been determined using published decay tables.[4] Mr. Beale submitted a report to Culpeper Memorial Hospital of a dose calibrator accuracy evaluation, which he purportedly performed on April 25, 1997, for a Cobalt-57 source, Serial No. 559186–9, which was certified as having been initially calibrated by the manufacturer on November 1, 1997. Mr. Beale could not explain these inaccuracies. Records of xenon clearance rate calculations and dose calibrator evaluations are required to be maintained by 10 CFR 35.205(d) and 10 CFR 35.50(e), respectively. These records are material to the NRC in that they are relied upon to demonstrate the Licensees' compliance with 10 CFR

[1] Dated February 6, 1998, August 7, 1998, February 5, 1999, August 2, 1999, February 4, 2000, August 24, 2000, and February 21, 2002.

[2] Dated January 8, 1999, July 14, 1999, January 7, 2000, January 11, 2000, July 7, 2000, and July 12, 2000.

[3] Dated May 14, 1998, November 12, 1998, May 3, 1999, November 19, 1999, and April 22, 2000.

[4] For May 6, 1999, 1.58 millicuries versus 1.37 millicuries. For December 10, 1998, 2.65 millicuries versus 1.99 millicuries. For May 16, 1998, 1.1 millicuries versus 3.34 millicuries.

35.205(c) and 10 CFR 35.50(b)(2), which require the performance of xenon clearance rate calculations and dose calibrator evaluations, respectively.

In addition, Mr. Beale admitted at the predecisional enforcement conference that inaccurate information regarding his educational background and professional qualifications had been provided to Culpeper Memorial Hospital. Specifically, Mr. Beale's resume indicated that he had received a Master of Science Degree in Radiologic Technology, Nuclear Medicine, Radiological Physics from the University of Virginia and that he had been certified by the American Board of Radiology (ABR) in Radiological Physics. Mr. Beale also acknowledged that a certificate purportedly issued by the ABR indicated that he was certified in Radiological Physics. Mr. Beale stated at the predecisional enforcement conference that, in fact, he does not possess a Master Degree from the University of Virginia and has not received ABR certification. Based on a written request from Culpeper Memorial Hospital dated December 19, 1995, the NRC amended Culpeper Memorial Hospital's license to name Mr. Beale as alternate RSO by Amendment No. 10, dated December 22, 1995. The request from Culpeper Memorial Hospital included Mr. Beale's inaccurate resume. In addition, based on a written request from Culpeper Memorial Hospital dated July 23, 1996, the NRC amended the license to name Mr. Beale as RSO by Amendment No. 11, dated August 7, 1996. The request included Mr. Beale's inaccurate resume and a copy of the purported ABR certificate. The inaccurate resume information and purported ABR certificate were material to the NRC because they were relevant to Mr. Beale's qualifications to be named an alternate RSO and an RSO on the Culpeper Hospital Memorial license.

After the predecisional enforcement conference, NRC staff conducted inspections from July 31 through August 2, 2002, at Fauquier Hospital, Culpeper Memorial Hospital and Prince William Hospital, hospitals which used the consulting services of Perry M. Beale. Mr. Beale contracted with the hospital to provide reviews of their radiation safety programs and to participate in Radiation Safety Committee activities. Mr. Beale also performed xenon clearance rate calculations, leak tests, dose calibrator tests (including decay correction calculations) for the hospitals, and undertook to have the licensees' survey instruments calibrated by a calibration vendor at the appropriate frequency. The inspections revealed that xenon clearance rate calculations prepared by Mr. Beale for the three hospitals were similar to those he had prepared for City Hospital and Warren Memorial Hospital and which had been examined during the OI investigation. Specifically, the input values for the calculations were the same, and the forms Mr. Beale provided to the three hospitals stated that his xenon gas clearance rate calculations were performed according to the procedure specified in Appendix O to NRC Regulatory Guide 10.8, ''Guide for the Preparation of Applications for Medical Use Programs.'' The clearance rates calculated by Mr. Beale, however, were different from those that would have been calculated if the formula specified by Regulatory Guide 10.8 had been used. Records of xenon clearance rate calculations are required to be maintained by 10 CFR 35.205(d), and are material to the NRC in that they are relied upon to demonstrate the Licensee's compliance with 10 CFR 35.205(c), which requires the performance of xenon clearance rate calculations.

Also, during the inspection at Prince William Hospital, a survey instrument that was used to perform activities required by regulation was observed to have an overdue calibration sticker. When questioned about this, the licensee representative presented a current calibration certificate which showed that the instrument had been calibrated within the past several months. As part of his consultant activities for the hospitals, Mr. Beale was to pick up their instruments prior to the calibration due date and send them to RSO, Inc. for calibration. After calibration, Mr. Beale was to return the instruments to the licensees with a current calibration certificate and calibration sticker. The calibration certificate which Prince William Hospital provided stated that RSO, Inc. had calibrated the instrument on May 7, 2002. The RSO, Inc. representative, whose name appeared on the certificate as the individual who had performed the calibration, advised NRC inspection staff that according to RSO, Inc. records, no instrument bearing the serial number referenced on the calibration certificate for Prince William Hospital (#119312) had been calibrated by RSO, Inc. for several years. The RSO, Inc. representative further advised that the RSO, Inc. order number referenced on the calibration certificate supplied by Prince William Hospital (#2118) was in fact for Culpeper Memorial Hospital. Comparison of the Prince William Hospital calibration certificate to the calibration certificates obtained from Culpeper Memorial Hospital and Fauquier Hospital demonstrates that the calibration data, order/tracking numbers, and probe serial numbers were identical for all three hospitals. Based on the above, the NRC concludes that Mr. Beale did not calibrate a radiation survey instrument for Prince William Hospital at the required frequency, and that Mr. Beale deliberately provided inaccurate information to Prince William Hospital to conceal his failure to calibrate the instrument. Licensees are required to note on the survey instrument the date of calibration and the apparent exposure rate from a dedicated check source, and to retain calibration records by 10 CFR 35.51(a)(3) and (d). These records are material to the NRC in that they are relied upon to demonstrate the Licensee's compliance with 10 CFR 35.51(a), which requires calibration of survey instruments. Moreover, the calibration certificate which Mr. Beale supplied to Prince William Hospital certifies that the instrument had been calibrated on May 7, 2002, approximately one year after Mr. Beale's interview with NRC's OI. During that interview, the Commission's regulation requiring complete and accurate information and the deliberately inaccurate xenon clearance rate calculations and dose calibrator evaluations which Mr. Beale had submitted to City Hospital, Warren Memorial Hospital and Culpeper Memorial Hospital were discussed at length.

Based on the above, it appears that Perry M. Beale has engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1) in that he caused City Hospital, Warren Memorial Hospital, Culpeper Memorial Hospital, Fauquier Hospital, and Prince William Hospital to be in violation of 10 CFR 35.205 and 10 CFR 30.9. It also appears that Mr. Beale engaged in deliberate misconduct in that he caused Culpeper Hospital to be in violation of 10 CFR 35.50 and 10 CFR 30.9, and caused Prince William Hospital to be in violation of 10 CFR 35.51 and 30.9. It further appears that Perry M. Beale has engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(2) by providing to Culpeper Memorial Hospital information regarding his educational and professional qualifications that he knew to be incomplete or inaccurate in some respect material to the NRC. The NRC must be able to rely on its Licensees and their employees, including consultants, to comply with NRC requirements, including the requirement to provide complete and accurate information in

all material respects. Mr. Beale's deliberate misconduct, including falsification of records related to his qualifications to be named a Radiation Safety Officer (RSO) and to licensees' compliance with regulatory requirements, especially continued falsification of records after being interviewed by OI concerning his falsification of records, raises serious concerns regarding his trustworthiness and reliability, and call into question his willingness to comply with NRC requirements, including the requirement to provide complete and accurate information to the NRC and to entities who perform NRC-licensed activities.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Perry M. Beale were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Perry M. Beale be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Mr. Beale is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period, and provide documentation of his qualifications to fill that position. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Beale's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

1. Perry M. Beale is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Perry M. Beale is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. After completion of the term specified in Paragraph IV.1 above, Perry M. Beale shall, at least 20 days before resuming participation in NRC-licensed activities (as a Consultant to, Radiation Safety Officer for, or employee of, an NRC licensee, or in any other capacity), provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the names, addresses, and telephone numbers of the employers or entities for whom he is, or will be, involved in NRC-licensed activities. In the notification, Perry M. Beale shall include his qualifications to participate in NRC licensed activities (as appropriate), a statement of his commitment to compliance with regulatory requirements, and provide a basis for why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above commitments upon demonstration by Perry M. Beale of good cause.

In accordance with 10 CFR 2.202, Perry M. Beale must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to request a hearing must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Perry M. Beale or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement, and to the Director, Office of Nuclear Materials Safety and Safeguards, at the same address, to the Regional Administrator, NRC Region II, 61 Forsyth Street, SW., Suite 23T85, Atlanta, Georgia, 30303–8931, and to Perry M. Beale if the hearing request is by a person other than Mr. Beale. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that any request for hearing be transmitted to the Secretary for the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than Perry M. Beale requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[5]

If a hearing is requested by Perry M. Beale or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Perry M. Beale may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, Including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. A Request for hearing shall not stay the immediate effectiveness of this order.

[5] The most recent version of Title 10 of the Code of Federal Regulations, published in January 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (d)(2), regarding the criteria for intervention and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''* * *such ruling body or officer shall, in ruling on— (1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) The nature of the petitioner's right under the Act to be made a party to the proceeding. (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest. (2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.''

Dated this 23rd day of September 2002.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

[FR Doc. 02–24942 Filed 9–30–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Intent To Establish Peer Review Committee for Source Term Modeling

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: This notice is to announce the NRC intends to establish a new advisory committee.

SUPPLEMENTARY INFORMATION: The U. S. Nuclear Regulatory Commission (NRC) is planning to charter a new advisory committee. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration. The committee, to designated as the Peer Review Committee for Source Term Modeling (PRCSTM), will develop guidance documents that will assist the NRC in evaluating the impact of specific terrorist activities targeted at a range of spent fuel storage casks and radioactive material (RAM) transport packages, including spent fuel. The committee will be composed of individuals with expertise in structural, nuclear, and thermal engineering, fuel performance and source term evaluations, consequence analyses, weapons and explosives, and transportation of radioactive material. The committee will define evaluation criteria, develop the methodology, evaluate the scenarios, and write the guidance documents based on previous and current studies and experiments, and the expertise of the individuals on the panel. The resulting guidance documents will be based on the qualitative judgments of the panel.

For Further Information Please Contact: Elaine Keegan (301) 415–8517 or Charles Interrante (301) 415–3967, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated: September 25, 2002.

Andrew L. Bates,

Federal Advisory Committee , Management Officer.

[FR Doc. 02–24941 Filed 9–30–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of September 30, October 7, 14, 21, 28, November 4, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 30, 2002

Tuesday, October 1, 2002

9:25 a.m.
Affirmation Session (Public Meeting)
a. Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–ISFSI; Review of LBP–02–08, consideration under NEPA of environmental justice issues
b. International Uranium (USA) Corporation (White Mesa Uranium Mill) (MLA–10/Maywood material) Appeal of LBP–02–12

9:30 a.m.
Briefing on Decommissioning Activities and Status (Public Meeting) (Contact: John Buckley, 301–415–6607)

This meeting will be webcast live at the Web address: *http://www.nrc.gov.*

Wednesday, October 2, 2002

10 a.m.
Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

Week of October 7, 2002—Tentative

There are no meetings scheduled for the Week of October 7, 2002.

Week of October 14, 2002—Tentative

There are no meetings scheduled for the Week of October 14, 2002.

Week of October 21, 2002—Tentative

There are no meetings scheduled for the Week of October 21, 2002.

Week of October 28, 2002—Tentative

Wednesday, October 30, 2002

2 p.m.
Discussion of Security Issues (Closed—Ex. 1 & 9)

Thursday, October 31, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

9:30 a.m.
Briefing on EEO Program (Public Meeting)

Week of November 4, 2002—Tentative

There are no meetings scheduled for the Week of November 4, 2002.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: September 26, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–25066 Filed 9–27–02; 2:26 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, September 6, 2002, through September 19, 2002. The last biweekly notice was published on September 17, 2992 (67 FR 58635).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 31, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to

[1] 1. The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

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

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

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

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

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

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

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

participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 28, 2002.

Description of amendment request: The amendment would revise Technical Specification (TS) 3/4.9.9, ''Containment Ventilation Isolation System'' and associated Bases to allow the use of administrative controls on open containment penetrations during core alterations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes modify TS requirements similar to that previously reviewed and approved by the NRC in Harris Nuclear Plant (HNP) License Amendment 104. The administrative controls proposed by this change are currently being used for the same applicable penetrations as part of TS 3.9.4. This change would permit opening up the applicable penetrations under administrative controls if the containment ventilation isolation system were inoperable. HNP has demonstrated (in License Amendment 104) that the radiological consequences were acceptable for a fuel handling accident occurring simultaneously with an open penetration. For the purpose of the applicable analysis, no credit was given for isolating the penetration and dose consequences remained below applicable regulatory limits. The proposed change does not modify the design or operation of equipment used to move spent fuel or to perform core alterations.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Containment penetrations are designed to form part of the containment pressure boundary. The proposed change provides for administrative controls and operating restrictions for containment penetrations consistent with guidance approved by the NRC staff. Containment penetrations are not an accident initiating system as described in the Final Safety Analysis Report [FSAR]. The proposed change does not affect other Structures, Systems, or Components. The operation and design of containment penetrations in operational modes 1–4 will not be affected by this proposed change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed changes modify similar required Actions previously reviewed and approved by the NRC in HNP License Amendment 104. The proposed change to containment penetrations does not significantly affect any of the parameters that relate to the margin of safety as described in the Bases of the TS or the FSAR. Accordingly, NRC Acceptance Limits are not significantly affected by this change.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Kahtan N. Jabbour, Acting.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 30, 2002.

Description of amendment request: The amendment would revise Technical Specifications Definitions 1.13, Engineered Safety Features (ESF) Response Time and 1.29, Reactor Trip System (RTS) Response Time. Also proposed in this change request are revisions to Surveillance Requirements 4.3.1.2 and 4.3.2.2 and Bases Sections B 3/4.3.1 and B 3/4.3.2. These changes will revise the definition and surveillance requirements for response

time testing of the Engineered Safety Feature Actuation System (ESFAS) and the RTS. These changes are in conformance with changes approved in WCAP–13632–P–A, Revision 2, and WCAP–14036–P–A, Revision 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change to the Harris Nuclear Plant (HNP) Technical Specification (TS) does not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. The same RTS and ESFAS instrumentation is being used; the time response allocations/modeling assumptions in the Final Safety Analysis Report (FSAR) Chapter 15 analyses are still the same; only the method of verifying the time response is changed. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed change will not change, degrade or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the FSAR.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not alter the performance of process protection racks, Nuclear Instrumentation, and logic systems used in the plant protection systems. Replacement transmitters will still have response time verified by testing before being placed in operational service. Changing the method of periodically testing these systems (assuring equipment operability) from response time testing to calibration and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these systems will continue and may be used to detect degradation that could cause the response time to exceed the total allowance. The total time response allowance for each function bounds all degradation that cannot be detected by periodic surveillance. Implementation of the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

This change does not affect the total system response time assumed in the safety analysis. The periodic system response time verification method for the process protection racks, Nuclear Instrumentation, and logic systems is modified to allow the use of actual test data or engineering data. The method of verification still provides assurance that the total system response is within that defined in the safety analysis, since calibration tests will continue to be performed and may be used to detect any degradation which might cause the system response time to exceed the total allowance. The total response time allowance for each function bounds all degradation that cannot be detected by periodic surveillance. Based on the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety.

Pursuant to 10 CFR 50.91, the preceding analysis provides a determination that the proposed Technical Specifications change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Kahtan N. Jabbour, Acting.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 12, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.8.2.3, ''Electrical Power Systems, D.C. Distribution—Operating,'' TS 3.8.2.4, ''Electrical Power Systems, D.C. Distribution—Shutdown,'' and TS 3.8.2.5, ''Electrical Power Systems, D.C. Distribution Systems (Turbine Battery)—Operating'' to use standard technical specification terminology in order to provide enhanced readability and usability. The proposed amendment would also provide additional criteria for determining battery operability upon restoration from a recharge or equalizing charge.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specifications changes for relocation of information which defines the operability of the D.C. electrical power subsystems will not create any new failure modes, will not cause an accident to occur, and will not result in any change in the operation of accident mitigation equipment. Relocation of this information will not have an adverse impact on any accident initiators. Proper operation of the D.C. electrical power subsystems will still be verified. As a result, the design basis accidents will remain the same postulated events described in the Millstone Unit No. 2 Final Safety Analysis Report, and the consequences of the design basis accidents will remain the same. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The proposed changes for deletion of redundant actions requirements and reformatting of surveillance requirements associated with the D.C. electrical power subsystems will not cause an accident to occur and will not result in any change in the operation of associated accident mitigation equipment. The proposed changes will not have an adverse impact on any accident initiators. Proper operation of the D.C. electrical power subsystems will still be verified. As a result, the design basis accidents will remain the same postulated events described in the Millstone Unit No. 2 Final Safety Analysis Report, and the consequences of the design basis accidents will remain the same. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The proposed changes to the surveillance requirements for the D.C. electrical power subsystems to add additional criteria relating to physical damage or deterioration and its impact on battery performance do not affect any existing accident initiators or precursors. The proposed changes will not create any adverse interactions with other systems that could result in initiation of a design basis accident. Proper operation of the D.C. electrical power subsystems batteries will still be verified. As a result, the design basis accidents will remain the same postulated events described in the Millstone Unit No. 2 Final Safety Analysis Report, and the consequences of the design basis accidents will remain the same. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The proposed changes to the surveillance requirements for the D.C. electrical power subsystems to add additional criteria relating to demonstrating battery operability following a recharge or equalizing charge will not have an adverse affect on battery operability. The proposed changes will not create any adverse interactions with other systems that could result in initiation of a design basis accident. Proper operation of the D.C. electrical power subsystems batteries will still be verified. As a result, the design basis accidents will remain the same postulated events described in the Millstone Unit No. 2 Final Safety Analysis Report, and the consequences of the design basis accidents will remain the same. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create any new or different accident initiators or precursors. The proposed changes do not create any new failure modes for the components of the D.C. electrical power subsystems and do not affect the interaction between the D.C. electrical power subsystems and any other system. The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The proposed changes do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The components of the D.C. electrical power subsystems will continue to function as before, and will continue to be declared inoperable if their ability to perform a safety function is impaired. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will not reduce the margin of safety since they have no impact on any accident analysis assumption. The proposed changes do not decrease the scope of equipment currently required to be operable or subject to surveillance testing, nor do the proposed changes affect any instrument setpoints or equipment safety functions. The Technical Specifications will continue to require that a battery be declared inoperable if physical damage or abnormal deterioration of the cells, cell plates, or racks that would degrade battery performance is observed. The proposed changes do not alter the requirements of the Technical Specification with respect to the capacity of any battery. The effectiveness of Technical Specifications will be maintained since the changes will not alter the operation of any component or system, nor will the proposed changes affect any safety limits or safety system settings which are credited in a facility accident analysis. Therefore, there is no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Andersen, Acting.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: August 14, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) related to Containment Systems. Specifically, the proposed changes would: (1) Add clarification to TS 1.7 ''Definitions—Containment Integrity'' (2) add clarifying information as well revise a portion of Surveillance Requirement (SR) 4.6.1.1 associated with the affected section of TS 3.6.1.1 ''Containment Integrity;'' (3) revise TS 3.6.3, ''Containment Isolation Valves,'' to make editorial changes, to add clarifying information and to add an Action item that would increase the allowed outage time (AOT) from 4 hours to 72 hours for Containment Isolation Valves (CIVs) in closed systems, and (4) other changes that are clarifying and/or administrative in nature. In addition, the TS Bases would be revised to address the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes associated with both containment integrity and CIVs that will remove ambiguity, improve usability, and increase AOT for CIVs in closed systems, will not cause an accident to occur. Operability requirements for containment integrity and CIVs will remain the same. The ability of the equipment associated with the proposed changes to mitigate the design basis accidents will not be affected. The proposed Technical Specification requirements are sufficient to ensure the required accident mitigation equipment will be available and function properly for design basis accident mitigation. The proposed allowed outage time is reasonable and consistent with standard industry guidelines to ensure the accident mitigation equipment will be restored in a timely manner. In addition, the design basis accidents will remain the same postulated events described in the Millstone Unit No. 3 Final Safety Analysis Report, and the consequences of those events will not be affected. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The additional proposed changes to the Technical Specifications (e.g., relocating information to the Bases, renumbering of footnotes, renumbering a requirement) will not result in any technical changes to the current requirements. Therefore, these additional changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not impact any system or component that could cause an accident. The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions, and will not alter the manner in which the plant is operated. The response of the plant and the operators following an accident will not be different. In addition, the proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification changes associated with both containment integrity and CIVs that will remove ambiguity, improve usability, and increase AOT for CIVs in closed systems, will not cause an accident to occur. Operablity requirements for containment integrity and CIVs will remain the same. The equipment associated with the proposed Technical Specification changes will continue to be able to mitigate the design basis accidents as assumed in the safety analysis. The proposed allowed outage time is reasonable and consistent with standard industry guidelines to ensure the accident mitigation equipment will be restored in a timely manner. In addition, the proposed changes will not affect equipment design or operation, and there are no changes being made to the Technical Specification required safety limits or safety system settings. The proposed Technical Specification changes will provide adequate control measures to ensure the accident mitigation functions are maintained. Therefore, the proposed changes will not result in a reduction in a margin of safety.

The additional proposed changes to the Technical Specifications (*e.g.*, relocating information to the Bases, renumbering of footnotes, renumbering a requirement) will not result in any technical changes to the current requirements. Therefore, these additional changes will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Andersen, Acting.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 15, 2002.

Description of amendment request: The proposed amendment would revise the River Bend Station (River Bend or RBS) reactor vessel surveillance program required by Title 10 of the Code of Federal Regulations (10 CFR) part 50, appendix H, section IIIB.3. The change will incorporate the Boiling Water Reactor Vessel & Internals Project Integrated Surveillance Program into the RBS licensing basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Pressure-temperature (P/T) limits (RBS Technical Specifications Figure 3.4.11–1) are imposed on the reactor coolant system to ensure that adequate safety margins against nonductile or rapidly propagating failure exist during normal operation, anticipated operational occurrences, and system hydrostatic tests. The P/T limits are related to the nil-ductility reference temperature, RT_{NDT}, as described in ASME [American Society of Mechanical Engineers Boiler and Pressure Vessel Code (Code)] Section III, Appendix G. Changes in the fracture toughness properties of RPV [reactor pressure vessel] beltline materials, resulting from the neutron irradiation and the thermal environment, are monitored by a surveillance program in compliance with the requirements of 10CFR50, Appendix H. The effect of neutron fluence on the shift in the nil-ductility reference temperature of pressure vessel steel is predicted by methods given in RG [Regulatory Guide] 1.99, Rev[ision] 2.

River Bend's current P/T and Power Uprate limits were established based on adjusted reference temperatures developed in accordance with the procedures prescribed in RG 1.99, Rev 2, Regulatory Position 1. Calculation of adjusted reference temperature by these procedures includes a margin term to ensure conservative, upper-bound values are used for the calculation of the P/T limits. When permitted (two or more credible surveillance data sets available), Regulatory Position 2 (or other NRC [U.S. Nuclear Regulatory Commission]-approved) methods for determining adjusted reference temperature will be followed.

This change is not related to any accidents previously evaluated. This change will not affect P/T limits as given in RBS Technical Specifications Figure 3.4.11–1 or USAR [Updated Safety Analysis Report] Figures 5.3–4a and 5.3–4b. This change will not affect any plant safety limits or limiting conditions of operation. The proposed change will not affect reactor pressure vessel performance as no physical changes are involved and RBS vessel P/T limits will remain conservative in accordance with Reg[ulatory] Guide 1.99, Rev 2 requirements. The proposed change will not cause the reactor pressure vessel or interfacing systems to be operated outside of their design or testing limits. Also, the proposed change will not alter any assumptions previously made in evaluating the radiological consequences of accidents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the RBS license basis to reflect participation in the ISP [Integrated Surveillance Program]. This proposed change does not involve a modification of the design of plant structures, systems, or components. The proposed change will not impact the manner in which the plant is operated as plant operating and testing procedures will not be affected by the change. The proposed change will not degrade the reliability of structures, systems, or components important to safety as equipment protection features will not be deleted or modified, equipment redundancy or independence will not be reduced, supporting system performance will not be downgraded, the frequency of operation of equipment will not be increased, and increased or more severe testing of equipment will not be imposed. No new accident types or failure modes will be introduced as a result of the proposed change. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from that previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

As stated in the River Bend SER [Safety Evaluation Report], ''Appendices G and H of 10CFR50 describe the conditions that require pressure-temperature limits and provide the general bases for these limits. These appendices specifically require that pressure-temperature limits must provide safety margins at least as great as those recommended in the ASME Code, Section III, Appendix G. * * * Until the results from the reactor vessel surveillance program become available, the staff will use Regulatory Guide (RG) 1.99, Revision 1 [now Revision 2], to predict the amount of neutron irradiation damage. * * * The use of operating limits based on these criteria—as defined by applicable regulations, codes, and standards—will provide reasonable assurance that nonductile or rapidly propagating failure will not occur, and will constitute an acceptable basis for satisfying the applicable requirements of General Design Criteria (GDC) 31.''

Bases for RBS Technical Specification 3.4.11 states: ''The P/T limits are not derived from Design Basis Accident (DBA) analyses. They are prescribed during normal operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause nonductile failure of the RCPB [Reactor Coolant Pressure Boundary], a condition that is unanalyzed. * * * Since the P/T limits are not derived from any DBA, there are no acceptance limits related to the P/T limits. Rather, the P/T limits are acceptance limits themselves since they preclude operation in an unanalyzed condition.''

The proposed change will not affect any safety limits, limiting safety system settings, or limiting conditions of operation. The proposed change does not represent a change in initial conditions, or in a system response time, or in any other parameter affecting the course of an accident analysis supporting the Bases of any Technical Specification. The proposed change does not involve revision of the P/T limits but rather a revision to the surveillance capsule withdrawal schedule. The current P/T limits were established based on adjusted reference temperatures for vessel beltline materials calculated in accordance with Regulatory Position 1 of RG 1.99, Rev 2. P/T limits will continue to be revised as necessary for changes in adjusted reference temperature due to changes in fluence according to Regulatory Position 1 until two or more credible surveillance data sets become available. When two or more credible surveillance data sets become available, P/T limits will be revised as prescribed by Regulatory Position 2 of RG 1.99, Rev 2, or other NRC-approved guidance. Therefore, the proposed change does not involve a significant reduction in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 21, 2002.

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the

specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated August 21, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 14, 2002, as supplemented by letter dated September 9, 2002. The May 14, 2002, application was originally noticed in the **Federal Register** on July 23, 2002 (67 FR 48216).

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours to permit the completion of the surveillance when the allowable outage time limits of the ACTION requirements are less than 24 hours'' to ''* * *up to 24 hours or up to the limit of the specified interval, whichever is greater.'' In addition, the following requirement would be added to SR 4.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.'' Also, the addition of a Bases Control Program is proposed as Technical Specification (TS) 6.5.14, clarifications are proposed for SR 4.0.1, and other minor changes are proposed for SR 4.0.3, consistent with NUREG–1432, Revision 2, ''Standard Technical Specifications, Combustion Engineering Plants.''

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the model NSHC determination in its application dated May 14, 2002, as supplemented by letter dated September 9, 2002. The NRC staff has augmented the model NSHC to address the ANO–2 plant-specific items regarding the addition of a Bases Control Program, clarifications for SR 4.0.1, and other minor changes for SR 4.0.3 (because the model NSHC assumes a plant's TSs already have these improvements), as presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns.

The addition of a Bases Control Program formalizes a means for processing changes to the Bases of the TSs and does not change the meaning of any TS. The clarifications proposed for SR 4.0.1 regarding surveillances that are not met, do not change the current intent or practice of the TSs. The other minor changes to SR 4.0.3 regarding the discovery of surveillances that were not performed, address the delay time period and make other editorial changes that do not change the current intent or practice of the TSs. As such, none of these changes affects the initiator of any accident previously evaluated nor the ability of safety systems to mitigate any accident previously evaluated.

Therefore, the changes discussed above do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns.

Likewise, formalizing a program to control changes to the Bases, clarifying SR 4.0.1, and the other minor changes to SR 4.0.3, do not change the meaning of any TS and thus do not involve a physical alteration of the plant or change the methods governing normal plant operation.

Therefore, the changes discussed above do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Likewise, formalizing a program to control changes to the Bases, clarifying SR 4.0.1, and the other minor changes to SR 4.0.3, do not change the meaning of any TS and thus will not cause equipment that is relied upon to perform a safety function, to become inoperable.

Therefore, the changes discussed above do not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the above analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: August 7, 2002.

Description of amendment request: The proposed amendment would revise the Limiting Condition for Operation (LCO), the associated Conditions and Required Actions of TS 3.7.1, and the values in Table 3.7.1–1. The proposed changes would revise the LCO by requiring five MSSVs per steam generator to be operable consistent with the accident analyses assumptions. The proposed change would modify the associated Required Actions of TS 3.7.1 by adding a requirement to reduce the Power Range Neutron Flux—High reactor trip setpoint when one or more steam generators with one or more MSSVs are inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change adds a requirement to appropriately reduce the Power Range Neutron Flux—High reactor trip setpoint when one or more steam generators with one or more MSSVs are inoperable. The proposed TS change does not affect the design of the MSSV or increase the likelihood of MSSV failures. Reducing the Power Range Neutron Flux—High reactor trip setpoint does not affect initiators of any accident sequence analyzed in the Byron/Braidwood Stations' Updated Final Safety Analysis Report (UFSAR). Therefore, the probability of occurrence of a previously evaluated accident is not increased.

The design basis for the MSSVs is to limit the secondary system pressure to ≤ 110% of steam generator design pressure for any Anticipated Operational Occurrence (AOO) or accident considered in the Design Basis Accident (DBA) and transient analyses. If there are inoperable MSSVs, it is necessary to limit the primary system power during steady-state operation and Anticipated Operational Occurrences (AOOs) to a value that does not result in exceeding the combined steam flow capacity of the turbine (if available) and the remaining operable MSSVs. It has been demonstrated that for those events that challenge the relieving capacity of the MSSVs, *i.e.*, decreased heat removal events resulting in a Reactor Coolant System (RCS) heatup and reactivity insertion events, it is necessary to limit the AOO by reducing the setpoint of the Power Range Neutron Flux—High reactor trip function. For example, with one or more MSSVs on one or more steam generators inoperable, during an RCS heatup event (*e.g.*, turbine trip) when the Moderator Temperature Coefficient (MTC) is positive, the reactor power may increase above the value assumed in the analysis at the start of the transient. Likewise, a reactivity insertion event, such as an uncontrolled rod cluster control assembly (RCCA) withdrawal from partial power level, may result in an increase in reactor power that exceeds the combined steam flow

capacity of the turbine and the remaining operable MSSVs. Thus, for any number of inoperable MSSVs on one or more steam generators it is necessary to prevent a power increase by lowering the Power Range Neutron Flux—High reactor trip setpoint to an appropriate value. This change will ensure that the consequences of previously evaluated accidents remain bounding. Currently administrative controls are in place to address the current non-conservative TS in accordance with the direction provided in NRC Administrative Letter 98–10, ''Dispositioning of Technical Specifications that are Insufficient to Assure Plant Safety.''

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the units. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. The design and operation of the MSSVs are unaffected by the proposed change. The proposed change will not alter the manner in which equipment operation is initiated, nor will the functional demands on equipment be changed. No change is being made to procedures relied upon to respond to off-normal events. As such, no new failure modes are being introduced. The proposed change appropriately revises the setpoints at which protective actions are initiated. The proposed change also prevents operating the plant in a configuration that could challenge the safety analyses limiting initial condition assumptions, thereby ensuring previously evaluated accidents remain bounding. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The primary purpose of the MSSVs is to provide overpressure protection for the secondary system. The MSSVs must have sufficient capacity to limit the secondary pressure to ≤ 110% of the steam generator design pressure in order to meet the requirements of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code, Section III, ''Rules for Construction of Nuclear Power Plant Components.'' The proposed change precludes operation in a configuration that could challenge the design requirement of the MSSVs by requiring a reduction in the Power Range Neutron Flux—High reactor trip setpoint, in addition to a reduction in Thermal Power, when one or more steam generators with one or more MSSVs are inoperable. The maximum allowable power specified in TS Table 3.7.1–1 was calculated using a simple heat balance calculation as described in the attachment to NRC Information Notice 94–60, ''Potential Overpressurization of the Main Steam Safety System,'' dated August 22, 1994, assuming uprated power conditions with an appropriate allowance for Nuclear Instrumentation System reactor trip channel uncertainties. Precluding operation in a configuration that could challenge the design requirement of the MSSVs and appropriately revising the values in Table 3.7.1–1 preserves the margin of safety. This change assures the design basis limit will not be exceeded. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket No. 50–171, Peach Bottom Atomic Power Station, Unit 1, York County, Pennsylvania

Date of application for amendment: May 21, 2002.

Brief description of amendment: This proposed amendment will revise the Peach Bottom Atomic Power Station, Unit 1, Technical Specifications (TS) to: (1) delete License Condition C(4) to reflect satisfaction of the minimum decommissioning trust fund amount at the time of transfer of the Facility Operating License; 2) revise License Condition C(5)(d) to reflect 30 days prior written notification to the Director of Nuclear Material Safety and Safeguards before modification of the decommissioning trust agreement in any material respect; 3) delete TS 2.1(B)3 and TS 2.4(b) to eliminate inconsistencies with reporting requirements in Title 10 U.S. Code of Federal Regulations (10 CFR) 20.2202, 10 CFR 50.73, and 10 CFR 73.71; 4) revise TS 2.2 to refer to the Facility Operating License; and 5) revise TS 2.3 to refer to the radiological hazards associated with the facility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes do not impact the SAFSTOR status of Peach Bottom Atomic Power Station, Unit 1, or the design of any plant system, structure, or component. These changes are administrative in nature. They do not affect security at Unit 1 or the potential of radioactive material being released. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The changes do not alter the plant configuration. These changes are administrative in nature and do not alter assumptions made in the safety analysis and licensing basis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Do the proposed changes involve a significant reduction in a margin of safety?

No. These changes are administrative in nature. The changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Claudia M. Craig.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: August 22, 2002.

Description of amendment request: The proposed change modifies the required surveillance interval for calibration of the trip units associated with the instrumentation channels of the Anticipated Transient Without Scram-Recirculation Pump Trip (ATWS–RPT) system from monthly to quarterly.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS [Technical Specification] change increases a STI [surveillance test interval] for ATWS–RPT System actuation

instrumentation based on generic analyses completed by the Boiling Water Reactor Owners' Group (BWROG). The NRC has reviewed and approved these generic analyses and has concurred with the BWROG that the proposed changes do not significantly affect the probability of failure or availability of the affected instrumentation systems. EGC [Exelon Generation Company, LLC] has determined these studies are applicable to QCNPS [Quad Cities Nuclear Power Station], Units 1 and 2.

TS requirements that govern operability or routine testing of plant instruments are not assumed to be initiators of any analyzed event because these instruments are intended to prevent, detect, or mitigate accidents. Therefore, this change will not involve an increase in the probability of occurrence of an accident previously evaluated. Additionally, this change will not increase the consequences of an accident previously evaluated because the proposed change does not involve any physical changes to ATWS–RPT System components or the manner in which the ATWS–RPT System is operated. This change will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients specified in the ATWS analysis contained in the QCNPS Updated Final Safety Analysis Report (UFSAR). As justified and approved in licensing topical reports endorsing extended AOTs [allowed out-of-service times] and STIs, the proposed change establishes or maintains adequate assurance that components are operable when necessary for the prevention or mitigation of accidents or transients, and that plant variables are maintained within limits necessary to satisfy the assumptions for initial conditions in the safety analyses. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite. For these reasons, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical changes to the ATWS–RPT System or associated components, or the manner in which the ATWS–RPT System functions. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated. There is no change being made to the parameters within which the plant is operated. There are no setpoints at which protective or mitigative actions are initiated that are affected by the proposed change. This proposed change will not alter the manner in which equipment operation is initiated nor will the function demands on credited equipment be changed. The change in methods governing normal plant operation is consistent with the current ATWS analysis assumptions specified in the UFSAR. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the proposed change involve a significant reduction in a margin of safety?

Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms or actions. The proposed change increases a STI for ATWS–RPT System actuation instrumentation based on generic analyses completed by the BWROG. The analyses determined that there is no significant change in the availability and/or reliability of ATWS–RPT instrumentation as a result of the proposed change in STI. The extended STI does not result in significant changes in the probability of ATWS–RPT instrument failure. Furthermore, the proposed change will not reduce the probability of test-induced ATWS–RPT transients and equipment failures. Therefore, it is concluded that the proposed change will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: August 26, 2002.

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period before entering a Limiting Condition for Operation (LCO) following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated August 26, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a

significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: L. Raghavan.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 20, 2002.

Description of amendment request: The proposed change will modify action statements and surveillance requirements associated with the diesel generators and make various editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not affect the operational limits or the physical design of the emergency diesel generators.

The emergency diesel generator system is not an accident initiator. The proposed changes will minimize unnecessary testing that can result in accelerated degradation and will reduce the burden on plant operating personnel while continuing to ensure emergency diesel generator reliability. The editorial and administrative changes do not change the intent of any Technical Specification requirement.

Since the proposed changes do not affect any accident initiator and since the emergency diesel generators will remain capable of performing their design function, the proposed change does not involve a significant increase in the probability or off-site and on-site radiological consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the operational limits or the physical design of the emergency diesel generators. The diesel generators will remain capable of performing their design function. No new failure mechanisms, malfunctions, or accident initiators are being introduced by the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect the operational limits or the physical design of the emergency diesel generators. The diesel generators will remain capable of performing their design function. Unnecessary testing that can result in accelerated degradation will be minimized by the proposed changes. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Andersen, Acting.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: August 9, 2002.

Description of amendment request: The proposed amendments would incorporate the Boiling Water Reactor Vessel and Internals Project (BWRVIP) Integrated Surveillance Program for the surveillance of the Plant Hatch material capsules. The schedule for removal of the capsules is provided in the Units 1 and 2 Final Safety Analysis Reports. The proposed amendment is consistent with the NRC's Regulatory Issue Summary 2002–05, ''NRC Approval of Boiling Water Reactor Pressure Vessel Integrated Surveillance Program,'' dated April 8, 2002 (ADAMS Accession No. ML020660522).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to the material surveillance program will involve implementing the BWRVIP Integrated Surveillance Program (ISP). The purpose of the program is to monitor the reactor pressure vessel beltline materials for neutron embrittlement. The existing program for Hatch Units 1 and 2 includes removal and evaluation of existing material capsules in the Hatch Unit 1 and 2 Reactor vessels. The ISP combines all the individual surveillance programs for participating U.S. BWRs into a single integrated program. To insure the program is adequate, similar heats of materials are used to represent the limiting materials of the RPVs. A test matrix was developed to identify the specimens that best meet the needs of each BWR, including the Hatch units. The material associations for the ISP were chosen to best represent the limiting plate and weld materials for each plant using specimens from the entire BWR fleet. As a result, the Plant Hatch RPVs [reactor pressure vessels] will be adequately monitored for neutron embrittlement and thus the probability or consequences of RPV embrittlement are not significantly increased.

Implementing the ISP does not affect the assumptions of any previously evaluated accident, neither does it affect any of the systems designed for the prevention or mitigation of previously evaluated accidents. Therefore, their consequences are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated.

Implementing the ISP will not affect the operation of any plant system designed for the prevention or mitigation of accidents. As a result, no new modes of operation are introduced which may result in the need to consider a new type of event. As described above in the answer to question #1, the ISP will continue to adequately monitor the RPV materials; therefore, the possibility of an RPV embrittlement event is not created.

3. Does the proposed change involve a significant decrease in the margin of safety.

The ISP will use materials that adequately represent a particular RPV, including Plant Hatch. A test matrix, as provided in BWRVIP–86: [''BWR Vessel and Internals Project, BWR Integrated Surveillance Program Implementation Plan,'' includes representative materials from other plants to be used for the Hatch Units. A representative material is a plate or weld that is selected from among all the existing plant surveillance programs to represent the corresponding limiting plate or weld material in a plant. The choice of material considers chemistry, heat number, fabricator and the welding process. These are factors that determine the best representative material. As a result, the Hatch RPV will be adequately monitored for radiation embrittlement and the margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: John A. Nakoski.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 19, 2002.

Description of amendment request: The proposed amendment revises Technical Specification (TS) Section 3/4.3.2, ''Engineered Safety Features Actuation System Instrumentation.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, this analysis provides a determination that the proposed change to the Technical Specifications described previously, does not involve any significant hazards consideration as defined in 10 CFR 50.92, as described below:

[(1)] Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change to the Technical Specifications will not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. The same ESFAS [engineered safety features actuation system] instrumentation will be used and the same ESFAS system reliability is expected. The proposed change will not modify any system interface or function and could not increase the likelihood of an accident because these events are independent of this change. The proposed activity will not change, degrade, or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the safety analysis report.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[(2)] Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not alter the performance of the ESFAS mitigation systems assumed in the plant safety analysis. Changing the interval for periodically verifying ESFAS slave relays (assuring equipment operability) will not create any new accident initiators or scenarios. Only the testing frequency is changed. No physical changes will be made to the Solid State Protection System or the ESF Actuation System as a result of this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[(3)] Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not affect the total ESFAS response assumed in the safety analysis because the reliability of the slave relays will not be significantly affected by the increased surveillance interval. The relays have demonstrated a high reliability and insensitivity to short term wear and aging effects. The overall reliability, redundancy, and diversity assumed available for the protection and mitigation of accident and transient conditions is unaffected by this proposed Technical Specification change.

Therefore, the proposed change does not involve a reduction in a margin of safety.

Based on the above safety evaluation, the South Texas Project concludes that the change proposed by this License Amendment Request satisfies the no significant hazards consideration standards of 10 CFR 50.92(c) and, accordingly, a finding of no significant hazards is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A.H. Gutterman, Esq., Morgan, Lewis, & Bockius, 1111 Pennsylvania NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company (STPNOC), Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 20, 2002.

Description of amendment request: The proposed amendment would delete the Appendix C of the Operating License, regarding antitrust conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

STPNOC has determined whether a significant hazards consideration is involved with the proposed amendment by focusing on the three criteria set forth in 10 CFR 50.92 as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This request involves an administrative change only. The Operating Licenses are being changed to remove unnecessary and outdated antitrust conditions. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, this request will have no impact on the probability or consequences of any type of accident: new, different, or previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request involves an administrative change only. The Operating Licenses are being changed to remove unnecessary and outdated antitrust conditions. No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, this request will have no impact on the possibility of any type of accident: new, different, or previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request involves an administrative change only. The Operating Licenses are being changed to remove unnecessary and outdated antitrust conditions.

No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed change will not relax any criteria used to establish safety limits, safety systems settings, or any limiting conditions of operations. Therefore, this request will not impact [a] margin of safety.

Based on the above, STPNOC concludes that the proposed amendment involves no significant hazards consideration under the criteria set forth in 10 CFR 50.92 and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis, & Bockius, 1111 Pennsylvania NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 21, 2002.

Description of amendment request: The proposed amendment revises Technical Specifications (TS) 3/4.4.1.4.2 and 3/4.9.1.3 to delete the specific reference to the valves required to be secured to isolate uncontrolled boron dilution flow paths in MODE 5 with the loops not filled and in MODE 6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

STPNOC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below.

[(1)] Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There is no technical change in the requirements imposed by the Technical Specifications. The proposed changes to replace the TS reference to the specific valves to be used to isolate boron dilution flow paths with new Technical Specification requirements to assure the flow paths are secured provides the same level of assurance that the boron dilution event will be precluded.

[(2)] Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change allows alternate, equally effective, locations where the potential boron dilution flow paths can be isolated to preclude an uncontrolled boron dilution event in MODE 5 with the loops not filled and in MODE 6. Consequently, the possibility of the dilution event is unchanged. The proposed change does not otherwise alter how the plant is operated or change its design basis so that the possibility of a new accident is not created.

[(3)] Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to replace the TS reference to the specific valves to be used to isolate boron dilution flow paths with new Technical Specification requirements to assure the flow paths are secured provides the same level of assurance that the boron dilution event will be precluded.

Based upon the analysis provided herein, the proposed amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A.H. Gutterman, Esq., Morgan, Lewis, & Bockius, 1111 Pennsylvania NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 16, 2002.

Description of amendment request: The amendment would revise Technical Specification 3.6.3, ''Containment Isolation Valves,'' by (1) deleting the Note and adding the acronym ''(CIV)'' for containment isolation valve in Condition A of the Actions for the Limiting Condition for Operation, (2) revising the Completion Time for Required Condition A.1 from 4 hours to as much as 7 days depending on the category of the CIVs, (3) deleting Condition C, and (4) renumbering the later Conditions D and E. The proposed amendment is based on Topical Report WCAP–15791–P, ''Risk-Informed Evaluation of Extensions to Containment Isolation Valve Completion Times.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Completion Times do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the containment isolation valves. The containment isolation valves will remain highly reliable and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by the large early release frequency (LERF) and incremental conditional large early release probabilities (ICLERP) is acceptable. These changes are consistent with the acceptance criteria in [the risk-informed] Regulatory Guides 1.174 and 1.177. Therefore, since the containment isolation valves will continue to perform their [safety] functions with high reliability as originally assumed and the increase in risk as measured by LERF and ICLERP is acceptable, there will not be a significant increase in the consequences of any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended [safety] function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed changes are consistent with the safety analysis assumptions and resultant consequences [in Chapter 15, ''Accident Analysis,'' of the Updated Final Safety Analysis Report (USAR) for the plant].

Therefore, it is concluded that this change does not increase the probability of occurrence of a malfunction of equipment important to safety.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change in the manner in which the containment isolation valves provide plant protection. There are no design changes associated with the proposed changes. The changes to Completion Times do not change any existing accident scenarios, nor create any new or different accident scenarios.

The changes do not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the possibility of a new or different malfunction of safety related equipment is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for

operation are determined. The safety analysis acceptance criteria are not impacted by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and is consistent with the acceptance criteria contained in Regulatory Guides 1.174 and 1.177.

Therefore, it is concluded that this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: July 19, 2002.

Brief description of amendment request: The proposed amendment would revise Technical Specification Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours'' to ''* * * up to 24 hours or up to the limit of the specified surveillance interval, whichever is greater.'' In addition, the following requirement would be added to SR 4.0.3: ''A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed.'' The proposed amendment would also make administrative changes to SRs 4.01 and 4.03 to be consistent with NUREG–1431, Revision 2.

Date of publication of individual notice in ***Federal Register:*** September 4, 2002 (67 FR 56604).

Expiration date of individual notice: October 4, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: September 19, 2001, as supplemented on January 17 and July 1, 2002.

Brief description of amendment: The amendment revises Technical Specifications Subsections 3.5.A.5.b and c, concerning operability of suppression chamber-to-drywell vacuum breakers.

Date of Issuance: September 11, 2002.

Effective date: As of the date of issuance, to be implemented within 30 days of issuance.

Amendment No.: 230.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 20, 2001 (66 FR 65749). The January 17 and July 1, 2002, letters provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 11, 2002.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: September 10, 2001.

Brief description of amendment: The amendment revised the requirements in Technical Specifications, Sections 3.4.A.7.c and 3.4.A.8.c, changing confirmation of operability of core spray pumps and system components from testing to verification.

Date of Issuance: September 10, 2002.

Effective date: As of the date of issuance, to be implemented within 30 days of issuance.

Amendment No.: 231.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10008). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 10, 2002.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: August 1, 2001, as supplemented on June 19 and September 9, 2002.

Brief description of amendment: The amendment revised Technical Specifications Section 6.3, ''Facility Staff Qualifications,'' deletes Section 6.4, ''Training,'' and revises the Table of Contents to reflect deletion of Section 6.4. These changes reflect updating of requirements that had been outdated based on licensed operator training programs being accredited by the Institute of Nuclear Power Operations, and promulgation of applicable regulations.

Date of Issuance: September 18, 2002.

Effective date: September 18, 2002, and shall be implemented within 30 days of issuance.

Amendment No.: 232.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55009). The June 19 and September 9, 2002, letters provided clarifying information within the scope of the original application and did not change the staff?s initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 18, 2002.

No significant hazards consideration comments received: No.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: May 15, 2002, as supplemented by letter dated August 29, 2002.

Brief description of amendments: The amendments revise Limiting Condition for Operation (LCO) 3.9.3, ''Containment Penetrations.'' The amendments would (1) modify the requirement in LCO 3.9.3.b that one door in each air lock is closed by adding the words ''capable of being'' before the word ''closed'' and (2) add a note to LCO 3.9.3 stating that containment penetration flow paths providing direct access from the containment to the outside atmosphere may be unisolated under administrative controls. The amendments would allow the containment air lock and other penetrations that provide direct access to the outside atmosphere to be open during core alterations or movement of irradiated fuel assemblies within containment.

Date of issuance: September 11, 2002.

Effective date: September 11, 2002, and shall be implemented within 60 days of the date of issuance, including completing the changes to the Technical Specification Bases, as described in the licensee's letters of May 15 and August 29, 2002.

Amendment Nos.: Unit 1—144, Unit 2—144, Unit 3—144.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42816). The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated September 11, 2002.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: March 26, 2002, as supplemented June 19 and August 8, 2002.

Brief description of amendment: This amendment extends the 10-year performance-based Type A test interval on a one-time basis to require the performance of a Type A test within 12.1 years from the last test, which was performed on April 9, 1992.

Date of issuance: September 16, 2002.

Effective date: September 16, 2002.

Amendment No.: 193.

Facility Operating License No. DPR–23: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 28, 2002 (67 FR 36928). The June 19, and August 8, 2002, supplements contained clarifying information only, and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 16, 2002.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: February 21, 2002, as supplemented May 14 and August 2, 2002.

Brief description of amendment: The amendment modifies the containment vessel spray nozzle testing frequency from testing every ''10 years'' to testing ''following activities which could result in nozzle blockage.''

Date of issuance: September 19, 2002.

Effective date: September 19, 2002.

Amendment No.: 194.

Facility Operating License No. DPR–23: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21285). The May 14 and August 2, 2002, supplements contained clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 2002.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–400, Shearon Harris Nuclear Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: July 8, 2002.

Brief Description of amendment: The amendment deleted the level value in Technical Specification (TS) 3/4.8.1.1, ''Electrical Power Systems—A.C. Sources—Operating'' and TS 3/4.8.1.2, ''Electrical Power Systems—A.C. Sources—Shutdown.''

Date of issuance: September 12, 2002.

Effective date: As of date of issuance and shall be implemented within 60 days from date of issuance.

Amendment No.: 111.

Facility Operating License No. NPF–63: Amendment changes the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50950). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 2002.

No significant hazards consideration comments received: No.

Consumers Energy Company, Docket No. 50–155, Big Rock Point Nuclear Plant, Charlevoix County, Michigan

Date of amendment request: June 11, 2002, as supplemented by letter dated July 3, 2002.

Brief description of amendment: The amendment revises Defueled Technical Specification (DTS) Section 5.2, ''Storage and Inspection of Spent Fuel,'' and DTS Section 6.6.2.9, ''Spent Fuel Pool Water Chemistry Program,'' by adding applicability statements that specify that these specifications apply

only when irradiated fuel is stored in the spent fuel pool.

Date of issuance: September 11, 2002.

Effective date: The license amendment is effective as of the date of issuance and shall be implemented within 45 days from the date of issuance.

Amendment No.: 124.

Facility Operating License No. DPR–6: The amendment revised the Defueled Technical Specifications.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45562). The July 3, 2002, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 2002.

No significant hazards considerations comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: May 23, 2002.

Brief description of amendment: The amendment deletes Technical Specification 5.5.3, ''Post Accident Sampling System (PASS),'' and thereby eliminates the requirements to have and maintain the PASS at Fermi 2.

Date of issuance: September 5, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 150.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42816). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 6, 1998; April 5, 1999; April 7, April 19, July 31, and September 28, 2000; March 19, June 11, September 21, and December 20, 2001.

Brief description of amendment: The amendment revises the Millstone Power Station, Unit No. 3 licensing basis related to operation of the supplementary leak collection and release system after a postulated accident. Specifically, the proposed revision to the Final Safety Analysis Report (FSAR) would address: (1) The manual actions required to trip the non-safety grade fans and the time requirements for control room ventilation realignment, and (2) the input assumptions and results of the loss-of-coolant accident/control rod ejection accident analyses.

Date of issuance: September 16, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 211.

Facility Operating License No. NPF–49: Amendment revised the FSAR.

Date of initial notice in ***Federal Register:*** July 1, 1998 (63 FR 35992). The April 5, 1999; April 7, April 19, July 31, and September 28, 2001; March 19, June 11, September 21, and December 20, 2001, letters provide clarifying information that was within the scope of the original application and did not change the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 16, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: December 7, 2001, as supplemented by letter dated July 22, 2002.

Brief description of amendments: The amendments revise the Technical Specifications (TS) to permit implementation of containment local leakage rate testing addressed by 10 CFR Part 50, Appendix J, Option B, and to reference Regulatory Guide 1.163, ''Performance-Based Containment Leak Test Program,'' dated September 1995. In addition, the TS are revised regarding soap bubble testing and leak testing of containment purge valves with resilient seals for upper and lower compartments and instrument rooms.

Date of issuance: September 4, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 207 & 188.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 26, 2001 (67 FR 66464). The supplement dated July 22, 2002, provided clarifying information that did not change the scope of the December 7, 2001, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 4, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: July 11, 2002.

Brief description of amendments: The amendments revised the Technical Specifications to incorporate several administrative changes.

Date of Issuance: September 5, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 328, 328 & 329.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50951). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 5, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: January 8, 2002, as supplemented on August 22, 2002.

Brief description of amendment: The amendment revised Technical Specifications Section 3.7.C, ''Gas Turbine Generators,'' and Section 4.6, ''Emergency Power System Periodic Tests,'' to change the minimum amount of fuel oil required to be stored from 54,200 gallons to 94,870 gallons. The amendment also revised the minimum electrical output of the gas turbine generator that is required to be tested monthly to 2000 kilowatts from the previous value of 750 kilowatts.

Date of issuance: September 18, 2002.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 233.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10012). The August 22, 2002, letter provided clarifying information that did not

change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 7, 2002, supplemented July 17, 2002.

Brief description of amendment: The amendment changes the Technical Specifications to allow relaxation of secondary containment operability requirements while handling irradiated fuel in the secondary containment. The amendment replaces the current accident source term use in selected design basis radiological analyses with an alternative source term pursuant to 10 CFR 50.67, ''Accident Source Term.''

Date of issuance: September 12, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 276.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45568). The July 17, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: March 19, 2002, as supplemented on June 4, July 16 and 24, August 22 and September 4, 2002.

Brief description of amendment: The amendment revises the technical specifications to reflect the removal of the automatic reactor scram and main steam isolation valve closure functions of the main steam line radiation monitors (MSLRM). An explicit requirement for periodic functional test and calibration of the MSLRM is added to maintain operability of the mechanical vacuum pump trip function.

Date of Issuance: September 18, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 212.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45573). The July 16 and 24, August 22, and September 4, 2002, supplements were within the scope of the original application and did not change the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 18, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station (GGNS), Unit 1, Claiborne County, Mississippi

Date of application for amendment: November 15, 2001, as supplemented by letters dated March 1 and June 19, 2002.

Brief description of amendment: This amendment revises the GGNS Unit 1 Technical Specification Surveillance Requirements (SRs) pertaining to testing of the standby emergency diesel generators (DGs) to allow DG testing during reactor operation. The change removes the restriction associated with these SRs that prohibits conducting the required testing of the DGs during reactor operating Modes 1, 2, or 3.

Date of issuance: September 5, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No: 153.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications and Surveillance Requirements.

Date of initial notice in ***Federal Register:*** December 26, 2001 (66 FR 66464). The supplemental letters dated March 1 and June 19, 2002, provided clarifying information that did not change the scope of original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 2002.

No significant hazards consideration comments received: None.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: February 25, 2002, as supplemented by letters dated August 16 and 22, 2002.

Brief description of amendment: This amendment adds a new Technical Specification 3.10.9, ''Suppression Pool Makeup-MODE 3,'' to allow installation of reactor cavity gate 2 in the Upper Containment Pool (UCP) and draining the reactor cavity pool portion of the UCP while still in MODE 3, with the reactor pressure less than 230 pounds per square inch gauge (psig). It also modifies the applicability of the UCP gates surveillance requirement (TS Section 3.6.2.4, ''Suppression Pool Makeup (SPMU) System,'') to allow installation of UCP gates in MODES 1, 2, and 3.

Date of issuance: September 6, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No: 154.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications and Surveillance Requirements.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21289). The August 16 and 22, 2002, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: February 19, 2002, as supplemented by letter dated July 17, 2002.

Brief description of amendment: This amendment revises Technical Specification 3.8.1, ''AC Sources—Operating,'' to remove all current Mode restrictions associated with testing the High Pressure Core Spray Diesel Generator 13 during normal operation. The proposed changes remove the restriction associated with Surveillance Requirements (SRs) that prohibit performing the required testing in

Modes 1, 2, or 3. The specific SRs addressed in this amendment are: SR 3.8.1.11, 3.8.1.12, 3.8.1.16, and 3.8.1.19.

Date of issuance: September 10, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No: 155.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications and Surveillance Requirements.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21288). The supplemental letter dated July 17, 2002, provided clarifying information that did not change the scope of original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 2002.

No significant hazards consideration comments received: None.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: March 8, 2002.

Brief description of amendments: The amendments revise TS 3.8.4, ''DC Sources-Operating,'' 3.8.5, ''DC Sources-Shutdown,'' 3.8.6, ''Battery Cell Parameters,'' and 3.8.8, ''Inverter-Shutdown.'' The changes also include the relocation of the following TS items to a licensee-controlled program: (1) A number of Surveillance Requirements (SRs) that require the performance of preventive maintenance, and (2) TS Table 3.8.6–1, ''Battery Cell Parameter Requirements.'' The amendments also add new actions and their associated completion times to TS 3.8.6 for out-of-limits conditions for battery cell voltage, electrolyte level, and electrolyte temperature. In addition, SRs are added for verification of these parameters.

Date of issuance: September 19, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 129, 129, 124 & 124.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34485). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 19, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: August 1, 2001, as supplemented June 19 and September 9, 2002.

Brief description of amendments: The amendments revise Technical Specification 5.3, ''Unit Staff Qualifications,'' concerning approval of the education and experience eligibility requirements for operator license applicants.

Date of issuance: September 17, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 194 & 187.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55018). The supplements dated June 19 and September 9, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: August 01, 2001, as supplemented June 19 and September 09, 2002.

Brief description of amendments: The amendments revise Technical Specifications requirements regarding Facility Staff Qualifications for licensed operator and non-licensed personnel training programs. The changes revise requirements that have been superseded based on licensed operator training programs being accredited by the Institute of Nuclear Power Operations, promulgation of the revised 10 CFR part 55, ''Operators' Licenses,'' which became effective on May 26, 1987, and adoption of a systems approach to training as required by 10 CFR 50.120, ''Training and qualification of nuclear power plant personnel.''

Date of issuance: September 17, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 154 & 140.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55018). The supplements dated June 19 and September 09, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of application for amendments: August 1, 2001, as supplemented June 19 and September 9, 2002.

Brief description of amendments: The amendments revised Technical Specification 5.3.1 to state that the licensed operators shall comply with the qualification requirements in 10 CFR part 55, rather than the American National Standards Institute's (ANSI) standard ANSI N18.1–1971.

Date of issuance: September 17, 2002.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendments Nos.: 245, 249.

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55018). The June 19 and September 9, 2002, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: August 1, 2001, as supplemented June 19 and September 9, 2002.

Brief description of amendments: The amendments revise Technical Specification requirements that have been superceded based on the licensed operator training program being accredited by the Institute of Nuclear Power Operations, promulgation of the revised 10 CFR part 55, and adoption of a systems approach to training as required by 10 CFR 50.120.

Date of issuance: September 18, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 208 & 203.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55018). The supplements dated June 19 and September 9, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 18, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: November 9, 2000.

Brief description of amendment: This amendment revises the allowed outage time from 72 hours to 7 days for one low pressure injection train, and one containment spray system train. The supporting analysis for the request is based on the Babcock & Wilcox Owners Group (B&WOG) Topical Report BAW–2295A, Revision 1 & 2, ''Justification for the Extension of Allowed Outage Time for Low pressure Injection and Reactor Building Spray Systems,'' and its review by the staff documented in a Safety Evaluation Report. The Davis-Besse Nuclear Power Station is the lead B&WOG plant requesting these changes to be made to the Technical Specifications.

Date of issuance: September 17, 2002.

Effective Date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 253.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 27, 2000 (65 FR 81919). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 17, 2002.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: January 18, 2002.

Brief description of amendments: These amendments revised Technical Specifications to relocate specific working hour limits and controls to administrative procedures.

Date of issuance: September 10, 2002.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 185 and 128.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7418). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 10, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: July 26, 2002, as supplemented August 23, 2002

Brief description of amendments: The amendments will add a license condition to the Operating Licenses for both units, allowing a one-time 140-hour allowed outage time for the essential service water (ESW) system, to allow ESW pump replacement during plant operation.

Date of issuance: September 9, 2002.

Effective date: As of the date of issuance and shall be implemented within 20 days.

Amendment Nos.: 270 and 251.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Facility Operating License.

Date of initial notice in ***Federal Register:*** August 8, 2002 (67 FR 51603). The August 23, 2002, letter provided clarifying information within the scope of the original application and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 9, 2002.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: October 19, 2001, as supplemented June 17, 2002.

Brief description of amendment: The amendment revised the Technical Specifications to implement programmatic controls for radiological effluent technical specifications in the Administrative Controls section, to relocate certain procedural details to licensee-controlled documents, and to add new programs to accommodate existing NRC requirements and guidance.

Date of issuance: September 11, 2002.

Effective date: September 11, 2002.

Amendment No.: 176.

Facility Operating License No. DPR–63: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 928). The June 17, 2002, supplemental letter did not expand the scope of the application as originally noticed and did not change the proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 2002.

No significant hazards consideration comments received: No.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: August 9, 2001, as supplemented September 17, 2001, and June 24, 2002.

Description of amendment request: The amendment combines Technical Specifications (TSs) 3/4.9.9, ''Containment Purge and Exhaust Isolation System,'' and 3/4.9.4, ''Containment Building Penetrations.'' By combining these two TSs, the amendment updates the Seabrook TSs related to refueling operations by adopting portions of NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 2. The amendment also changes the TS index pages and the associated TS Bases. By letter dated June 24, 2002, the licensee withdrew that part of the application associated with relocation of TS 3/4.9.4, ''Decay Time,'' to the Seabrook Station Technical Requirements Manual.

Date of issuance: September 5, 2002.

Effective date: As of its date of issuance, and shall be implemented within 90 days.

Amendment No.: 85.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 19, 2001 (66 FR 48290). The supplements dated September 17, 2001, and June 24, 2002, provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: January 28, 2002.

Brief description of amendment: The amendment revises the Core Operating Limits Report analytical methods referenced in Technical Specification (TS) 5.6.5.b. Specifically, the amendment adds references to two NRC-approved Framatome ANP, Inc., reports: (1) EMF–2310(P)(A), Revision 0, ''SRP [Standard Review Plan] Chapter 15 Non-LOCA [loss-of-coolant accident] Methodology for Pressurized Water Reactors [PWRs],'' dated May 2001, and (2) EMF–2328(P)(A), Revision 0, ''PWR Small Break LOCA Evaluation Model, S–RELAP5 Based,'' dated March 2001. The amendment also deletes previous references in TS 5.6.5.b describing Exxon Nuclear Company's large-break LOCA evaluation model.

Date of issuance: September 13, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 209.

Facility Operating License No. DPR–20: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7420). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 3, 2002.

Brief description of amendment: This amendment consists of changes to the Technical Specifications (TSs) which allow the relocation of TS 3/4.4.4, ''Reactor Coolant System—Chemistry,'' and the associated bases from the TSs to the Hope Creek Updated Final Safety Analysis Report (UFSAR).

Date of issuance: September 18, 2002.

Effective date: September 18, 2002, and shall be implemented within 60 days.

Amendment No.: 140.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications and the UFSAR.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34492). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: May 24, 2002.

Brief description of amendments: The amendments revised the Technical Specifications to allow Mode 2 (startup) operation with two out of four, rather than three out of four, required intermediate range monitor channels per trip system.

Date of issuance: September 12, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 233/175.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45572). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 2002.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 31, 2001, as supplemented by letters dated June 14, August 13, October 16, November 7, 2001, August 14, 2002, and September 4, 2002.

Brief description of amendments: The amendment grants conforming amendments to the operating licenses to reflect the direct transfer of Reliant Energy Incorporated's ownership interest to Texas Genco, LP.

Date of issuance: September 4, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–142; Unit 2–130.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the facility operating licenses.

Date of initial notice in ***Federal Register:*** September 28, 2001 (66 FR 49711). The supplemental information did not expand the scope of the application as originally noticed in the **Federal Register**. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 4, 2002.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: April 1, 2002, as supplemented by letter dated June 6, 2002.

Brief description of amendments: The amendments include addition of topical report ERX–2001–005, ''ZIRLO™ Cladding and Boron Coating Models for TXU Electric's Loss of Coolant Accident Analysis Methodologies,'' to the list of approved methodologies for use in generating the Core Operating Limits Report in Technical Specification (TS) 5.6.5, ''Core Operating Limits Report (COLR).'' In addition, the proposed changes include ZIRLO™ clad in the description of the fuel assemblies in TS 4.2.1, ''Fuel Assemblies.''

Date of issuance: September 4, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 99 and 99.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34493). The June 6, 2002, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 4, 2002.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: March 27, 2002.

Brief description of amendments: The amendments revise Technical Specification (TS) 5.3.1 to require that each member of the unit staff, with the exception of licensed Reactor Operators (ROs) and licensed Senior Reactor Operators (SROs), shall meet or exceed the minimum qualifications of Regulatory Guide (RG) 1.8, ''Qualification and Training of Personnel for Nuclear Power Plants,'' Revision 2, 1987. Also, a new TS 5.3.2 is added to require that the ROs and SROs shall meet or exceed the minimum qualifications of RG 1.8, Revision 3, May 2000, and the current TS 5.3.2 is renumbered to TS 5.3.3.

Date of issuance: September 4, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 100 and 1000.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34493). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 4, 2002.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 17, 2002 (ULNRC–04684).

Brief description of amendment: The amendment revised Technical Specification 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' by adding Surveillance Requirement (SR) 3.3.1.16 to Function 3 of TS Table 3.3.1–1. SR 3.3.1.16 verifies that the reactor trip system response times are within limits every 18 months on a staggered test basis.

Date of issuance: September 3, 2002.

Effective date: September 3, 2002, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 151.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 23, 2002 (67 FR 48222). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 2002.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: February 15, 2001, as supplemented by letters dated April 20 and November 7, 2001, and March 1 and August 5, 2002.

Brief description of amendment: The amendment revises paragraph d.1.j) 2) of Technical Specification (TS) 5.5.9, ''Steam Generator (SG) Tube Surveillance Program,'' to (1) delete the requirement that all SG tubes containing an Electrosleeve™, a Framatome proprietary process, be removed from service within two operating cycles following installation of the first Electrosleeve™; (2) add the requirement that Electrosleeves™ will not be installed in the outermost periphery tubes of the SG bundles where potentially locked tubes would cause high axial loads; (3) revise the references describing electrosleeving; and (4) add the requirement that all sleeves with detected inside diameter flaw indications will be removed from service upon detection. In addition, if an Electrosleeve™ tube pull is performed by the licensee, the licensee has agreed to provide the results of the tube examination to the NRC staff within 60 days of when the final results of the examination are made available to the licensee.

Date of issuance: September 13, 2002.

Effective date: September 13, 2002, and shall be implemented within 60 days of the date of issuance.

Amendment No.: 153.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34494). The supplemental letter of August 5, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 2002.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 27, 2000, and its supplements dated January 31, 2001, May 2, 2001, October 30, 2001, and May 10, 2002.

Brief description of amendment: The amendment revised the antitrust conditions for Kansas Gas and Electric Company (KGE) in Appendix C to the operating license. The revisions (1) add a statement that the antitrust conditions do not restrict the rights of Kansas Electric Power Cooperative, Inc. (KEPCo) or the duties of KGE, that may exist beyond, and are not inconsistent with, the antitrust conditions, (2) define ''KGE members in licensee's service area'' in the appendix to include all KEPCo members with facilities in Western Resources' and KGE's combined service area, (3) delete license conditions restricting KEPCo's use of the power from WCGS, (4) remove out-of-date conditions, and (5) update conditions to be consistent with the terms and conditions of Western Resources' Federal Energy Regulatory Commission open access transmission tariff. Western Resources is the parent company of KGE.

Date of issuance: September 6, 2002.

Effective date: September 6, 2002, and shall be implemented within 90 days from the date of issuance.

Amendment No.: 147.

Facility Operating License No. NPF–42: The amendment revised Appendix C, ''Antitrust Conditions for Kansas Gas and Electric Company,'' to the operating license.

Date of initial notice in ***Federal Register:*** July 26, 2000 (65 FR 46010). The supplemental letters dated January 31, 2001, May 2, 2001, October 30, 2001, and May 10, 2002, provided additional clarifying information that did not expand the application beyond the scope of the initial notice or change the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 20th day of September, 2002.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–24616 Filed 9–30–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Entergy Nuclear Vermont Yankee, LLC. and Entergy Nuclear Operations, Inc.; Biweekly Notice; Applications And Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on July 9, 2002 (67 FR 45560), that incorrectly referenced the date of a supplement to an amendment request. This action is necessary to correct an erroneous date.

FOR FURTHER INFORMATION CONTACT: Peggy O'Brien, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1414, e-mail: *mbo@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 45573, in the first column, in the fifth complete paragraph, second line, is corrected to read from ''June 3, 2002,'' to ''June 4, 2002.''

Dated in Rockville, Maryland, this 25th day of September, 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 02–24943 Filed 9–30–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NRC Information Quality Guidelines

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of NRC Information Quality Guidelines.

SUMMARY: The NRC Information Quality Guidelines contain the Commission's policy and procedures for ensuring the quality of information before it is disseminated to the public. It also contains the procedures by which an affected person may obtain correction of information that does not comply with the guidelines.

DATES: The NRC Information Quality Guidelines are effective October 1, 2002.

ADDRESSES: Information Correction Requests may be mailed to the Information Quality Coordinator, Office of the Chief Information Officer, Mail Stop: T6–D8, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, e-mailed to *infoquality@nrc.gov,* or faxed to 301–415–5130. Information Correction Requests may also be submitted at the NRC Web site information quality comment form that is accessible from NRC's ''Contact Us'' Web page *(http://www.nrc.gov/public-involve/info-quality/contactus.html).* Information Correction Requests may be delivered to the Information Quality Coordinator, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Phillip Ray, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2972 or by Internet electronic mail at *infoquality@nrc.gov.*

SUPPLEMENTARY INFORMATION:

OMB and Agency Responsibilities

Section 515(a) of the Treasury and General Government Appropriations Act, FY 2001 (Pub. L. 106–554), directed the Director, Office of Management and Budget (OMB), to issue guidelines that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of the Paperwork Reduction Act. OMB issued its final guidelines on September 28, 2001. Subsequent guidance was issued by OMB on February 22, 2002 (67 FR 8452). These guidelines require agencies subject to the Paperwork Reduction Act to publish in the **Federal Register** a notice of availability of the final Information Quality Guidelines and post the guidelines on the agency's public Web Site by October 1, 2002. Also, these agencies will:

1. Ensure that information covered by these guidelines and disseminated for the first time on or after this date has undergone reviews for quality.

2. On January 1, 2004, and each January 1 thereafter, the agencies will submit to the Director of OMB a report on the number and nature of requests received regarding compliance with these OMB guidelines and the resolution of requests received.

NRC Information Quality Guidelines

The U.S. Nuclear Regulatory Commission (NRC) is committed to ensuring the quality of all information that it relies on or disseminates. The NRC's policies and practices are designed to ensure that the agency establishes and maintains an appropriate level of quality commensurate with the nature of the information. Thus, the most influential scientific, financial, and statistical data are subject to the most rigorous quality standards. The NRC will correct information that does not meet its guidelines or those of OMB based on the significance and impact of the correction. The NRC Information Quality Guidelines are general statements of agency policy and are not legally binding on the agency or on affected persons.

Scope of Information Subject to These Guidelines

Because of the importance of openness and transparency, the NRC routinely makes available to the public the majority of its regulatory documents, information about its decision making processes, and the standards used to analyze information submitted by the regulated community. OMB's guidelines require the NRC to apply information quality standards only to a subset of this information; however, the NRC is committed to ensuring the quality of all of the information it disseminates, whether or not it is specifically covered by these guidelines. In addition, the NRC has many existing processes by which the public may comment on agency information. The agency will continue to use these processes to respond to comments and requests, regardless of whether they are specifically covered by these guidelines.

The agency's information quality reviews apply to NRC information that is publicly disseminated for the first time on or after October 1, 2002. The fact that an information product is already on NRC's Website or in the Public Document Room prior to October 1, 2002, and is still maintained by NRC (*e.g.*, in NRC's files, in publications that NRC continues to distribute on its Website), does not make the information subject to these guidelines or to the request for correction process if it falls within the archival records exemption. Information disseminated prior to October 1, 2002, is subject to the correction and appeal process should the information be questioned and the requester can demonstrate that the challenged data, which is publicly available through agency Websites or other means, serves agency program responsibilities and/or is relied upon by the public as official government data. Additionally, if specific information has previously been disseminated and is not

covered by these guidelines, that information may still be subject to the NRC Information Quality Guidelines during a post October 1, 2002, dissemination of the information in which NRC either adopts, endorses or uses the information to formulate or support a regulation, guidance, or other Agency decision or position.

Information Subject to These Guidelines

These guidelines apply to print and electronic versions of agency information. The types of NRC information covered by the guidelines include, but are not limited to, the following:

- Rulemakings.
- Inspection reports.
- Findings of the reactor oversight process.
- Regulatory guides and other guidance to licensees.
- Generic communications to licensees, including information notices, generic letters, bulletins, and others.
- Technical reports.
- Safety Evaluations and Safety Evaluation Reports.
- Information that other parties provide to the NRC upon which the NRC relies or which the NRC disseminates.

Information Not Subject to These Guidelines

On the basis of the OMB guidelines, the types of NRC information exempt from the guidelines include, but are not limited to, the following:

- Information products intended to be limited to the allegations process, public filings, subpoenas, records compiled for law enforcement purposes or that are involved in adjudicative processes.
- Non-scientific and/or non-statistical general, procedural, or organizational information, which is prepared for NRC management and operation, and is not primarily intended for public dissemination.
- Information that is neither initiated nor sponsored by the NRC and is not relied upon or disseminated by the NRC.
- Information that expresses opinions, rather than formal agency views.
- Information that is intended to be limited to intra-agency use.
- Shared government information or information that is intended to be limited to inter-agency use.
- Information that is prepared for dissemination to agency employees, contractors, or grantees.
- Agency correspondence that is not primarily intended for public dissemination, but is made publicly available solely to enable the public to be aware of the NRC's interactions with individuals, including applicants, licensees, and others who make formal requests to the agency.
- Agency press releases, fact sheets, press conferences, or similar communications (in any medium) that announce, support the announcement, or give public notice of information that the NRC has disseminated elsewhere.
- Congressional testimony and other submissions to Congress containing information that the NRC has previously disseminated to the public.
- Agency speeches.
- Publications of individual employees, grantees, and contractors, in which the information is published in the same manner used by academic colleagues, and which include an appropriate disclaimer that the views expressed are the individual's or entities' own and do not reflect the views of the NRC.
- Archival records.
- Trade secrets, intellectual property, classified, restricted, unclassified safeguards, proprietary, sensitive homeland security, privacy, and other information not subject to disclosure under the Freedom of Information Act.
- Responses to requests made under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, or similar laws.
- Interpretations of data or information, or requests to de-publish information.

Applicability to Proposed Rulemaking and Other Public Comment Processes

The correction and appeal process that will address data quality challenges normally will not apply to information disseminated by the NRC through a comprehensive public comment process, *e.g.*, **Federal Register** notices of proposed rulemakings, regulatory analyses, requests for comments on information collections subject to the Paperwork Reduction Act, environmental impact statements, and other documents for which NRC solicits public comments. Persons questioning the quality of information disseminated in those documents, or documents referenced or relied upon in those documents, should submit comments as directed in the **Federal Register** or other notices requesting public comment on the given document.

The NRC will use its existing processes for responding to public comments in addressing the request for correction, and will describe the actions it has taken with regard to the request in the **Federal Register** notice of the final agency rule, regulatory analysis, or other final action. In cases where the agency disseminates a study, analysis, or other information prior to the final agency action or information product, ICRs will be considered prior to the final agency action or information product in those cases where the agency has determined that an earlier response would not unduly delay issuance of the agency action or information product and the requester has shown a reasonable likelihood of suffering actual harm from the agency's dissemination if the agency does not resolve the ICR prior to the final agency action or information product.

Waiver of Standards Under Urgent Conditions

The NRC's information quality standards may be temporarily waived for information that is disseminated under urgent situations. The NRC will consider ''urgent situations'' to include emergency conditions at licensed facilities, as well as imminent or credible threats to the public health and safety, the common defense and security, including homeland security, the environment, and other situations deemed to be urgent conditions on a case-by-case basis.

NRC Quality Standards

Information, including third-party information, that the NRC relies on or disseminates must meet both the NRC Information Quality Standards and OMB Information Quality Guidelines in order to ensure and maximize information quality. These information quality standards also apply to the creation, collection, acquisition, and maintenance of information by the NRC. The NRC will ensure that its draft information collection packages submitted for OMB approval will result in the information being collected, maintained, and used in a manner that is consistent with NRC and OMB information quality guidelines. Agency policies and procedures will ensure that the NRC meets and maintains these standards.

The NRC has set information quality as a measure of agency performance. The NRC will meet the information quality criteria for utility, integrity, and objectivity, as defined in the OMB and NRC guidelines. The following NRC standards expound on how the NRC will apply the OMB criteria in its regulatory environment. The degree of rigor of the pre-dissemination reviews will be commensurate with the nature and significance of the information.

The NRC will impose the highest level of quality on influential scientific,

financial, or statistical information, which the agency defines as information that forms the technical basis for a substantive rulemaking that has substantial impact on an industry. The NRC may also deem other types of information as ''influential'' under Section 515(a) of Public Law 106–554 of the Treasury and General Appropriations Act, on a case-by-case basis. In determining what constitutes influential scientific, financial, or statistical information, the NRC considers two principal factors. First, the information may have a clear and substantial impact that has a high probability of occurring. Second, the information may impact regulatory decisions affecting a broad class of applicants or licensees. (Although information contained in a regulatory decision for an individual applicant or licensee may have substantial impact, it is limited in its breadth, therefore may not be deemed ''influential'' for the purposes of these guidelines.)

The NRC applies the most rigorous procedures to ensure the quality of such ''influential'' information. The NRC achieves the highest level of quality by adherence to procedures that ensure utility, integrity, and objectivity. The reproducibility of original and supporting data for influential scientific, financial, or statistical information will be consistent with commonly accepted scientific, financial, or statistical standards. When reproducibility is not achievable through public access because of confidentiality protection or compelling interests, analytical results will receive especially rigorous reviews. The staff will describe the specific reviews, as well as the specific data sources, quantitative methods, and assumptions used.

The following provides a definition of the elements of information quality (utility, integrity, and objectivity) and a description how the NRC ensures information quality.

Utility is the usefulness of the information to its intended users. To ensure information utility, the NRC will:

- Adhere to NRC policy on the dissemination of information to the public, which clearly specifies what is to be made available to the public and when it should be available for public release.
- Make information associated with the agency regulatory processes and decisions public unless release is restricted because, for example, a given regulatory process or decision contains classified national security information, safeguards information, proprietary information, sensitive homeland security information, or other information that is protected from disclosure under the Freedom of Information Act.
- Use feedback mechanisms at the NRC's Web site to request public comments on what information the NRC disseminates and how it is disseminated.
- Request public comments on individual documents and hold public meetings, as appropriate, to solicit public comments.
- Assist the public in quickly and conveniently locating the information they are seeking through the NRC's Public Document Room, or its Web site.

Integrity is the security of information from unauthorized access or revision to ensure that the information is not compromised through corruption or falsification. To ensure information integrity, the NRC will adhere to agency policies for personnel security, computer security, information security, and records management, which include the following key components:

- Systems development and life cycle management policies require that computer systems must be designed and tested to prevent inadvertent or deliberate alteration and ensure appropriate access controls.
- Computer and personnel security policies ensure that employees and contractors who have access to electronic information and associated computer systems are screened for trustworthiness and assigned the appropriate level of access.
- Records management policies require that agency records must be properly maintained and protected. In particular, the NRC's electronic records management system (*i.e.*, Agencywide Documents Access and Management System, (ADAMS)) is designed to ensure that documents that are disseminated to the public are protected from alteration or falsification.

Objectivity involves two distinct elements, including presentation and substance. Information must be presented in a manner that is accurate, clear, complete, and unbiased. In addition, the substance of the information presented must be accurate, reliable, and unbiased. To ensure information objectivity, the NRC will:

- Achieve accuracy and completeness in the following ways:
- Provide formal review of and concurrence with all information disseminated, including rulemaking documents, inspection reports, technical reports, generic communications, and all other agency documents covered by these guidelines.
- Encourage peer review of NRC research products. The primary objective of the peer review is to judge the technical adequacy of the research and to bring the widest and best knowledge to bear on the quality of research products. The NRC has adopted criteria for the selection of peer reviewers and the performance of peer reviews that are consistent with OMB guidelines.
- Adhere to Quality Management Control standards prior to disseminating information at the NRC's public Web site.
- Ensure that information is reliable and unbiased in the following ways:
- Apply sound statistical and research methods to generate data and analytical results for scientific and statistical information.
- Use peer reviews, consistent with OMB guidelines, of agency-sponsored research that is relied upon. Where information has been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity. However, this presumption is rebuttable based on a persuasive showing in a particular instance.
- Use reviews of agency information by independent advisory committees, as appropriate, including the Advisory Committee on Reactor Safeguards (ACRS), the Advisory Committee on Nuclear Waste (ACNW), and the Advisory Committee on the Medical Uses of Isotopes (ACMUI).
- Use reviews by the Committee to Review Generic Requirements (CRGR), as appropriate, for information and related analyses with generic implications.
- Use reviews by Agreement States, as appropriate, for matters pertaining to the regulation of nuclear materials.
- Provide opportunities for the public and States to comment on rulemakings, Commission policy statements, regulatory guides, and other information products, as appropriate.
- Hold public meetings to seek public views and solicit public comments through the NRC's Website and Federal Register notices, as appropriate.
- Comply with internal policy to ensure unbiased incident investigation team investigations.
- Use reviews of proposed policy decisions by the five-member Commission.

Achieve transparency in the following ways:

- Include in relevant agency information products descriptions of the data and methods used to develop the information product in a way that would make it possible for an independent, qualified individual or organization to reproduce the results.

• Adhere to NRC policy and guidance overseeing the performance of regulatory analyses as provided in publicly available ''Regulatory Analysis Guidelines of the U. S. Nuclear Regulatory Commission,'' NUREG/BR–0058, Rev. 3, and publicly available ''Regulatory Analysis Technical Evaluation Handbook,'' NUREG/BR–0184. The NRC will perform regulatory analyses that assess uncertainty, in the context of quantifying risk, and communicate those findings to the public in a manner that meets the intent of the OMB referenced information quality standards.

Achieve clarity in the following ways:

• Adhere to the agency's Plain Language Program in written and electronic products.

• Ensure that the all disseminated information receives appropriate editorial review.

• Respond to stakeholder comments on the clarity of proposed actions.

NRC Administrative Process for the Public to Seek Correction of Information

(1) What You Must Do If You Are an Affected Person

Use the following procedure to seek correction, under Section 515(a), of information that does not meet NRC or OMB Information Quality Guidelines:

• Submit your Information Correction Request (ICR) within 60 calendar days of the initial information dissemination or within 60 calendars days of NRC notice of intent to rely, or its reliance, on the information.

• Submit a discussion of why the NRC should consider your ICR (along with your ICR), if you submit the ICR after 60 calendar days after the initial information dissemination or after 60 calendars days after the NRC notice of intent to rely, or its reliance, on the information.

• State that your ICR is submitted in accordance with the NRC's Information Quality Guidelines.

• Include your name, mailing address, fax number, e-mail address, telephone number, and organizational affiliation, if any. The NRC needs this information to respond to your ICR and contact you if necessary.

• Describe clearly the information you believe is in error and requires correction. Include the source of the information (for example, the name and date of the report or data product), the exact location of the error (for example, the page, figure, table, or Web page address), and a detailed description of the information to be corrected. A copy of the specific information that the ICR covers would assist the NRC in its review of your ICR.

• State specifically why the information should be corrected and, if possible, recommend specifically how it should be corrected.

• Provide a copy of supporting documentary evidence, such as comparable data or research results on the same topic, or a specific authoritative source to help in the review of your ICR. If you supply the documentary evidence by means of a reference, the reference must be specific enough to allow the NRC to easily locate the information you identify as the basis for the ICR.

• State specifically how you are affected by the information for which you are seeking correction.

(2) How to Submit Your Request

You must submit your ICR under these guidelines in writing by mail, fax, e-mail, or Internet, as follows:

• Mail: Information Quality Coordinator, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

• Fax: 301–415–5130.

• E-mail: *Infoquality@nrc.gov.*

• Internet: *http://www.nrc.gov/public-involve/info-quality/contactus.html.*

(3) What the NRC Will Do With Your Initial Request

Based on a review of the information you provide, the NRC will take the following actions:

• Perform an acceptance review to confirm that you have provided the necessary information regarding the ICR for the staff to review and make a decision.

• Submit your ICR for review to an Initial Review Official (IRO) who is knowledgeable of the subject matter related to your ICR and who normally will be at the Branch Chief level and, in most cases, a member of the Senior Executive Service.

• Consult with other Federal agencies or NRC staff in responding to your ICR, as appropriate.

• Determine whether an error exists and a correction is warranted and, if so, what action will be taken.

• Notify you as soon as possible within the 45 day period if the ICR requires more than 45 calendar days to resolve. The NRC will inform you that more time is required, state the reason why, and include an estimated decision date.

• Notify you of the agency's final decision regarding your ICR within 45 calendar days by letter, e-mail, or fax. The NRC's response will explain the findings of the review and any actions that the NRC will take.

(4) How You May Appeal the NRC Decision in Regard to Your Initial Request

Use the following procedure if you wish to appeal the NRC's denial of your ICR, or if you wish to appeal the decision on the corrective action:

• Submit your appeal within 30 calendar days of receipt of NRC's notification of denial or notification of the corrective action. (Only the original requester may appeal the decision.)

• Identify clearly the original ICR, and specify the NRC decision that you are appealing.

• Describe clearly the basis for your appeal and how the response failed to resolve your ICR.

• Submit your appeal in accordance with the directions in the agency's initial response.

(5) What the NRC Will Do With Your Appeal

Based on a review of the information you provide in the appeal, the NRC will take the following actions:

• Perform an acceptance review to confirm that you have provided the necessary information regarding the ICR for the staff to review and make a decision.

• Submit your request for review to an Appeal Review Official (ARO), typically at the Division Director level, who is a member of the Senior Executive Service and who, in most cases, does not supervise the IRO responsible for the initial response to the ICR.

• Limit the appeal review to the basis of the appeal.

• Consult with other Federal agencies or NRC staff in responding to your appeal, as appropriate.

• Determine whether an error exists and a correction is warranted and, if so, what action will be taken.

• Notify you as soon as possible within the 30 day period if the appeal requires more than 30 calendar days to resolve. The NRC will inform you that more time is required, state the reason why, and include an estimated decision date.

• Notify you of the agency's final decision regarding your appeal within 30 calendar days by letter, e-mail, or fax. The NRC's response will explain the findings of the appeal and any actions that the NRC will take.

(6) Corrections

The correction process is designed to address the genuine and valid needs of affected persons without disrupting agency operations. You should be aware that you bear the burden of proof with

respect to both the need for correction and the type of correction requested. In determining whether to correct information, the NRC may reject claims made in bad faith or without justification. The NRC is required to undertake only the degree of correction that it concludes is appropriate for the nature and timeliness of the information involved.

The NRC may base its decisions regarding appropriate corrective action(s) on such factors as the significance of the asserted error, the benefits that are likely to be derived from such a correction, the observation of budget and resource priorities and restraints, and the agency's more pressing priorities and obligations.

Subject to applicable laws, the NRC's corrective measures may include, without limitation, personal contacts via letter or telephone, form letters, press releases, postings on the NRC's Website, correction in the next version of a document, or other appropriate methods that would give affected persons reasonable notice of any corrective actions made.

It is the NRC's intent to make corrections within a reasonable time after the agency has made the determination that a correction is appropriate. However, the NRC's budget, resources, and priorities, as well as the complexity of the correction itself, may affect when corrections are made.

In cases where the agency disseminates a study, analysis, or other information prior to the final agency action or information product, ICRs will be considered prior to the final agency action or information product in those cases where the agency has determined that an earlier response would not unduly delay issuance of the agency action or information product and the requester has shown a reasonable likelihood of suffering actual harm from the agency's dissemination if the agency does not resolve the ICR prior to the final agency action or information product.

The NRC will continue to process any decision or document that has had a related ICR unless the NRC decides that the information requires correction before the process may continue.

Your request for correction and the correction process will be open to the public as a commitment to transparency. Your ICR and NRC responses will be made public through ADAMS. Note: Your personal privacy information will not be made public.

(7) Annual Report

The NRC will identify the number and nature of the ICRs received and their resolution, including an explanation of decisions to deny or limit corrective actions in its annual fiscal year reports to the OMB.

Dated at Rockville, Maryland, this 20th day of September 2002.

For the Nuclear Regulatory Commission.

Jacqueline E. Silber,

Deputy Chief Information Officer, Office of the Chief Information Officer.

[FR Doc. 02–24944 Filed 9–30–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the U.S. Nuclear Waste Technical Review Board

AGENCY: U.S Nuclear Waste Technical Review Board.

ACTION: Final notice.

SUMMARY: The Office of Management and Budget (OMB) issued government wide guidelines *(OMB Guidelines)* as required by Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) to ensure and maximize the quality of information disseminated by Federal agencies. The *OMB Guidelines* were published on September 28, 2001, (66 FR 49718) and on January 3, 2002, (67 FR 369) and reprinted in their entirety on February 22, 2002, (67 FR 8452); *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies.* Each Federal agency is required to issue its own set of guidelines to comply with the Section 515 requirements.

The U.S. Nuclear Waste Technical Review Board (Board) is making its final information guidelines available both in the **Federal Register** and on its Web site at *www.nwtrb.gov.* These information guidelines include the proposed complaint and review process for addressing public requests for correcting information. Please bear in mind that the purpose of the complaint and review process is to deal with information quality, not to resolve underlying substantive policy or legal issues or factual disputes.

Comments received will be reviewed and their disposition included in the Board's annual report to OMB in Section 515.

The Board's information quality guidelines apply to information first disseminated by the Board on or after October 1, 2002 and do not include archived information disseminated previously.

NWTRB Guidelines for Disseminating Information

Board Mandate

The U.S. Nuclear Waste Technical Review Board was established by Public Law 100–203, Part E, to ''evaluate the technical and scientific validity of activities undertaken by the Secretary [of Energy] after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, including: (1) [Yucca Mountain] site characterization activities; and (2) activities relating to the packaging or transporting of high-level radioactive waste or spent nuclear fuel.''

To carry out its mandate, the Board strives for a high standard of quality in reviewing the U.S. Department of Energy's (DOE) technical and scientific activities. The Board holds open meetings, routinely schedules time for public comment at its meetings, and actively solicits the opinions of experts in fields allied with topics under review.

The Board also makes every effort to ensure the quality, objectivity, utility, and integrity of information that it disseminates. In developing these guidelines, the Board has followed the requirements set out by the OMB.

Information Disseminated by the Board

The Board was charged by Congress with providing technical and scientific advice to Congress and the Secretary of Energy based on the expert opinion of Board members. The mandate of the Board is to provide unbiased, expert advice. The quality of the information the Board provides is central to the Board's mission. Therefore, the Board makes every attempt to ensure that the process it uses to derive its opinions is open, and that standard scientific processes are sued.

In accordance with its mandate, the Board performs an evaluation of the technical and scientific validity of factual information provided by the DOE. The Board does not normally originate technical and scientific research or data. Consequently, information disseminated by the Board is almost without exception based on Board-member opinion of the information that has been presented to it. Like all expert judgments, Board

opinions have a subjective element. Thus, every effort is made to ensure that they meet the standards of objectivity, reproducibility, and transparency described in the OMB guidelines.

To clarify how the Board conducts its reviews, the following guidelines for the information the Board disseminates have been formalized from procedures that were already in place. The guidelines have three elements. first, to the extent that Board opinions derive *directly* from specific technical analyses, those analyses are revealed. Second, the Board makes clear the logic and rationale for its expert opinions. Third, the Board makes every effort to ensure that the information on which it bases its opinions is credible.

Technical analyses. The Board includes a discussion of technical analyses that form the basis of its expert opinions in its twice-yearly reports to Congress and the Secretary of Energy. In addition, such technical analyses are referenced in Board correspondence with the DOE and in correspondence with and testimony before Congress.

Logic and rationale. To make the logic and rationale that support its opinions clear, the Board makes every effort to ensure that its findings and recommendations and the technical analysis on which they are based are understandable, relevant, and widely accessible.

Credible information. To help ensure that its opinions are based on credible information, the Board stays informed on progress in the program by holding meetings several times a year, by being updated on current scientific and technical research, by conducting field observations, and by gathering information from parties to the process and experts in related fields. The Board cites all materials referenced as supporting documentation in its reports and correspondence. However, even with its scrupulous review the quality of information from external sources cannot be guaranteed by the Board.

From time to time, the Board retains technical experts to provide their opinions on specific technical and scientific issues related to the Board's review of the DOE program. Expert opinion generated or disseminated by these expert consultants are disseminated, the Board includes an appropriate disclaimer in the document, for example: ''The views in this document are those of the consultant and are not necessarily those of the Board.''

In addition, Board members, staff members, and consultants may independently publish information in their areas of expertise, without implying the official Board endorsement of the views presented.

Process of Disseminating Information

The Board strives for a high degree of transparency in its evaluation of the DOE program. Consequently, the Board ensures that all Board documents, covered by these guidelines, are widely disseminated and available to other organizations, to members of Congress, and to members of the public. The Board mails its twice-yearly reports and its meeting notices directly to its extensive mailing list. The Board makes all its reports, correspondence, congressional testimony, meeting transcripts, and other documents available on its Web site and on request. Most of these documents can be downloaded and are accessible to those who use assistive technology for reading online material.

Quality Management Principles

In reviewing information for dissemination, the Board complies with statutory requirements for protecting certain information. The statutory requirements include the Privacy Act of 1974, the Freedom of Information Act, and the computer security provisions of the Paperwork Reduction Act. The Board strives to ensure that the information in Board documents is unbiased, relevant, accurate, and clear by using the following procedures.

The Board reviews documents for adherence to quality standards as part of its internal review process. Board members and Board staff perform multiple reviews of Board reports, Board correspondence, Board congressional testimony, and other documents. All Board documents are reviewed for consistency and clarity. Text is edited to ensure that thoughts and arguments flow logically and are clear, concise, easy to read, and grammatically correct. Tables and charts are edited to ensure that they clearly and accurately illustrate and support points made in the text. Sound statistical and analytical techniques are used in developing Board documents.

Complaint and Review Procedures

Information Covered by These Guidelines

Board guidelines include the following procedures for members of the public to seek and obtain appropriate correction of information disseminated by the NWTRB after October 1, 2002. Archived materials released prior to this date are not included in these guidelines unless they are revised. As required by OMB Guidelines, the NWTRB will report annually to the director of the OMB on the number and disposition of such requests received.

Information Not Covered By These Guidelines:

- archival records
- transcripts of meetings
- correspondence with an individual
- reports containing a disclaimer
- dissemination for adjudicative processes

The Filing and Review Process

Please follow the procedures provided on the Board's Web site for available from the Board's office. Provide the information requested on the form and submit it to *IQG@nwtrb.gov* or to U.S. Nuclear Waste Technical Review Board; Section 515 Compliance; 2300 Clarendon Blvd., Suite 1300; Arlington, VA 22201.

Each person submitting a complaint must describe the specific information that does not comply with OMB or NWTRB guidelines, and how they are affected by the information error. Requests that are specific and provide evidence to support the need for and type of correction will enable the Board to develop an appropriate response and remedy. A decision on whether and how to correct the information will be made within 60 days of receipt, and the requester will be notified of the decision by mail, telephone, e-mail, or fax, excepting unusual cases, as appropriate. If the complaint needs more time to resolve the Board will notify the complainant that the response will be delayed, the reason for the delay, and an estimated date for the response. The NWTRB may choose not to respond to requests based on claims deemed frivolous or unlikely to have substantial future effect.

If the claim is denied, the requester may ask within 30 days of the date of the decision for reconsideration of the Board's decision. Such requests must be made by e-mail (*IQG@nwtrb.gov*) or in writing (U.S. Nuclear Waste Technical Review Board; Director of Administration; 2300 Clarendon Blvd., Suite 1300; Arlington, VA 22201). The NWTRB will then reconsider its decision. Reconsiderations will be made by the Director Administration or delegate. The claimant will be notified of the final decision within six weeks.

If the claim is found valid, the Board will work with the complainant to resolve the issue satisfactorily within the resources of the Board. A correction may be made on the website, published in the **Federal Register**, an erratum may be included in further distribution of the material, or other avenues may be

discussed. The information corrected and actions taken will be included in the Boards Section 515 annual report to OMB.

Definitions

Quality: An encompassing term comprising utility, objectivity, and integrity, as defined below.

Utility: The usefulness of the information to its intended users.

Objectivity: A focus on ensuring that information is accurate, reliable, and unbiased, and that information products are presented in an accurate, clear, complete, and unbiased manner.

Integrity: The security of information from unauthorized access or revision to ensure that the information is not compromised through corruption or falsification.

Information: Any communication or representation of knowledge, such as facts or data, in any form. This does not include individual Board member or staff opinions, where the agency makes it clear that what is being offered is someone's opinion rather than fact or the Board's view.

Dissemination: Agency-instituted or agency-sponsored distribution of information to the public. Dissemination under these guidelines does not include distributions limited to government employees or agency contractors or grantees; interagency or inraagency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, or other similar law.

Influential: The Board can reasonably determine that dissemination of the information will have or does have a clear and substantial effect on important public policies.

Reproducibility: The information is capable of being substantially reproduced, subject to an acceptable degree of imprecision.

Dated: September 25, 2002.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 02–24866 Filed 9–30–02; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF MANAGEMENT AND BUDGET

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of availability.

SUMMARY: The Office of Management and Budget (OMB) is giving notice of availability of its Information Quality Guidelines. These Information Quality Guidelines describe OMB's predissemination information quality control and an administrative mechanism for requests for correction of information publicly disseminated by OMB. The Information Quality Guidelines are posted on OMB's Web site: *http://www.whitehouse.gov/omb/inforeg/infopoltech.html.*

DATES: OMB's predissemination review applies to information that OMB first disseminates on or after October 1, 2002. OMB's administrative mechanism for correcting information that OMB disseminates applies to information that OMB disseminates on or after October 1, 2002, regardless of when OMB first disseminated the information.

FOR FURTHER INFORMATION CONTACT: Brooke J. Dickson, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Telephone (202) 395–3785 or e-mail to: *informationquality@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: OMB published a notice of availability for proposed information quality guidelines in the **Federal Register** on May 1, 2002 (67 FR 21779). OMB amended its proposed guidelines to reflect guidance provided to all the agencies in a Memorandum from John D. Graham for the President's Management Council, ''Agency Draft Information Quality Guidelines'' (June 10, 2002) and a Memorandum from John D. Graham to the President's Management Council, ''Agency Final Information Quality Guidelines'' (September 5, 2002). These memoranda are available on OMB's Web site: *http://www.whitehouse.gov/omb/inforeg/infopoltech.html.* OMB also received a few agency-specific textual comments that were helpful in clarifying the guidelines. A summary of significant amendments to the proposed guidelines follows, in order of the text.

In the introductory paragraph to these guidelines, OMB establishes these guidelines as its performance standard, as called for at page 7 in the June 10, 2002 memorandum. (*See also,* paragraph III.1 of the Agency-wide Guidelines, 67 FR 8452 (February 22, 2002)).

In a new paragraph I.A.6, OMB adds more specific language involving the dissemination of influential scientific, financial, or statistical information. (*See* June 10, 2002 memorandum, page 9; Agency-wide Guidelines, paragraph V.b.ii.B).

OMB clarified its predissemination review procedures in renumbered paragraph I.A.7.

In a new paragraph I.A.9, OMB links its clearance of proposed collections of information under the Paperwork Reduction Act with ongoing implementation of these information quality guidelines (*See* June 10, 2002 memorandum, p. 10).

In the introduction to section II, OMB stresses that the purpose of any corrective action will be to serve the genuine and valid needs of OMB without disrupting OMB processes, and to deal with information quality matters, not to resolve underlying substantive policy or legal issues. (See **SUPPLEMENTARY INFORMATION** to interim final Agency-wide Guidelines, 66 FR 49718, 49721 (September 28, 2001)).

In paragraph II.1, OMB stresses that the person seeking correction of information has the burden of proof with respect to the necessity for correction as well as with respect to the type of correction requested. (*See* June 10, 2002 memorandum, page 11). In addition, OMB adds a description of the kinds of information that a person seeking correction of information needs to provide to help meet that burden of proof.

In paragraph II.9, OMB points out that if it needs to extend the time it will take to notify the person seeking correction, it will provide a reasoned basis for the extension and an estimated decision date. (*See* September 5, 2002 memorandum, Appendix, topic (3)).

In a new paragraph II.10, OMB adds a provision stating that requests for correction of information will be considered, in cases where OMB disseminates a study, analysis, or other information for public comment, prior to disseminating the final OMB action or information product if (1) an earlier response would not unduly delay dissemination of the OMB action or information product; and (2) the requestor had shown a reasonable likelihood of suffering actual harm from the dissemination if the correction were not made until dissemination of the final OMB action or information

product. (*See* September 5, 2002 memorandum, Appendix, topic (2)).

In paragraph III.3, OMB points out that if it needs to extend the time it will take to notify the person seeking reconsideration of an OMB response to a request for correction, it will provide a reasoned basis for the extension and an estimated decision date. (See September 5, 2002 memorandum, Appendix, topic (3)).

In paragraph IV.2, OMB modifies the exemption for a press release to provide that the information in the press release has been previously disseminated by OMB or another Federal agency in compliance with the Agency-wide Guidelines or the these OMB guidelines. (*See* June 5, 2002 memorandum, page 4).

In paragraph IV.4, OMB deletes from the exclusion from the definition of ''information'' the provision referring to statements that may reasonably be expected to become the subject of litigation. (*See* June 5, 2002 memorandum, page 5).

Otherwise, the OMB amendments were technical and conforming textual edits, designed to clarify the OMB guidelines and conform them to the Agency-wide Guidelines.

Dated: September 20, 2002.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 02–24459 Filed 9–30–02; 8:45 am]

BILLING CODE 3110–01–P

PENSION BENEFIT GUARANTY CORPORATION

Notice of Availability of the Pension Benefit Guaranty Corporation Information Quality Guidelines

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to the requirements of the Office of Management and Budget's (OMB's) Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies, the Pension Benefit Guaranty Corporation (PBGC) has made available its Information Quality Guidelines on its Web site at *http://www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554) directs OMB to issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by Federal agencies.'' The OMB guidelines require each agency to prepare a report providing the agency's information quality guidelines. Each agency is required to publish a notice of availability of this report in the **Federal Register** and to post this report on its web site by October 1, 2002. The PBGC has posted its Information Quality Guidelines on its Web site at *http://www.pbgc.gov*.

Prior to submitting this report for OMB review, the PBGC posted the report in draft form on its web site for public comment. The Center for Regulatory Effectiveness (the CRE) prepared generic comments applicable to all federal agencies. The PBGC considered the CRE's comments and made appropriate changes to the guidelines. The PBGC received no other comments before submitting the guidelines to OMB. OMB suggested some modifications, which are reflected in the PBGC's final guidelines.

Issued in Washington, DC, on this 26th day of September 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–24902 Filed 9–30–02; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46540; File No. SR–NASD–2002–110]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a New Registration Category for Proctors of In-Firm Delivery of the Regulatory Element of the Continuing Education Requirements

September 24, 2002.

On August 8, 2002, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish NASD Rule 1043, a new registration category for proctors of in-firm delivery of the Regulatory Element of the NASD's continuing education requirements. The proposed rule change was published for notice and comment in the **Federal Register** on August 21, 2002.[3] The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[4] and, in particular, the requirements of Section 15A(b)(6),[5] which requires among other things that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change may result in more efficient delivery of the NASD's continuing education requirements, while maintaining the integrity of the continuing education program.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASD–2002–110) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–24830 Filed 9–30–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46553; File No. SR–NASD–2002–122]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Correct Inaccurate Language in the Text of NASD Rules

September 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46351 (August 14, 2002), 67 FR 54248.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposed rule change as one concerned solely with the administration of the self-regulatory organization under section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(3)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to correct several instances of inaccurate language in the text of NASD rules. Nasdaq will implement the proposed rule change immediately upon filing.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in brackets.

Rule 7010. System Services

(a)[(1)] Nasdaq Level 1 Service

The charge to be paid by the subscriber for each terminal receiving Nasdaq Level 1 Service is $20 per month. This Service includes the following data:

[(A)]*(1)* inside bid/ask quotations calculated for securities listed in The Nasdaq Stock Market and securities quoted in the OTC Bulletin Board (OTCBB) service;

[(B)]*(2)* the individual quotations or indications of interest of broker/dealers utilizing the OTCBB service; and

[(C)]*(3)* last sale information on securities classified as designated securities in the Rule 4630, 4640, and 4650 Series and securities classified as over-the-counter equity securities in the Rule 6600 Series.

[(2) Market Data Revenue Sharing]

[(A) For a pilot period lasting until December 31, 2002, NASD members shall receive a market data revenue sharing credit. The total credit shall be calculated in accordance with the following formula:]

[Credit = (0.90) × (Eligible Revenue) × (Member's Volume Percentage)]

[(B) Definitions. The following definitions shall apply to this Rule:]

[(i) ''Eligible Revenue'' shall mean the portion of the net distributable revenues that Nasdaq, through the NASD, is eligible to receive under the Nasdaq UTP Plan, that is attributed to the Nasdaq Level 1 Service for Eligible Securities.]

[(ii) ''Eligible Securities'' shall mean all Nasdaq National Market securities and any other security that meets the definition of ''Eligible Security'' in the Nasdaq UTP Plan.]

[(iii) ''Member's Volume Percentage'' shall mean the average of:]

[a. the percentage derived from dividing the total number of trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to the Automated Confirmation Transaction Service (''ACT'') by the total number of trades in Eligible Securities reported to ACT by NASD members, and]

[b. the percentage derived from dividing the total number of shares represented by trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to ACT by the total number of shares represented by all trades in Eligible Securities reported to ACT by NASD members.]

[(iv) ''Nasdaq UTP Plan'' shall mean the Joint Self-Regulatory Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis.]

(b)–(o) No change.

(p) [NasdaqTrader.com Volume and Issue Data Package Fee]

[The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be $70 per month. The charge to be paid by market data vendors for this information shall be $35 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members, Qualified Institutional Buyers* and data vendors. The Volume and Issue Data package includes:]

[(1) Daily Share Volume reports]

[(2) Daily Issue Data]

[(3) Monthly Volume Summaries]

[(4) Buy Volume Report]

[(5) Sell Volume Report]

[(6) Crossed Volume Report]

[(7) Consolidated Activity Volume Report]

[* For purposes of this service, see definition of ''Qualified Institutional Buyer'' found in Rule 144A of the Securities Act of 1933.]

[(q)] Historical Research and Administrative Reports

(1)–(4) No change.

(q) Reserved.

(r) No change.

(s) NasdaqTrader.com Volume and Issue Data Package Fee

The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be $70 per month. The charge to be paid by market data vendors for this information shall be $35 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members, Qualified Institutional Buyers and data vendors. The Volume and Issue Data package includes:*

(1) Daily Share Volume reports

(2) Daily Issue Data

(3) Monthly Volume Summaries

(4) Buy Volume Report

(5) Sell Volume Report

(6) Crossed Volume Report

(7) Consolidated Activity Volume Report

** For purposes of this service, see definition of ''Qualified Institutional Buyer'' found in Rule 144A of the Securities Act of 1933.*

* * * * *

[7110. Regulatory Services.]

[(a) Fee. NASD members will be assessed a monthly fee for the regulatory services provided in connection with the operation of The Nasdaq Stock Market during a pilot period lasting until December 31, 2002. The fee shall be calculated at the beginning of each month using data concerning market activity during the prior month, in accordance with the following formula:]

[Regulatory Fee = ((Monthly Regulatory Charge) × (Member's Quote Share) × 0.4) + ((Monthly Regulatory Charge) × (Member's Position Share) × 0.2) + ((Monthly Regulatory Charge) × (Member's ACT Record Share) × 0.4)]

[(b) Transitional Fee Reduction. The fee for regulatory services payable by a member in a given month shall be reduced by an amount calculated in accordance with the following formula (if such amount is positive):]

[Fee Reduction = (Aggregate Fee Reduction) × (Member's Share of Fee Reduction)]

[(c) Definitions. The following definitions shall apply to this Rule:]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[(1) ''Aggregate Fee Reduction'' shall mean the lesser of (i) the Aggregate Impact during a month or (ii) $416,667.]

[(2) ''Aggregate Impact'' shall mean the sum of each Member's Impact that is positive.]

[(3) ''Implicit Monthly Fee'' shall mean the product of (i) the Monthly Regulatory Charge with respect to a particular month and (ii) the Member's Volume Percentage (as defined in Rule 7010(a)(2)) during such month.]

[(4) ''Market ACT Record Total'' shall mean the sum of each Member's ACT Record Total.]

[(5) ''Member's ACT Record Share'' shall mean a percentage calculated by dividing the Member's ACT Record Total by the Market ACT Record Total.]

[(6) ''Member's ACT Record Total'' shall mean the greater of (i) the number of all types of ACT records in which the member is the reporting party during the month, minus the number of ACT records reported for dissemination to the public in which the member is either the reporting party or the contra-party during the month, or (ii) the number of ACT records reported for dissemination to the public in which the member is the reporting party during the month.]

[(7) ''Member's Impact'' shall mean the difference between the regulatory fee payable by the member under subsection (a) with respect to a particular month and the highest Implicit Monthly Fee for such member in any month between January 2002 and such month.]

[(8) ''Member's Position Share'' shall mean a percentage calculated by dividing (i) the sum of the number of days during the month that the member posted a bid or offer under its name with respect to each Nasdaq-listed security by (ii) the sum of the number of days during the month that each member posted a bid or offer under its name with respect to each Nasdaq-listed security.]

[(9) ''Member's Quote Share'' shall mean a percentage calculated by dividing the member's quotation activity in Nasdaq-listed securities during the month by the quotation activity of all members in Nasdaq-listed securities during the month. Prior to the introduction of the version of the Nasdaq National Market Execution System (the ''NNMS'') commonly referred to as SuperMontage, quotation activity shall be measured by quotation updates. In the version of the NNMS commonly referred to as SuperMontage, quotation activity shall be measured by any entry, modification, cancellation, or cancel/replace of a member's best priced Quote/Order on the bid or the offer side of the market.]

[(10) ''Member's Share of Fee Reduction'' shall mean a percentage calculated by dividing the Member's Impact by the Aggregate Impact.]

[(11) ''Monthly Regulatory Charge'' shall mean sum of (i) the fee that Nasdaq pays to NASD Regulation, Inc. for regulatory services with respect to Nasdaq-listed securities for the month, and (ii) costs incurred by Nasdaq's MarketWatch Department for regulatory services with respect to Nasdaq-listed securities during the month.]

[(12) ''Nasdaq-listed securities'' shall mean Nasdaq National Market securities and Nasdaq SmallCap Market securities.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to correct several inaccuracies in the text of NASD rules. In February 2002, Nasdaq instituted a program for sharing market data revenue on Nasdaq-listed securities with market participants on a pilot basis.[5] On May 3, 2002, Nasdaq submitted a proposed rule change to modify the pilot program for revenue sharing and to institute a direct fee for regulatory services provided in connection with the operation of The Nasdaq Stock Market.[6] On July 2, 2002, the Commission summarily abrogated this filing[7] under section 19(b)(3)(C) of the Act.[8] Commission staff has advised Nasdaq, however, that a rule filing is necessary to remove rule language that was affected by the Commission's abrogation order. Accordingly, Nasdaq is deleting NASD Rules 7010(a)(2) and 7110 and redesignating NASD Rule 7010(a)(1) as Rule 7010(a).

In SR–NASD–99–12, Nasdaq proposed a rule to establish a fee for the ''NasdaqTrader.com Volume and Issue Data Package.''[9] In the filing, the rule was designated as Rule 7010(p). In SR–NASD–99–70, Nasdaq proposed a rule to establish fees for historical research and administrative reports.[10] In the filing, the rule was designated as Rule 7010(q). However, SR–NASD–99–70 was approved by the Commission[11] two years before SR–NASD–99–12 was approved.[12] As a result, the rule adopted in SR–NASD–99–70 appeared in the NASD Manual as Rule 7010(p) and was referenced as such in a subsequent filing to amend the rule.[13] Accordingly, Nasdaq is amending the designation of this rule to conform it to the manner in which it appears in the NASD Manual.

In SR–NASD–2002–33, Nasdaq proposed a rule to establish fees for ''Nasdaq Data Entitlement Packages.''[14] In the filing, the proposed rule was also designated as Rule 7010(q).[15] Nasdaq is reserving this designation for the rule proposed in SR–NASD–2002–33. In addition, in SR–NASD–2001–93, Nasdaq adopted a fee schedule for the Primex Auction System, designated as Rule 7010(r).[16] Accordingly, Nasdaq is

[5] Securities Exchange Act Release No. 45342 (Jan. 28, 2002); 67 FR 5109 (Feb. 1, 2002) (SR–NASD–2001–96); Securities Exchange Act Release No. 45444 (Feb. 14, 2002); 67 FR 8051 (Feb. 21, 2002) (SR–NASD–2002–17).

[6] Securities Exchange Act Release No. 45916 (May 10, 2002); 67 FR 35167 (May 17, 2002) (SR–NASD–2002–61).

[7] Securities Exchange Act Release No. 46159 (July 2, 2002); 67 FR 45775 (July 10, 2002) (SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, SR–PCX–2002–37).

[8] 15 U.S.C. 78s(b)(3)(C).

[9] Securities Exchange Act Release No. 41244 (Apr. 1, 1999); 64 FR 17429 (Apr. 9, 1999) (SR–NASD–99–12).

[10] Securities Exchange Act Release No. 42207 (Dec. 8, 1999), 64 FR 69811 (Dec. 14, 1999) (SR–NASD–99–70).

[11] Securities Exchange Act Release No. 42341 (Jan. 14, 2000); 65 FR 3513 (Jan. 21, 2000) (SR–NASD–99–70).

[12] Securities Exchange Act Release No. 45270 (Jan. 11, 2002); 67 FR 2712 (Jan. 18, 2002) (SR–NASD–99–12).

[13] Securities Exchange Act Release No. 44940 (Oct. 16, 2001); 66 FR 53462 (Oct. 22, 2001) (SR–NASD–2001–59); Securities Exchange Act Release No. 45102 (Nov. 26, 2001); 66 FR 59830 (Nov. 30, 2001) (SR–NASD–2001–59).

[14] SR–NASD–2002–33 (Amendment No. 4 filed Sept. 13, 2002).

[15] In addition, prior to the approval of SR–NASD–99–12, Nasdaq adopted a fee schedule for the Nasdaq ReSource SM Service, which was also designated as Rule 7010(q). Securities Exchange Act Release No. 44303 (May 14, 2001), 66 FR 27712 (May 18, 2001) (SR–NASD–2001–30). However, this fee schedule was deleted by a subsequent filing. Securities Exchange Act Release No. 45444 (Feb. 14, 2002), 67 FR 8051 (Feb. 21, 2002) (SR–NASD–2002–17).

[16] Securities Exchange Act Release No. 45285 (Jan. 15, 2002); 67 FR 3521 (Jan. 24, 2002) (SR–NASD–2001–93).

redesignating the rule adopted in SR–NASD–99–12 as Rule 7010(s).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act.[17]

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[18] and Rule 19b–4(f)(3)[19] thereunder, in that the foregoing proposed rule change is concerned solely with the administration of the self-regulatory organization.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–122 and should be submitted by October 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–24907 Filed 9–30–02; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78o–3.

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(3).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46551; File No. SR–NASD–2002–111]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq's Transaction Credit Pilot Program for Exchange-Listed Securities To Eliminate Volume Eligibility Thresholds

September 25, 2002.

On August 9, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify Nasdaq's transaction credit pilot program for exchange-listed securities. Specifically, the proposed rule change would eliminate the requirement that a member print an average of 500 daily trades of Tape A securities during a quarter to qualify for Tape A market data revenue sharing, as well as the comparable volume threshold for Tape B securities. The proposed rule change was published for notice and comment in the **Federal Register** on August 21, 2002.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[4] and, in particular, the requirements of section 15A(b)(5)[5] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. The Commission believes it is reasonable for Nasdaq to eliminate the thresholds, so that the market data revenue sharing program will be available to all members that participate in the InterMarket, regardless of their level of activity.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASD–2002–111) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–24908 Filed 9–30–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46357 (August 15, 2002), 67 FR 54245.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–3(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46549; File No. SR–NASD–2002–101]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Increasing Fees for the Mutual Fund Quotation Service and Adopting a New Fee To Process a Request To Amend the Name and/or Symbol of a Fund

September 25, 2002.

On July 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 (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 7090 to increase fees associated with the Mutual Fund Quotation Service (''MFQS'' or the ''Service'') and to adopt a new administrative fee to process a request to amend the name and/or symbol of a fund. Nasdaq filed Amendment No. 1 to

the proposal with the Commission on August 5, 2002.[3] Nasdaq filed Amendment No. 2 to the proposal with the Commission on August 15, 2002.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 22, 2002.[5] The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[6] and, in particular, the requirements of section 15A of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 15A(b)(5) of the Act,[8] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq has represented that the fee changes are necessary to ensure that the fees for MFQS continue to cover the costs of its operation and that the fees will be imposed directly on funds that benefit from the operation of the System. Specifically, Nasdaq stated that the proposed fee increase for a logon identification to MFQS is necessary to reflect the costs of recent upgrades to its security software and hardware to keep pace with Internet security threats. Secondly, Nasdaq represented that the increase in the application processing fee reflects costs associated with upgrading the system's application processing methods, as well as general increases in personnel costs. Lastly, Nasdaq represented that the fee for processing requests to change the name and/or symbol of a fund that is currently listed on MFQS is to compensate for the personnel and system costs associated with making these changes.

[3] *See* letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 5, 2002 (''Amendment No. 1'').

[4] *See* letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 14, 2002 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 46373 (August 16, 2002), 67 FR 54519.

[6] In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(5).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change and Amendment Nos. 1 and 2 thereto (File No. SR–NASD–2002–101)[10] are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–24909 Filed 9–30–02; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46547; File No. SR–NYSE–2002–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Expand the Hours of Operation of Its Off-Hours Trading Facility Known as Crossing Session II

September 25, 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 (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NYSE has designated this proposed rule change as one that has become effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(5)[4] thereunder because it effects a change in an existing order-entry or trading system of a self-regulatory organization that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) have the effect of limiting the access to or availability of the system.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(5).

[5] *Id.*

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The New York Stock Exchange proposes to expand the operating hours of one of its Off-Hours Trading Facilities, known as Crossing Session II.

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 purpose of the proposed rule change is to expand the time of operation of the Exchange's Off-Hours Trading Facility (''OHTF'') known as Crossing Session II. Currently, the OHTF consists of ''Crossing Session I,'' which permits the execution, at the Exchange's closing price, of single stock, single sided closing price orders and crosses of single-stock, closing price buy and sell orders. The OHTF also consists of ''Crossing Session II,'' which provides an opportunity for members and member organizations to cross program trading orders in NYSE listed securities on the Exchange between 4 p.m. and 5:15 p.m. based on the aggregate price of the program. Matched buy and sell orders for a minimum of 15 NYSE listed stocks having a minimum dollar value of $1 million may be transmitted to the Exchange for execution in Crossing Session II. These orders are transmitted via facsimile detailing the total number of stocks, total number of shares and total dollar value. Average daily volume reported in Crossing Session II is 23.4 million shares for 2002.

The Exchange proposes to expand the hours of operation of Crossing Session II until 6:15 p.m. each day that the Exchange is open for its regular 9:30 a.m. to 4 p.m. trading session. Expanding the time of operation of Crossing Session II is simply intended to enhance the usefulness and practicality of Crossing Session II by

making it available to member organizations for a greater time period.

In approving Crossing Session II, the Commission granted exemptive relief from its Rule 10a–1 [6] under the Act (short sale rule) for transactions effected therein, finding that such transactions did not raise all of the same regulatory concerns that are raised by similar transactions during the 9:30 a.m. to 4 p.m. trading session. The Exchange is requesting that the Commission extend the exemptive relief from Rule 10a–1 [7] currently available for transactions effected in Crossing Session II to transactions effected in Crossing Session II as modified by this proposed rule change.

Exchange Rule 51 provides for the operation of Off-Hours Trading ''during such times as the Exchange may from time to time specify.'' Upon approval of the proposed rule change, the Exchange will alert its membership and other market participants of the new operating hours for Crossing Session II.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) [8] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(5) [10] thereunder because it effects a change in an existing order-entry or trading system of a self-regulatory organization that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) have the effect of limiting the access to or availability of the system.[11] At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR-NYSE–2002–38 and should be submitted by October 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–24910 Filed 9–30–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 240.10a-1.

[7] *Id.*

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(5).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46555; File No. SR–OC–2002–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by OneChicago, LLC Relating to Customer Margin Requirements for Security Futures

September 26, 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, OneChicago, LLC, (''OneChicago'') 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 OneChicago. On September 25, 2002, OneChicago submitted Amendment No. 1 to the proposed rule change.[3] On September 25, 2002, OneChicago submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OneChicago is proposing to adopt new Rule 515, including Schedule A thereto (the ''Proposed Rule''), to (i) establish general requirements and procedures relating to customer margining by security futures intermediaries (the ''General Margin Rules''), (ii) set initial or maintenance margin levels for offsetting positions involving security futures and related positions at levels lower than the levels that would be required if those positions were margined separately (the ''Margin Offset Rule'') and (iii) exclude proprietary trades of qualifying security futures dealers from the margin requirements set forth in the Proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kieran P. Hennigan, Sullivan & Cromwell, to Assistant Director for Security Futures Products, Division of Market Regulation (''Division''), Commission, dated September 24, 2002, (''Amendment No. 1''). In Amendment No. 1, OneChicago replaced the Form 19b–4 originally filed on August 30, 2002 in its entirety. The changes made by Amendment No. 1 have been incorporated into this notice.

[4] See letter from Frank Ochsenfeld, Sullivan & Cromwell, attention to T.R. Lazo, Senior Special Counsel, Division, Commission, dated September 24, 2002, (''Amendment No. 2''). In Amendment No. 2, OneChicago made a technical correction to the rule text. The changes made by Amendment No. 2 have been incorporated into this notice.

Rule and the related regulatory requirements (the ''Market Maker Exclusion'').[5] The General Margin Rules, which are contained in paragraphs (a) through (l) of the Proposed Rule, are detailed below. The Margin Offset Rule consists of paragraph (m) of the Proposed Rule and the table of offsets attached thereto as Schedule A, which describes in detail the margin offsets available with respect to particular combinations of security futures and related positions.

Below is the text of the proposed rule change. Proposed new language is italicized.

* * * * *

Customer Margin Requirements

515. General Requirements; Offsetting Positions; Exclusion for Market Makers

(a) Scope of Rule. This Rule 515 shall apply to positions resulting from transactions in Contracts traded on the Exchange or subject to the Rules of the Exchange to the extent that such positions are held by Clearing Members or, if applicable, Exchange Members on behalf of Customers in futures accounts (as such term is defined in Commission Regulation § 1.3(vv) and Exchange Act Regulation 15c3–3(a)), with paragraph (n) of this Rule 515 also applying to such positions held in securities accounts (as such term is defined in Commission Regulation § 1.3(ww) and Exchange Act Regulation 15c3–3(a)). As used in this Rule 515, the term ''Customer'' does not include (i) any exempted person (as such term is defined in Commission Regulation § 41.43(a)(9) and Exchange Act Regulation 401(a)(9)) and (ii) any Market Maker (as such term is defined in paragraph (n) below). Nothing in this Rule 515 shall alter the obligation of each Clearing Member and, if applicable, Exchange Member to comply with Applicable Law relating to customer margin for transactions in Single Stock Futures and Stock Index Futures, including without limitation Commission Regulations §§ 41.42 through 41.49 or Rules 400 through 406 under the Exchange Act, as applicable (including in each case any successor regulations or rules).

(b) Margin System. The Standard Portfolio Analysis of Risk (SPAN®) is the margin system adopted by the Exchange. SPAN® generated margin requirements shall constitute Exchange margin requirements. All references to margin in the Rules of the Exchange shall be to margin computed on the basis of SPAN®. Margin systems other than SPAN® may be used to meet Exchange margin requirements if the relevant Clearing Member or, if applicable, Exchange Member can demonstrate that its margin system will result in margin requirements that are in all cases equal to or greater than the corresponding requirements determined on the basis of SPAN®.

(c) Margin Rate. The Exchange will set and publish the initial and maintenance margin rates to be used in determining Exchange margin requirements; provided that in no case shall the required margin for any long or short position held by a Clearing Member or, if applicable, Exchange Member on behalf of a Customer be less than 20% of the current market value of the relevant Contract (or such other rate from time to time determined by the Commission and the Securities and Exchange Commission for purposes of Commission Regulation § 41.45(b)(1) and Rule 403(b)(1) under the Exchange Act) unless a lower margin level is available for such position pursuant to paragraph (m) below.

(d) Acceptable Margin Deposits.

(i) Clearing Members and, if applicable, Exchange Members may accept from their Customers as margin deposits of cash, margin securities (subject to the limitations set forth in the following sentence), exempted securities, any other assets permitted under Regulation T of the Board of Governors of the Federal Reserve System (as in effect from time to time) to satisfy a margin deficiency in a securities margin account, and any combination of the foregoing, each as valued in accordance with Commission Regulation § 41.46(c) and (e) or Rule 404(c) under the Exchange Act, as applicable. Shares of a money market mutual fund that meet the requirements of Commission Regulation § 1.25 may be accepted as a margin deposit from a Customer for purposes of this Rule 515.

(ii) A Clearing Member or, if applicable, Exchange Member shall not accept as margin from any Customer securities that have been issued by such Customer or an Affiliate of such Customer unless such Clearing Member or Exchange Member files a petition with and receives permission from the Exchange for such purpose.

(iii) All assets deposited by a Customer to meet margin requirements must be and remain unencumbered by third party claims against the depositing Customer.

(iv) Except to the extent prescribed otherwise by the Exchange, cash margin deposits shall be valued at market value and all other margin deposits shall be valued at an amount not to exceed that set forth in Commission Regulations §§ 41.42 through 41.49 or Rules 400 through 406 under the Exchange Act, as applicable (including in each case any successor regulations or rules).

(e) Acceptance of Orders. Clearing Members and, if applicable, Exchange Members may accept Orders for a particular Customer account only if sufficient margin is on deposit in such account or is forthcoming within a reasonable period of time (which shall be no more than five Business Days, although the relevant Clearing Member or, if applicable, Exchange Member may deem one hour to be a reasonable period of time). For a Customer account that has been subject to calls for margin for an unreasonable period of time, Clearing Members and, if applicable, Exchange Members may only accept Orders that, when executed, will reduce the margin requirements resulting from the existing positions in such account. Clearing Members and, if applicable, Exchange Members may not accept Orders for a Customer account that would liquidate to a deficit or that has a debit balance.

(f) Margin Calls. Clearing Members and, if applicable, Exchange Members must call for margin from a particular Customer:

(i) when the margin equity on deposit in such Customer's account falls below the applicable maintenance margin requirement; or

(ii) subsequently, when the margin equity on deposit in such Customer's account, together with any outstanding margin calls, is less than the applicable maintenance margin requirement.

Any such call must be made within one Business Day after the occurrence of the event giving rise to such call. Clearing Members and, if applicable, Exchange Members may call for additional margin at their discretion.

Clearing Members and, if applicable, Exchange Members shall reduce any call for margin only to the extent that margin deposits permitted under paragraph (d) above are received in the relevant account. Clearing Members and, if applicable, Exchange Members may delete any call for margin only if (i) margin deposits permitted under paragraph (d) above equal to or in excess of the deposits called are received in the relevant account or (ii) inter-day favorable market movements or the liquidation of positions result in the margin on deposit in the relevant account being equal to or greater than the applicable initial margin requirement. In the event of any such reduction or deletion, the oldest

[5] Terms used in this filing that are defined in the Act, or the Rules thereunder, have the meanings assigned to them in the Act or Rules thereunder.

outstanding margin call shall be reduced or deleted first.

Clearing Members and, if applicable, Exchange Members, shall maintain written records of any and all margin calls issued, reduced or deleted by them.

(g) Disbursements of Excess Margin. Clearing Members and, if applicable, Exchange Members may release to Customers margin on deposit in any account only to the extent that such margin is in excess of the applicable initial margin requirement under this Rule 515 and any other applicable margin requirement.

(h) Loans to Customers. Clearing Members and, if applicable, Exchange Members may not extend loans to Customers for margin purposes unless such loans are secured within the meaning of Commission Regulation § 1.17(c)(3). The proceeds of any such loan must be treated in accordance with Commission Regulation § 1.30.

(i) Aggregation of Accounts and Positions. For purposes of determining margin requirements under this Rule 515, Clearing Members and, if applicable, Exchange Members shall aggregate accounts under identical ownership if such accounts fall within the same classifications of customer segregated, customer secured, special reserve account for the exclusive benefit of customers and non-segregated for margin purposes. Clearing Members and, if applicable, Exchange Members may compute margin requirements for identically owned concurrent long and short positions on a net basis.

(j) Omnibus Accounts. Clearing Members and, if applicable, Exchange Members shall collect margin on a gross basis for positions held in domestic and foreign omnibus accounts. For omnibus accounts, initial margin requirements shall equal the corresponding maintenance margin requirements. Clearing Members and, if applicable, Exchange Members shall obtain and maintain written instructions from domestic and foreign omnibus accounts for positions that are eligible for offsets pursuant to paragraph (m) below.

(k) Liquidation of Positions. If a Customer fails to comply with a margin call required by Commission Regulations §§ 41.42 through 41.49 or Rules 400 through 406 under the Exchange Act, as applicable, within a reasonable period of time (which shall be no more than five Business Days, although the relevant Clearing Member or, if applicable, Exchange Member may deem one hour to be a reasonable period of time), the relevant Clearing Member or, if applicable, Exchange Member may liquidate positions in such Customer's account to ensure compliance with the applicable margin requirements.

(l) Failure to Maintain Required Margin. If a Clearing Member or, if applicable, Exchange Member fails to maintain sufficient margin for any Customer account in accordance with this Rule 515, the Exchange may direct such Clearing Member or Exchange Member to immediately liquidate all or any part of the positions in such account to eliminate the deficiency.

(m) Offsetting Positions. For purposes of Commission Regulation § 41.45(b)(2) and Rule 403(b)(2) under the Exchange Act, the initial and maintenance margin requirements for offsetting positions involving Single Stock Futures and Stock Index Futures, on the one hand, and related positions, on the other hand, are set at the levels specified in Schedule A to this Chapter 5.

(n) Exclusion for Market Makers.

(i) A Person shall be a ''Market Maker'' for purposes of this Rule 515, and shall be excluded from the requirements set forth in Commission Regulations §§ 41.42 through 41.49 or Rules 400 through 406 under the Exchange Act, as applicable, in accordance with Commission Regulation § 41.42(c)(2)(v) or Rule 400(c)(2)(v) under the Exchange Act with respect to all trading in security futures (as such term is defined in Section 1a(31) of the CEA) for its own account, if such Person is an Exchange Member that is registered with the Exchange as a dealer (as such term is defined in Section 3(a)(5) of the Exchange Act) in security futures.

(ii) Each Market Maker shall:

(A) be registered as a floor trader or a floor broker with the Commission under Section 4f(a)(1) of the CEA or as a dealer with the Securities and Exchange Commission (or any successor agency or authority) under Section 15(b) of the Exchange Act;

(B) maintain records sufficient to prove compliance with the requirements set forth in this paragraph (n) and Commission Regulation § 41.42(c)(2)(v) or Rule 400(c)(2)(v) under the Exchange Act, as applicable; and

(C) hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis.

A Market Maker satisfies condition (C) above if: (x) at least seventy-five percent (75%) of its gross revenue on an annual basis is derived from business activities or occupations from trading listed financial derivatives and the instruments underlying those derivatives, including security futures, stock index futures and options, stock and index options, stocks, foreign currency futures and options, foreign currencies, interest rate futures and options, fixed income instruments and commodity futures and options; or (y) except for unusual circumstances, at least fifty percent (50%) of its trading activity in Contracts on the Exchange in any calendar quarter (measured in terms of contract volume) is in the contracts to which it is assigned under a market making program adopted by the Exchange pursuant to Rule 514.[6]

(iii) Any Market Maker that fails to comply with the Rules of the Exchange, Commission Regulations §§ 41.42 through 41.49 or Rules 400 through 406 under the Exchange Act, as applicable, shall be subject to disciplinary action in accordance with Chapter 7. Appropriate sanctions in the case of any such failure shall include, without limitation, a revocation of such Market Maker's registration as a dealer in security futures pursuant to clause (i) above.

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[6] OneChicago has represented that it will amend this paragraph prior to approval of the proposed rule change to specify the types of records security futures intermediaries will be required to maintain to demonstrate compliance with the Market Maker Exclusion.

SCHEDULE A TO CHAPTER 5.—MARGIN LEVELS FOR OFFSETTING POSITIONS

Description of offset	*Security underlying the security future*	*Initial margin requirement*	*Maintenance margin requirement*
1. *Long security future (or basket of security futures representing each component of a narrow-based securities index[7]) and long put option[8] on the same underlying security (or index)*.	*Individual stock or narrow-based security index*.	*20% of the current market value of the long security future, plus play for the long put in full*.	*The lower of: (1) 10% of the aggregate exercise price[9] of the put plus the aggregate put out-of-the-money[10] amount, if any; or (2) 20% of the current market value of the long security future.*
2. *Short security future (or basket of security futures representing each component of a narrow-based securities index) and short put option on the same underlying security (or index)*.	*Individual stock or narrow-based security index*.	*20% of the current market value of the short security future, plus the aggregate put in-the-money, if any. Proceeds from the put sale may be applied*.	*20% of the current market value of the short security future, plus the aggregate put in-the-money, if any.[11]*
3. *Long security future and short position 20% in the same security (or securities basket) underlying the security future*.	*Individual stock or narrow-based security index*.	*The initial margin required under Regulation T for the short stock or stocks*.	*5% of the current market value as defined in Regulation T of the stock or stocks underlying the security future.*
4. *Long security future basket of long security futures representing each component of a narrow-based securities index) and short call option on the same underlying security (or index)*.	*Individual stock or narrow-based security index*.	*20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied*.	*20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any.*
5. *Long a basket of narrow-based security futures that together tracks a broad-based index and short a broad-based security index call option contract on the same index*.	*Narrow-based security index*.	*20% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied*.	*20% of the current market value of the long basket of narrow-based security futures, plus aggregate call in-the-money amount, if any.*
6. *Short a basket of narrow-based security futures that together tracks a broad-based security index and short a broad-based security index put option contract on the same index*.	*Narrow-based security index*.	*20% of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied*.	*20% of the current market value of the short basket of narrow-based security futures, plus aggregate put in-the-money amount, if any.*
7. *Long a basket of narrow-based security futures that together tracks a broad-based security index and long a broad-based security index put option contract on the same index*.	*Narrow-based security index*.	*20% of the current market value of the long basket of narrow-based security futures, plus pay the long put in full*.	*The lower of: (1) 10% of the aggregate exercise price of the put, plus the aggregate put out-of-the-money amount, if any; or (2) 20% of the current market value of the long basket of security futures.*
8. *Long a basket of narrow-based security futures that together tracks a broad-based security index and long a broad-based security index call option contract on the same index*.	*Narrow-based security index*.	*20% of the current market value of the short basket of narrow-based security futures, plus pay the long call in full*.	*The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20% of the current market value of the short basket of security futures.*
9. *Long security future and short security future on the same underlying security (or index)*.	*Individual stock or narrow-based security index*.	*The greater of: 5% of the current market value of the long security future; or (2) 5% of the current market value of the short security future*.	*The greater of: 5% of the current market value of the long security future; or (2) 5% of the current market value of the short security future.*
10. *Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put and call must have the same exercise price. (Conversion)*.	*Individual stock or narrow-based security index*.	*20% of the current market value of the long security futures, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from the put sale may be applied*.	*10% of the aggregate exercise price, plus the aggregate call in-the-money amount, if any.*

SCHEDULE A TO CHAPTER 5.—MARGIN LEVELS FOR OFFSETTING POSITIONS—Continued

Description of offset	*Security underlying the security future*	*Initial margin requirement*	*Maintenance margin requirement*
11. *Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put exercise price must be below the call exercise price. (Collar)*.	*Individual stock or narrow-based security index*.	*20% of the current market value of the long security futures, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from the call sale may be applied*.	*The lower of: (1) 10% of the aggregate exercise price of the put plus the aggregate call out-of-the money amount, if any; or (2) 20% of the aggregate exercise price of the call, plus the aggregate call in-the-money amount, if any.*
12. *Short security future and long position in the same security (or securities basket) underlying the security future*.	*Individual stock or narrow-based security index*.	*The initial margin required under Regulation T for the long stock or stocks*.	*5% of the current market value, as defined in Regulation T, of the long stock or stocks.*
13. *Short security future and long position in a security immediately convertible into the same security underlying the security future, without restriction, including the payment of money*.	*Individual stock or narrow-based security index*.	*The initial margin required under Regulation T for the long security*.	*10% of the current market value, as defined in Regulation T, of the long security.*
14. *Short security future (or basket of security futures representing each component of a narrow-based securities index) and long call option or warrant on the same underlying security (or index)*.	*Individual stock or narrow-based security index*.	*20% of the current market value of the short security future, plus pay for the call in full*.	*The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20% of the current market value of the short security future.*
15. *Short security future, Short put option and long call option. The short security future, short put and long call must be on the same underlying security and the put and call must have the same exercise price. (Reverse Conversion)*.	*Individual stock or narrow-based security index*.	*20% of the current market value of the short security futures, plus the aggregate call in-the-money amount, if any, plus pay for the call in full. Proceeds from the put sale may be applied*.	*10% of the aggregate exercise price, plus the aggregate put in-the-money amount, if any.*
16. *Long (short) a basket of security futures, each based on a narrow-based security index that together tracks the broad-based index and short (long) a broad-based index future*.	*Narrow-based security index*.	*5% of the current market value for the long (short) basket of security futures*.	*5% of the current market value of the long (short) basket of security futures.*
17. *Long (short) a basket of security futures that together tracks a broad-based and short (long) a narrow-based index future*.	*Individual stock or narrow-based security index*.	*The greater of: (1) 5% of the current market value of the long security future(s); or (2) 5% of the current market value of the short security future(s)*.	*The greater of: (1) 5% of the current market value of the long security future(s); or (2) 5% of the current market value of the short security future(s).*
18. *Long (short) a security future and short (long) an identical security future traded on a different market.*[12].	*Individual stock or narrow-based security index*.	*The greater of: (1) 3% of the current market value of the long security future(s); or (2) 3% of the current market value of the short security future(s)*.	*The greater of: (1) 3% of the current market value of the long security future(s); or (2) 3% of the current market value of the short security future(s).*

* * * * * * *

[7] Baskets of securities or security futures contracts must replicate the securities that comprise the index, and in the same proportion.

[8] Generally, for the purposes of these rules, unless otherwise specified, stock index warrants shall be treated as if they were index options.

[9] ''Aggregate exercise price,'' with respect to an option or warrant based on an underlying security, means the exercise price of an option or warrant contract multiplied by the numbers of units of the underlying security covered by the option contract or warrant. ''Aggregate exercise price'' with respect to an index option, means the exercise price multiplied by the index multiplier. *See, e.g.,* Amex Rules 900 and 900C; CBOE Rule 12.3; and NASD Rule 2522.

[10] ''Out-of-the-money'' amounts shall be determined as follows:

(1) for stock call options and warrants, and excess of the aggregate exercise price of the option or warrant over its current market value (as determined in accordance with Regulation T of the Broad of Governors of the Federal Reserve System);

(2) for stock put options or warrants, any excess of the current market value (as determined in accordance with Regulation T of the Board of Governors of the Federal Reserve System) of the option or warrant over its aggregate exercise price;

(3) for stock index call options and warrants, any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable index multiplier; and

(4) for stock index put options and warrants, any excess of the product of the current index value and the applicable index multiplier over the aggregate exercise price of the option or warrant. (See, e.g., NYSE Rule 431 (Exchange Act Release No. 42011 (October 14, 1999), 64 FR 57172 (October 22, 1999) (order approving SR–NYSE–99–03)); Amex Rule 462 (Exchange Act Release No. 43582 (November 17, 2000), 65 FR 71151 (November 29, 2000) (order approving SR–Amex–99–27)); CBOE Rule 12.3 (Exchange Act Release No. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) (order approving SR–CBOE–97–67)); or NASD Rule 2520 (Exchange Act Release No. 43581 (November 17, 2000), 65 FR 70854 (November 28, 2000) (order approving SR–NASD–00–15)).

[11] ''In-the-money'' amounts must be determined as follows:

(1) for stock call options and warrants, any excess of the current market value (as determined in accordance with Regulation T of the Board of Governors of the Federal Reserve System) of the option or warrant over its aggregate exercise price;

(2) for stock put options or warrants, any excess of the aggregate exercise price of the option or warrant over its current market value (as determined in accordance with Regulation T of the Broad of Governors of the Federal Reserve System);

(3) for stock index call options and warrants, any excess of the products of the current index value and the applicable index multiplier over the aggregate exercise price of the option or warrant; and

(4) for stock index put options and warrants, any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable index multiplier.

[12] Two security futures will be considered ''identical'' for this purpose if they are issued by the same clearing agency or cleared and guaranteed by the same derivatives clearing organization, have identical contract specifications, and would offset each other at the clearing level.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OneChicago 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. OneChicago 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

(a) *General Margin Rules.* The General Margin Rules are designed to complement the customer margin rules set forth in Rules 400 through 406 under the Act (the ''Exchange Act Rules'').[13] The Exchange Act Rules contain detailed requirements with respect to the margin to be collected from customers in connection with security futures and related positions held by security futures intermediaries on behalf of such customers. While the General Margin Rules are based on the standardized margin procedures developed by the U.S. futures exchanges' Joint Audit Committee and similar rules in effect for other contract markets [14] designated under the Commodity Exchange Act, as amended (the ''Commodity Exchange Act''), those precedents have been modified in certain respects to conform to the requirements of the Exchange Act Rules. The following paragraphs contain a brief explanation of each paragraph of the General Margin Rules:

Paragraph (a) of the Proposed Rule defines the scope of application of the Proposed Rule in two important respects. First, it provides that the Proposed Rule only applies to transactions in contracts traded on or subject to the rules of OneChicago. To the extent that security futures intermediaries engage in security futures transactions on or through other exchanges as well, they will need to comply with the respective margin requirements established by such other exchanges. Second, paragraph (a) clarifies that the requirements set forth in the Proposed Rule generally only apply to security futures intermediaries that carry security futures products in futures accounts (with the exception of paragraph (n), which also applies to positions held in securities accounts). As provided in Rule 402(a) under the Act,[15] security futures intermediaries that carry security futures in securities accounts are subject to the Exchange Act Rules, Regulation T of the Board of Governors of the Federal Reserve System,[16] and the margin requirements of the self-regulatory organizations of which they are a member. In addition, paragraph (a) tracks the exemption for ''exempted persons'' pursuant to Rule 401(a)(9) under the Act.[17]

Paragraph (b) of the Proposed Rule adopts the Standard Portfolio Analysis of Risk (SPAN®) as the margining system for OneChicago. Developed by the Chicago Mercantile Exchange Inc. in 1988, SPAN® has become the futures industry standard for margining. SPAN® evaluates the risk of the futures and options portfolio in each account and assesses a margin requirement based on such risk by establishing reasonable movements in futures prices over a one day period. Security futures intermediaries entering into transactions on OneChicago can receive risk arrays based on SPAN® to calculate margins for each of their accounts, so that they can calculate minimum margin requirements for such accounts on a daily basis.

Paragraph (c) of the Proposed Rule sets the required margin level for each long or short position in a security future at 20 percent of the current market value of such security future, as required by Rule 403(b) under the Act.[18] The only exception from this general requirement contemplated by the Proposed Rule is the Margin Offset Rule, which is described in greater detail under (b) below.

Paragraph (d) of the Proposed Rule specifies the types of margin that a security futures intermediary may accept from a customer. Consistent with Rule 404(b) under the Act,[19] acceptable types of margin are limited to deposits of cash, margin securities (subject to specified restrictions), exempted securities, any other assets permitted under Regulation T [20] of the Board of Governors of the Federal Reserve System to satisfy a margin deficiency in a securities margin account, and any combination of the foregoing. Paragraph (d) of the Proposed Rule further provides that the different types of eligible margin are to be valued in accordance with the applicable principles set forth in Rule 404 under the Act.[21]

Paragraph (e) of the Proposed Rule provides that security futures intermediaries may accept orders for a particular account only if (i) sufficient margin is on deposit in such account or is forthcoming within a reasonable time, or (ii) in the event that the conditions set forth in (i) are not satisfied, such orders reduce the margin requirements resulting from the existing positions in such account. This provision is designed to prevent account holders from exacerbating any already existing margin deficiency by entering into further transactions.

Paragraph (f) of the Proposed Rule establishes the general principle that a security futures intermediary must call for initial or maintenance margin equity whenever the minimum margin requirements determined in accordance with paragraph (c) of the Proposed Rule (taking into account any relief available under the Margin Offset Rule) is not satisfied. Any such margin call must be made within one business day after the occurrence of the event giving rise to the call. Paragraph (f) also clarifies that security futures intermediaries may call for margin in excess of OneChicago's minimum requirements. Finally, paragraph (f) provides that a margin call may only be reduced or deleted if and to the extent that (i) qualifying margin deposits are received or (ii) inter-day

[13] 17 CFR 242.400–242.406.

[14] Specifically, OneChicago modeled the General Margin Rules after Rule 930 of the Chicago Mercantile Exchange, Inc.

[15] 17 CFR 242.402(a).

[16] 12 CFR 220 *et seq.*

[17] 17 CFR 242.401(a)(9).

[18] 17 CFR 242.403(b).

[19] 17 CFR 242.404(b).

[20] 12 CFR 220 *et seq.*

[21] 17 CFR 242.404.

favorable market movements or the liquidation of positions have offset the previously existing margin deficiency. In each case, the oldest margin call outstanding at any time is to be reduced or deleted first. These provisions address necessary technical aspects of customer margining and are consistent with similar provisions contained in the precedents referred to above.

Paragraph (g) of the Proposed Rule limits the ability of customers to obtain disbursements of excess margin to any amounts in excess of the applicable initial margin requirement under the Proposed Rule and any other applicable margin requirement. This limitation is consistent with Rule 405(a) under the Act.[22]

Paragraph (h) of the Proposed Rule prohibits security futures intermediaries from extending loans to Customers for margin purposes unless such loans are secured within the meaning of Commission Regulation 1.17(c)(3).[23] This prohibition corresponds to similar restrictions currently in effect on other contract markets.

Paragraph (i) of the Proposed Rule provides that accounts under identical ownership are to be aggregated for purposes of determining the applicable margining requirements on a net basis if such accounts fall within the same general classification (customer segregated, customer secured, special reserve account for the exclusive benefit of customers and non-segregated). This aggregation approach is consistent with universal practice in the futures industry and reflects the fact that several accounts under identical ownership may become subject to liquidation of positions in the event of a failure to satisfy margin calls with respect to any one of such accounts.

Paragraph (j) of the Proposed Rule establishes particular rules for omnibus accounts of security futures intermediaries, namely that (i) margin for positions held in such accounts is to be collected on a gross basis, (ii) initial and maintenance margin requirements are identical and (iii) security futures intermediaries are to obtain and maintain written instructions from such accounts with respect to positions which are eligible for offsets pursuant to the Margin Offset Rule.

Paragraph (k) of the Proposed Rule enables a security futures intermediary to liquidate positions in the account of any customer that fails to comply with a required margin call within a reasonable period of time. This provision complements the requirements set forth in Rule 406(a) and (b) under the Act.[24]

Paragraph (l) of the Proposed Rule authorizes OneChicago to direct any security futures intermediaries that fail to maintain margin requirements for any account in accordance with the Proposed Rule, to immediately liquidate any or all of the positions in such account to eliminate the resulting deficit. This provision is designed to ensure compliance by security futures intermediaries with their obligations under paragraph (k) and is an important function of OneChicago's oversight over such intermediaries.

The Exchange Act Rules and related provisions of the Act (such as, among others, sections 6(g)(4)(B)(ii)[25] and 6(h)(3)(L)[26] of the Act) are premised on each self-regulatory organization adopting margin requirements that are functionally equivalent to those contained in the General Margin Rules. Accordingly, the General Margin Rules represent a corollary of, and are designed to give effect to, the Exchange Act Rules and related provisions of the Exchange Act. As discussed in the preceding paragraphs, the General Margin Rules as proposed comply with the applicable requirements set forth in the Exchange Act Rules. OneChicago therefore believes that the General Margin Rules are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OneChicago.

(b) *Margin Offset Rule.* Security futures intermediaries entering into transactions on OneChicago will be subject, among other things, to Rule 403(b)(1) under the Act,[27] which provides that the margin for each long or short position in a security future will generally be 20 percent of the current market value of such security future. As discussed above, this requirement is reflected in paragraph (c) of the General Margin Rules. Pursuant to Rule 403(b)(2) under the Act,[28] however, a self-regulatory authority may set the required initial or maintenance margin level for offsetting positions involving security futures and related positions at a level lower than the level that would apply if such positions were margined separately based on the aforementioned 20 percent requirement, provided the rules establishing such lower margin levels meet the criteria set forth in section 7(c)(2)(B) of the Act.[29] That Section requires, in relevant part, that:

''(I) The margin requirements for a security futures product be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to section 6(a) of (the Exchange Act); and

(II) Initial and maintenance margin levels for a security futures product not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange registered pursuant to section 6(a) of (the Exchange Act), other than an option on a security future.'' [30]

OneChicago is proposing the Margin Offset Rule pursuant to, and in reliance on, Rule 403(b)(2) under the Act.[31] Without the margin relief afforded by the Margin Offset Rule, security futures intermediaries would be required to collect margin from their customers equal to 20 percent of the current market value of the security futures held on behalf of such customers, irrespective of whether such security futures positions are hedged or unhedged. With respect to option contracts traded on securities exchanges, the Commission has recognized that it is ''appropriate for the SROs to recognize the hedged nature of certain combined options strategies and prescribe margin requirements that better reflect the risk of those strategies.'' [32] OneChicago believes that the same considerations apply in connection with the determination of margin levels for offsetting positions involving security futures and related positions. If margin offsets were not available with respect to security futures, the customer margin requirements applicable to such instruments would effectively be inconsistent with, and more onerous than, the margin requirements for comparable option contracts traded on securities exchanges. This would be contrary to the statutory objectives reflected in section 7(c)(2)(B) of the Act.

At the core of the Margin Offset Rule will be the table of offsets attached to the Proposed Rule as Schedule A, which describes in detail the margin offsets available with respect to particular combinations of security futures and related positions. Such Schedule A is

[22] 17 CFR 242.405(a).

[23] 17 CFR 1.17(c)(3).

[24] 17 CFR 242.406(a) and (b).

[25] 15 U.S.C. 78f(g)(4)(B)(ii).

[26] 15 U.S.C. 78f(h)(3)(L).

[27] 17 CFR 242.403(b)(1).

[28] 17 CFR 242.403(b)(2).

[29] 15 U.S.C. 78(c)(2)(b).

[30] *Id.*

[31] 17 CFR 242.403(b)(2).

[32] See Securities Exchange Act Release Nos. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) (order approving SR–CBOE–97–67 amending CBOE Rule 12.3); 42011 (October 14, 1999), 64 FR 57172 (October 22, 1999) (order approving SR–NYSE–99–03 amending NYSE Rule 431); 43581 (November 17, 2000), 65 FR 70854 (November 28, 2000) (order approving SR–NASD–2000–15 amending NASD Rule 2520); and 43582 (November 17, 2000), 65 FR 71151 (November 29, 2000) (order approving SR–Amex–99–27 amending Amex Rule 462).

substantively identical to the table of offsets included in the Commission's release on Customer Margin Rules Relating to Security Futures (the ''Customer Margin Release'').[33] While the table differs in certain specified respects from similar tables in effect for exchange-traded options, the Commission acknowledged in the Customer Margin Release that these limited differences are warranted by different characteristics of the instruments to which they relate. For the reasons set forth above, OneChicago believes that the Margin Offset Rule is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OneChicago.

(c) *Market Maker Exclusion.* Rule 400(c)(2)(v) under the Act [34] permits a national securities exchange to adopt rules containing specified requirements for security futures dealers, on the basis of which the financial relations between security futures intermediaries, on the one hand, and qualifying security futures dealers, on the other hand, are excluded from the margin requirements contained in the Exchange Act Rules. Any rules so adopted by an exchange must meet the criteria set forth in section 7(c)(2)(B) of the Act, which is reproduced in relevant part under (b) above.

OneChicago is proposing the Market Maker Exclusion pursuant to, and in reliance on, Rule 400(c)(2)(v) under the Act.[35] OneChicago intends to select certain of its members to serve as lead market makers in accordance with Item VI. of its Policies and Procedures as in effect on the date hereof. From time to time, OneChicago may adopt other programs pursuant to Rule 514 of its Rulebook under which members may be designated as market makers with respect to one or more security futures products in order to provide liquidity and orderliness in the relevant market or markets. A significant number of those members will likely be floor traders or floor brokers registered with the Commodity Futures Trading Commission under section 4f(a)(1) of the Commodity Exchange Act, as amended, or dealers registered with the Commission under section 15(b) of the Act.[36] As such, they will not qualify as exempted persons within the meaning of Rule 401(a)(9) under the Act. [37] Without the Market Maker Exclusion, they arguably would have to be treated as customers for purposes of determining margin requirements, even with respect to their proprietary market making activities. This would be different from the treatment of security futures dealers on securities exchanges under section 7(c)(3) of the Act,[38] and, therefore, would be contrary to the statutory objectives reflected in section 7(c)(2)(B) of the Act.[39]

The Market Maker Exclusion as proposed reflects all of the criteria and limitations set forth in Rule 400(c)(2)(v) under the Exchange Act.[40] Specifically, as contemplated by the Customer Margin Release, the Market Maker Exclusion specifies the circumstances under which a Market Maker will be considered to ''hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis.'' [41] Under the Market Maker Exclusion, a Market Maker satisfies this condition if either (i) at least seventy-five percent (75%) of its gross revenue on an annual basis is derived from business activities or occupations from trading listed financial derivatives and the instruments underlying those derivatives, including security futures, stock index futures and options, stock and index options, stocks, foreign currency futures and options, foreign currencies, interest rate futures and options, fixed income instruments and commodity futures and options or (ii) except for unusual circumstances, at least fifty percent (50%) of its trading activity on OneChicago in any calendar quarter is in classes of security futures products to which it is assigned under a market making program adopted by OneChicago pursuant to Rule 514 of its Rulebook.

These alternative standards proposed by OneChicago generally follow examples given in the Customer Margin Release. With respect to the standard described in (i) above, the Customer Margin Release provides that the rules of the self-regulatory organization may ''require that a large majority of [the Market Maker's] revenue is derived from business activities or occupations from trading listed financial-based derivatives.''[42] Given the composition of the pool of exchange members from which OneChicago will select Market Makers, the standard proposed by OneChicago clarifies that such members' trading activities related to the cash instruments underlying listed financial derivatives are taken into account in determining gross revenue. The standard described in (ii) above corresponds to similar requirements for market makers on several U.S. options markets.[43] Based on the foregoing, OneChicago believes that the Market Maker Exclusion is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OneChicago.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the Proposed Rule will have an impact on competition because, as described under 3 above, (i) the General Margin Rules are based on the standardized margin procedures developed by the U.S. futures exchanges' Joint Audit Committee and similar rules in effect for other contract markets, (ii) the Margin Offset Rule will be consistent with similar rules in effect for option contracts traded on exchanges registered pursuant to section 6(a) of the Act [44] and (iii) the Market Maker Exclusion ensures that qualifying security futures dealers on OneChicago are subject to margin requirements that are comparable to those traditionally applicable to security futures dealers on securities exchanges. In addition, it can be expected that other self-regulatory organizations that will list security futures products will adopt rules that are substantially similar to the Proposed Rule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the Proposed Rule have not been solicited.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[33] Securities Exchange Act Release No. 46292 (August 1, 2002), 67 FR 53146 (August 14, 2002).

[34] 17 CFR 242.400(c)(2)(v).

[35] 17 CFR 242.400(c)(2)(v).

[36] 15 U.S.C. 78o.

[37] 17 CFR 242.401(a)(9).

[38] 15 U.S.C. 78g(c)(3).

[39] 15 U.S.C. 78g(c)(2)(B).

[40] 17 CFR 242.400(c)(2)(v).

[41] *Cf.* 17 CFR 242.400(c)(2)(v)(B)(3).

[42] *See* Securities Exchange Act Release No. 46292 (August 1, 2002), 67 FR 53146 (August 14, 2002).

[43] *See* note 91 in the Customer Margin Release and the several options exchange rules referenced therein.

[44] 15 U.S.C. 78f.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–OC–2002–01 and should be submitted by October 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–24906 Filed 9–30–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3444]

State of Georgia

Seminole County and the contiguous counties of Decatur, Early and Miller in the State of Georgia; Gadsden and Jackson Counties in the State of Florida; and Houston County in the State of Alabama constitute a disaster area due to damages caused by severe storms, flooding, and wind damage caused by Tropical Storm Hanna on September 15, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 25, 2002 and for economic injury until the close of business on June 25, 2003 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 344411 for Georgia; 344511 for Florida; and 344611 for Alabama. The number assigned to this disaster for economic injury is 9R6000 for Georgia; 9R6100 for Florida; and 9R6200 for Alabama.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 25, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–24854 Filed 9–30–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Information Quality Guidelines

AGENCY: Small Business Administration.

ACTION: Notice of availability of final guidelines.

FOR FURTHER INFORMATION CONTACT: Data Administrator, Office of the Chief Information Officer, (202) 205–6289.

SUPPLEMENTARY INFORMATION: Pursuant to the Office of Management and Budget ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies,'' effective January 3, 2002 (''OMB Guidelines''), SBA has issued its own information quality guidelines and established an administrative mechanism for affected persons to seek and obtain correction of information maintained and disseminated by SBA that does not comply with the OMB Guidelines or SBA Guidelines. SBA's final guidelines are available to the public on SBA's Web site at *http://www.sba.gov/aboutsba/infoqualityguidelines.pdf*, or by calling SBA Data Administrator at (202) 205–6289, or writing to the Office of the Chief Information Officer, Data Administrator, U.S. Small Business Administration, 409 Third Street, SW., Suite 4000, Washington, DC 20416.

Authority: Section 515(a) of the Treasury and General Government Appropriations Act for FY 2001, Public Law 106–554; Office of Management and Budget ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies,'' effective January 3, 2002, 67 FR 8452 (Feb. 22, 2002).

Dated: September 25, 2002.

Lawrence E. Barrett,

Chief Information Officer.

[FR Doc. 02–24920 Filed 9–30–02; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from

[45] 17 CFR 200.30–3(a)(12).

the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Black Lung Student Statement Regarding Resumption of School Attendance and Report of Black Lung Student Beneficiary at End of School Year—0960–0314. 20 CFR subpart C 410.370. The information collected on forms SSA–2602 and SSA–2613 is used by SSA to determine whether or not an entitled student beneficiary will resume (or has resumed) full-time school attendance at an approved educational institution. If so, the student will be continuously entitled to benefits. The respondents are children of disabled or deceased coal miners and officials of schools they attend.

Type of Request: Extension of an OMB-approved information collection.

	SSA–2602	SSA–2613
Number of Respondents	50	100
Frequency of Response	1	1
Average Burden Per Response (in minutes)	5	7.5
Estimated Annual Burden (hours)	4	12

2. Voluntary Customer Surveys In Accordance with E.O. 12862 within the Social Security Administration—0960–0526. These voluntary customer surveys will be used to ascertain customer satisfaction with the Social Security Administration in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys will involve individuals that are the direct or indirect beneficiaries of SSA services. The average burden per response for these activities is estimated to range from 5 minutes for a simple comment card to 2 hours for participation in a focus group.

Type of Request: Extension of an OMB-approved information collection.

FY 2003

Number of Respondents: 1,530,854.

Frequency of Response: 1.

Average Burden Per Response: Varies (5 minutes to 2 hours).

Estimated Annual Burden: 139,571 Hours.

FY 2004:

Number of Respondents: 1,527,260.

Frequency of Response: 1.

Average Burden Per Response: Varies (5 minutes to 2 hours).

Estimated Annual Burden: 138,229.

FY 2005:

Number of Respondents: 1,529,990.

Frequency of Response: 1.

Average Burden Per Response: Varies (5 minutes to 2 hours).

Estimated Annual Burden: 138,074.

3. Authorization to Disclose Information to Social Security Administration—0960–0623—20 CFR subpart O, 404.1512 and subpart I, 416.912. SSA must obtain sufficient medical evidence to make eligibility determinations for the Social Security disability benefits and supplemental security income (SSI) payments. For SSA to obtain medical evidence, an applicant must authorize his or her medical source(s) to release the information to SSA. The applicant may use one of the forms SSA–827, SSA–827OP1 or SSA–827 OP2 to provide consent for the release of information. Generally, the State Disability Determination Service completes the form(s) based on information provided by the applicant, and sends the form(s) to the designated medical source(s). The respondents are applicants for Social Security disability benefits and SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 3,853,928.

Frequency of Response: 4.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 2,569,285 hours.

4. Application for Supplemental Security Income—0960–0444—20 CFR subpart C, 416.301–416.360. Form SSA–8001–F5 is the application for SSI payments. The information collected by SSA is used to determine eligibility for SSI and the amount of benefits payable.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 872,956.

Frequency of Response: 1.

Average Burden Per Response: 15–18 minutes.

Estimated Annual Burden: 219,549 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Disability Report-Adult—0960–0579—20 CFR subpart O, 404.1512 and subpart I, 416.912. The Social Security Act requires claimants to furnish medical and other evidence to prove they are disabled. Applicants for disability benefits will complete form SSA–3368. The information will be used, in conjunction with other evidence, by State DDSs to develop medical evidence, to assess the alleged disability, and to make a disability determination. The respondents are applicants for title II and title XVI disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 2,116,667.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated annual Burden: 2,116,667 hours.

2. State Contribution Return—0960–0041–20 CFR subpart M, 404.1237 and 404.1249. Information collection on form SSA–3961 is used by the Social Security Administration (SSA) to identify and account for all contributions due and paid under section 218 of the Social Security Act. The respondents are State Social Security agencies (one agency in each state, Puerto Rico, and the Virgin Islands) and each of approximately 65 interstate instrumentalities.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 117.

Frequency of Response: 8.5.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 50 hours.

3. Report on Individual with Mental Impairment—0960–0058–20 CFR subpart O, 404.1513. and subpart I, 416.913. Information collected on form SSA–824 is used by the Social Security Administration to determine the claimant's medical status prior to making a disability determination. The respondents are physicians, medical directors, medical record librarians and other health professionals.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 50,000.
Frequency of Response: 1.
Average Burden Per Response: 36 minutes.
Estimated Annual Burden: 30,000 hours.

4. Missing and Discrepant Wage Reports Letter and Questionnaire—0960–0432. SSA uses the information on Forms SSA–L93, SSA–95 and SSA–97 to secure the employer information missing from its records (or discrepant with Internal Revenue Service (IRS) records) by contacting the involved employers. When secured, SSA is able to properly post the employee's earnings records. Compliance by employers with SSA requests facilitates proper posting of employees' wage records. SSA makes two efforts to obtain wage information from the employer before the case is turned over to the IRS for penalty assessments. The respondents are employers with missing or discrepant wage reports.

Type of Request: Extension of an OMB-approved information collection.
Number of Respondents: 360,000.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 180,000 hours.

5. Employee Verification Service (EVS).

Background

Under Internal Revenue Service regulations, employers are required to provide wage and tax data to SSA using form W–2, Wage and Tax Statement or its electronic equivalent. As part of this process, the employer must furnish the employee's name and Social Security Number (SSN). This information must match SSA's records in order for the employee's wage and tax data to be properly posted to the Earnings Record. Information that is incorrectly provided to the Agency must be corrected by the employer using an amended reporting form, which is a labor-intensive and time-consuming process for both SSA and the employer. Therefore, to help ensure that employers provide accurate name and SSN information on their wage reports, SSA is offering the EVS service whereby employers can verify, via magnetic tape, cartridge, diskette, paper, and telephone, if the reported name and SSN of their employee matches SSA's records.

EVS Collection

SSA will use the information collected through the EVS to verify that the employee name and SSN information, provided by employers, matches SSA records. SSA will respond to the employer informing them only of matches and mismatches of submitted information. Respondents are employers who provide wage and tax data to SSA who elect to use EVS to verify their employees' names and SSNs.

Type of Request: New information collection.

Number of Respondents: 100,000.

Frequency of Response: 5.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 83,333 hours.

6. 20 CFR part 422.527, Private Printing and Modification of Prescribed Applications and Other Forms—0960–NEW. SSA uses the information required by this regulation to process requests from a person, institution or organization (requesting entities) that want to reproduce, duplicate, or privately print any SSA application or other form prescribed by SSA. The requesting entities must obtain prior approval from SSA and make their requests in writing, providing the required information set forth in the regulation. Respondents are the requesting entities that want to reproduce, duplicate, or privately print any SSA application or other form.

Type of Request: New information collection.

Number of Respondents: 4.

Frequency of Response: 1.

Average Burden Per Response: 8 minutes.

Estimated Annual Burden: ½ hour.

7. Medical Source Statement of Ability To Do Work-Related Activities (Physical), Form HA–1151; Medical Source Statement of Ability To Do Work-Related Activities (Mental), Form HA–1152; 20 CFR 404.1513 and 20 CFR 416.913–0960–NEW. SSA's Office of Hearing and Appeals (OHA) uses the HA–1151 (Physical) and its companion form HA–1152 (Mental) to collect information that Administrative Law Judges and the Appeals Council of OHA require to determine the residual functional capacity (RFC) of individuals who are appealing denied claims for benefits based on disability. RFC must be determined to decide cases that cannot be decided based on current work activity or on medical facts alone. Both forms are completed by medical sources that provide medical reports based either on existing medical evidence or on consultative examinations conducted for the purposes of the report. Respondents to these forms are medical sources that provide medical reports.

HA–1151

Type of Request: New information collection.
Number of Respondents: 5,000.
Frequency of Response: 20.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 25,000 hours.

HA–1152

Type of Request: New information collection.
Number of Respondents: 5,000.
Frequency of Response: 20.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 25,000 hours.

Dated: September 25, 2002.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–24808 Filed 9–30–02; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: This notice serves to announce the availability of SSA's information quality guidelines for ensuring and maximizing the quality, objectivity, utility and integrity of disseminated information and mechanisms for seeking correction of information. These guidelines are required by section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001. On April 29, 2002 we published a notice in the **Federal Register** announcing that our draft guidelines were available on our Web site, and asked for public comments on them. This notice revises our guidelines in response to the comments.

EFFECTIVE DATE: This notice is effective October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Greenberg, Office of Research, Evaluation, and Statistics by telephone at (410) 965–0131, FAX at (410) 965–3308, e-mail at *Brian.V.Greenberg@ssa.gov,* or mail at Mr. Brian Greenberg, Office of Research, Evaluation, and Statistics, Room 4–C–15 Operations, 6401 Security Boulevard, Baltimore, MD 21235–6401.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554) directs the Office of Management and Budget (OMB) to issue government-wide guidelines for Federal agencies to ensure and maximize the quality, objectivity, utility and integrity of information disseminated by Federal agencies. In response, OMB issued government-wide guidelines on February 22, 2002 (67 FR 8452), as revised on March 4, 2002 (67 FR 9797), that require Federal agencies that are subject to the Paperwork Reduction Act (44 U.S.C. chapter 35) to develop and publish their own information quality guidelines along with administrative mechanisms to allow persons to request correction of information.

As directed by OMB (67 FR 8452), SSA prepared section 515 draft information quality guidelines and related material and made them available to the public for comment on April 29, 2002 (67 FR 21009). In response to comments, SSA has revised its section 515 information quality guidelines and mechanisms for seeking correction of information. The revised material has been approved by OMB as meeting the requirements established in the OMB government-wide guidelines.

The SSA information quality guidelines and related information are on the agency's Web site at *http://www.ssa.gov/515.* The comments that SSA received on the earlier draft guidelines along with those draft section 515 guidelines and related material are available at *http://policy.ssa.gov/redir2.nsf/closed?OpenPage.*

The SSA received comments from the Office of Management and Budget (OMB) and from two organizations that are concerned with regulatory affairs. All three comment packages were generic in that they cut across all agencies and provided general guidance and direction. We considered all comments received and discuss the most significant ones below.

One issue addressed in all comment packages concerned the scope of applicability for these guidelines. One organization expressed concern that the scope of agency guidelines was too narrow, and another organization expressed concern that the scope of agency guidelines was too broad. We reviewed the SSA guidelines to ensure that they are consistent with the intent and scope of the statute, with the OMB government-wide information quality guidelines, and the guidance provided by OMB. In response to an OMB comment, we added a statement noting that SSA's section 515 information quality guidelines conform to the guidance, scope of applicability, and intent of the government-wide quality guidelines issued by the OMB. We also added a statement noting that section 515 guidelines apply to information disseminated on or after October 1, 2002.

One comment suggested that each agency's information quality guidelines state that agency submissions for information collection under the Paperwork Reduction Act will include the statement that data to be collected shall conform to section 515 information quality guidelines when appropriate. We added a statement to the SSA guidelines to that effect. In response to another comment, we added a statement establishing criteria for reproducibility of information collected in SSA statistical surveys.

Several comments focused on our procedures to seek correction of information under section 515. In response to one comment, we added a statement noting that these procedures do not replace other established processes for challenges to disseminated information. In response to another comment, we will request that persons seeking correction of information under section 515 indicate how they are affected by the allegedly erroneous information. We also provided more details about the appeals process and set time limits for SSA to respond to initial requests and appeals.

Dated: September 23, 2002.

Paul N. Van de Water,

Acting Deputy Commissioner for Policy.

[FR Doc. 02–24809 Filed 9–30–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4143]

Bureau of Educational and Cultural Affairs, Office of the Executive Director, Program Review Staff; 60-Day Notice of Proposed Information Collection: Form DS–2038, Application for Certificate of International Educational Character; OMB Control Number 1405–0122

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of Educational and Cultural Affairs ECA–IIP/EX/PR.

Title of Information Collection: Application for Certificate of International Educational Character.

Frequency: Occasionally.

Form Number: DS–2038.

Respondents: Members of the public who seek a certificate for audio-visual material.

Estimated Number of Respondents: 8.

Average Hours Per Response: .4.

Total Estimated Burden: 24 hours.

• Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Leslie M. Nolan, U.S. Department of State, Bureau of Educational and Cultural Affairs, 301 4th Street, SW., room 534, Washington, DC 20547, who may be reached on 202–205–9076.

Dated: July 9, 2002.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–24807 Filed 9–30–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending September 20, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within

21 days after the filing of the application.

Docket Number: OST–2002–13424.

Date Filed: September 20, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR–SASC 0096 dated 13 September 2002, Europe-South Asian Subcontinent Expedited Resolutions r1–r6. PTC23 EUR–SASC 0097 dated 13 September 2002, Europe-South Asian Subcontinent Expedited Resolution 002bb r–7. Intended effective date: November 1, 2002/January 1, 2003.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–24889 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending September 20, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1997–3020.

Date Filed: September 16, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 7, 2002.

Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. 41102, 41108, 14 CFR part 302 and subpart B, requesting renewal and amendment of its experimental certificate of public convenience and necessity for Route 246 (U.S.-People's Republic of China).

Docket Number: OST–2002–13406.

Date Filed: September 19, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 10, 2002.

Description: Application of ExecuJet Charter AG, pursuant to 49 U.S.C. 41302 and subpart B, requesting a foreign air carrier permit authorizing charter air transportation of persons, property, and mail between a point or points in Switzerland, on the one hand, and a point or points in the United States, on the other hand, either directly or via intermediate points in other countries, with or without stopovers and beyond.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–24888 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Report Implementing OMB's Information Dissemination Quality Guidelines

AGENCY: Office of the Secretary, DOT.

ACTION: Final guidelines.

SUMMARY: The U.S. Department of Transportation (DOT) is issuing guidelines to implement section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106–554). The Office of Management and Budget (OMB) has issued Government-wide guidelines under Section 515 which direct each Federal agency to establish and implement written procedures to ensure and maximize the quality, utility, objectivity and integrity of the information that they disseminate.

DATES: Effective Date: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Vanester M. Williams, Office of the Chief Information Officer, OST, Department of Transportation; 202–366–1771 (not a toll-free call) or by email at *vanester.williams@ost.dot.gov.* For specific inquiries on the Department's administrative mechanisms for allowing persons to seek correction of information, please contact Robert Ashby, Office of the General Counsel, OST, Department of Transportation; 202–366–9310 (not a toll-free call) or by e-mail at *bob.ashby@ost.dot.gov.* For specific inquiries on the Department's statistical guidelines, please contact Dr. Patrick Flanagan, Bureau of Transportation Statistics, Department of Transportation; 202–366–4168 (not a toll-free call) or by email at *pat.flanagan@bts.dot.gov.*

SUPPLEMENTARY INFORMATION: The Department's information quality guidelines apply to a wide variety of its information dissemination activities in order to meet basic information quality standards set forth by Section 515. These guidelines provide a framework under which the Department will allow affected persons an opportunity to seek and obtain correction of information maintained and disseminated by the Department that does not comply with these guidelines.

The written procedures established within DOT's guidelines apply to all organizational components of the Department. For DOT organizations that require additional guidelines, these organizations will implement corresponding procedures that meet the terms of these Departmental guidelines. For the purposes of these guidelines, the term ''DOT organizations'' refer to:

Office of the Secretary (OST)
Bureau of Transportation Statistics (BTS)
Office of the Inspector General (OIG)
Federal Aviation Administration (FAA)
Federal Highway Administration (FHWA)
Federal Motor Carrier Safety Administration (FMCSA)
Federal Railroad Administration (FRA)
Federal Transit Administration (FTA)
Maritime Administration (MARAD)
National Highway Traffic Safety Administration (NHTSA)
Research and Special Programs Administration (RSPA)
Saint Lawrence Seaway Development Corporation (SLSDC)
Transportation Administrative Service Center (TASC)
Transportation Security Administration (TSA)
United States Coast Guard (USCG)

Public Comments and DOT's Responses

In response to its May 1, 2002 posting of draft guidelines, the Department received seven substantive comments from members of the public. Responses to these comments are included in the Department's final guidelines.

Availability of Final Guidelines

As provided in OMB's guidelines implementing Section 515, the Department is publishing this notice of availability of its final quality guidelines in the **Federal Register**. The final guidelines themselves will be posted on the Department's Dockets Management System (DMS) Web site at *http://dms.dot.gov* as of October 1, 2002 (OST–2002–11996). The Office of Dockets and Media Management is open for examination and copying, at the following address, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays: Department of Transportation, TASC, Office of Dockets and Media Management, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001; phone number (202) 366–9329; fax number (202) 493–2251.

Issued in Washington, DC, on September 25, 2002.

Eugene K. Taylor, Jr.,

Acting CIO, Department of Transportation.

[FR Doc. 02–24887 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13436]

National Boating Safety Activities: Funding for National Nonprofit Public Service Organizations

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard seeks applications for grants and cooperative agreements from national, nongovernmental, nonprofit, public service organizations. These grants and cooperative agreements would be used to fund projects on various subjects promoting boating safety on the national level. This notice provides information about the grant and cooperative agreement application process and some of the subjects of particular interest to the Coast Guard.

DATES: Application packages may be obtained on or after October 9, 2002. Proposals for the fiscal year 2003 grant cycle must be received before 4 p.m. eastern time, January 15, 2003.

ADDRESSES: Application packages may be obtained by calling the Coast Guard Infoline at 800–368–5647. Submit proposals to: Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3100, Washington, DC 20593–0001. This notice is available from the Coast Guard Infoline and on the Internet at *http://dms.dot.gov* or at the Web site for the Office of Boating Safety at *http://www.uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Ms. Vickie Hartberger, Office of Boating Safety, U.S. Coast Guard (G–OPB–1/room 3100), 2100 Second Street, SW., Washington, DC 20593–0001; 202–267–0974.

SUPPLEMENTARY INFORMATION: Title 26, United States Code, section 9504, establishes the Boat Safety Account of the Aquatic Resources Trust Fund. From this trust fund, the majority of funds are allocated to the States, and up to 5% of these funds may be distributed by the Coast Guard for grants and cooperative agreements to national, nonprofit, public service organizations for national boating safety activities. It is anticipated that $2,950,000 will be available for fiscal year 2003. Twenty-six awards totaling $2,950,000 were made in fiscal year 2002 ranging from $6,820 to $450,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Director of Operations Policy, U.S. Coast Guard. Applicants must be national, nongovernmental, nonprofit, public service organizations and must establish that their activities are, in fact, national in scope. An application package may be obtained by writing or calling the point of contact listed in **ADDRESSES** on or after October 9, 2002. The application package contains all necessary forms, an explanation of how the grant program is administered, and a checklist for submitting a grant application. Specific information on organization eligibility, proposal requirements, award procedures, and financial administration procedures may be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT.**

Prospective grantees may propose up to a five-year grant with twelve-month (fiscal year) increments. In effect, an award would be made for the first year and thereafter renewal is optional. Each annual increment would not be guaranteed. Under a continuation (multi-year) grant type of award the Coast Guard agrees to support a grant project at a specific level of effort for a specified period of time, with a statement of intention to provide certain additional future support, provided funds become available, the achieved results warrant further support, and are in support of the needs of the government. Award of continuation grants will be made on a strict case-by-case basis to assist planning certain large scale projects and ensure continuity. Procedures also provide for awarding noncompetitive grants or cooperative agreements on a case-by-case basis. This authority is judiciously used to fund recurring annual projects or events which can only be carried out by one organization, and projects that present targets of opportunity for timely action on new or emerging program requirements or issues.

The following list includes items of specific interest to the Coast Guard, however, potential applicants should not be constrained by the list. We welcome any initiative that supports the organizational objectives of the Recreational Boating Safety Program to save lives, reduce the number of boating accidents, injuries and property damage, and lower associated health care costs. We have a high interest in initiatives that focus on recreational anglers, canoeists, kayakers, and/or personal watercraft operators. Some project areas of continuing and particular interest for grant funding include the following:

1. Develop and Conduct a National Annual Safe Boating Campaign

The Coast Guard seeks a grantee to develop and conduct the year 2004 National Annual Safe Boating Campaign that targets specific boater market segments and recreational boating safety topics. This year-round campaign must support the organizational objectives of the Recreational Boating Safety Program, as well as support the nationwide grassroots activity of the many volunteer groups who coordinate local media events, education programs, and public awareness activities. The major focus of the campaign will be to affect the behavior of all boaters with special emphasis on paddlers, hunters and anglers, and users of personal watercraft. A significant emphasis on safety and security issues and the dangers of carbon monoxide, as well as boating under the influence of alcohol and/or drugs, should be within the context of the campaign. Efforts will also be coordinated, year-round, with other national transportation safety activities and special media events. Point of Contact: Ms. Jo Calkin, 202–267–0994.

2. Develop and Conduct a National Recreational Boating Safety Outreach and Awareness Conference

The Coast Guard seeks a grantee to plan, implement, and conduct a National Recreational Boating Safety Outreach and Awareness Conference that supports the organizational objectives of the Recreational Boating Safety Program. The overall conference focus should have promotional strategies which address the following specific targeted audiences: paddlers, anglers and hunters, and personal watercraft users. A significant emphasis on the dangers of carbon monoxide, propeller strikes and off-throttle steering of personal watercraft should be within the context of the conference. Point of Contact: Ms. Jo Calkin, 202–267–0994.

3. State/Federal/Boating Organizations Cooperative Partnering Efforts

The Coast Guard seeks a grantee to provide programs to encourage greater participation and uniformity in boating safety efforts. Applicants would provide a forum to encourage greater uniformity of boating laws and regulations, reciprocity among jurisdictions, and

closer cooperation and assistance in developing, administering, and enforcing Federal and State laws and regulations pertaining to boating safety. Point of Contact: Mr. John Malatak, 202–267–6286.

4. Voluntary Standards Development Support

The Coast Guard seeks a grantee to carry out a program to encourage active participation by members of the public and other qualified persons in the development of technically sound voluntary safety standards for boats and associated equipment. Point of Contact: Mr. Peter Eikenberry, 202–267–6984.

5. Develop and Conduct Boating Accident Seminars

The Coast Guard seeks a grantee to develop, provide instructional material, and conduct training courses nationwide for boating accident investigators, including three courses at the U.S. Coast Guard Reserve Training Center in Yorktown, Virginia. Point of Contact: Mr. Rick Gipe, 202–267–0985.

6. National Estimate of Personal Flotation Devices (PFDs) Wear Rate

The Coast Guard seeks a grantee to develop a statistically valid national estimate and evaluation of wear rates of PFDs by recreational boaters. Wear rate should be determined by actual observation of boaters rather than other means such as surveys. Point of Contact: Mr. Peter Eikenberry, 202–267–6894.

7. Flare Disposal Program

The Coast Guard seeks a grantee to develop a national program for the disposal of flares and pyrotechnic devices required to be carried aboard recreational boats that have surpassed their expiration date. The grantee should thoroughly analyze the problem associated with the disposal of flares and pyrotechnics as hazardous waste, review current methods recommended for their disposal and the effectiveness of each method, and develop a plan for their disposal that can be implemented on a nationwide basis. Point of Contact: Mr. Richard Kanehl, 202–267–0976.

8. Personal Watercraft Accident Analysis

The Coast Guard seeks a grantee to research and analyze personal watercraft accidents attributable to lack of off-throttle steering, develop a valid statistical baseline, and formulate a method to discern and monitor future accident trends. Grantee shall use State data from the Boating Accident Report System. Point of Contact: Mr. Gary Larimer, 202–267–0986.

9. Boating Risk Analysis Information System (BRAINS)

The Coast Guard seeks a grantee to enhance the functionality and update the accident report data used in the Boating Risk Analysis Information System (BRAINS) software application. BRAINS enables analysts to isolate the specific effect of one accident report variable or a group of variables (*i.e.,* alcohol use, type of boat, PFD wear) on the outcome of an accident scenario. BRAINS serves as a decision support system using data captured by the BARD system and is a valuable tool to better target accident prevention efforts. A BRAINS Web site enables customers to use an Internet version or download a full-blown version of the software. In addition to updating the accident report data used in BRAINS, the grantee shall improve the functionality of the application in a Windows environment as well as the charting and reporting capabilities. Point of Contact: Mr. Bruce Schmidt, 202–267–0955.

10. Recreational Boating Study/Survey Analysis

The Coast Guard seeks a grantee to research and analyze past, current, and ongoing recreational boating studies/surveys/data collection efforts conducted by national organizations, universities, Federal and State agencies, and others. The results are to be cataloged in a master bibliography with a brief synopsis of each study/survey and indexed by topic and by entity conducting the study/survey. This information will then be used to determine deficiencies in recreational boating research, to identify opportunities for collective planning for future surveys/studies/data collection initiatives, and to strive to create uniform definitions for boating-related terms and concepts. This effort should utilize a task force in partnership with key stakeholder groups and the academic community. Point of Contact: Mr. Bruce Schmidt, 202–267–0955.

Potential grantees should focus on partnership, *i.e.,* exploring other sources, linkages, in-kind contributions, cost sharing, and partnering with other organizations or corporations. We encourage proposals addressing other boating safety concerns.

The Boating Safety Financial Assistance Program is listed in section 20.005 of the Catalog of Federal Domestic Assistance.

Dated: September 25, 2002.

Harvey E. Johnson,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 02–24939 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–56]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 21, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200X–XXXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sandy Buchanan-Sumter, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7271.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on September 26, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12681.
Petitioner: U.S. Flight Academy International, Inc.
Section of 14 CFR Affected: 14 CFR 119.33.
Description of Relief Sought: To permit Mr. Jarle Boe to conduct commercial passenger or cargo operations for compensation or hire under part 135 without being a U.S. citizen.

Docket No.: FAA–2002–12855.
Petitioner: Grant Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.203(a)(2).
Description of Relief Sought: To permit Grant Aviation to operate night flights under the visual flight rules minimum altitude restrictions for nonmountainous terrain for flights between Emmonak Airport and Alakanuk, Sheldon Point, and Kotlik Airports in the State of Alaska.

Docket No.: FAA–2002–12437.
Petitioner: Mr. Larry Nicoludis.
Section of 14 CFR Affected: 14 CFR 121.333(c)(3).
Description of Relief Sought: To permit Mr. Larry Nicoludis, while operating between flight levels 250 and 410, to have his oxygen mask out of its storage container, properly fitted, connected and on, and resting in his lap, in hand, ready for use in less than 3 seconds.

[FR Doc. 02–24934 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–58]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 21, 2002.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13368 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Pat Siegrist (425–227–2126), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on September 26, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13368.
Petitioner: Lufthansa Technik.
Section of 14 CFR Affected: 14 CFR 25.785(j).
Description of Relief Sought: Petitioner requests exemption from that portion of 14 CFR 25.785(j) which requires a firm handhold along each aisle to enable persons to steady themselves while using the aisles in moderately rough air. The petitioner requests this exemption for the Boeing Model 737–800 airplane, equipped with an executive interior, to be used in private, not for hire, operation.

[FR Doc. 02–24935 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2002–13387]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 2, 2002.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Safety Assurance, (NVS–233), Room 6115, 400 Seventh Street, SW., Washington, DC 20590. Mr. Loy's telephone number is (202) 366–5308. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an

agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(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.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Motor Vehicle Information.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2127–0002.

Affected Public: Those business or persons requesting to import motor vehicle into the United States.

Abstract: The National Highway Traffic Safety Administration's (NHTSA's) statute at 49 U.S.C. Subchapter III *Importing Noncomplying Motor Vehicles and Equipment* (49 U.S.C. section 30141 *et seq.*) requires that a motor vehicle which does not conform to applicable Federal Motor vehicle Safety Standards (FMVSS) be refused admission into the United States. NHTSA may authorize importation of nonconforming vehicles upon specified terms and conditions to insure that any such vehicle or equipment will be brought into conformity with all applicable FMVSS or will be exported out of or abandoned to the United States at no cost.

Estimated Annual Burden: 77,500.

Delmas Maxwell Johnson,

Associate Administrator for Administration.

[FR Doc. 02–24890 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13433]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed extension of existing collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 2, 2002.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Sharon Vaughn-Fair, NHTSA 400 Seventh Street, SW., Room 5219, NCC113, Washington, DC 20590. Mrs. Vaughn-Fair's telephone number is (202) 366–1834. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(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.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Designation of Agent.

OMB Control Number: 2127–0040.

Affected Public: Business.

Form Number: This collection of information uses no standards forms.

Requested Expiration Date of Approval: Three years from date of approval.

Abstract: The U.S. agent is used to advise foreign manufacturers of safety related defects where laws vary from country to country. In turn, the manufacturer can notify U.S. purchasers and correct the defect.

Summary of the Collection of Information: This collection of information applies to motor vehicle and motor vehicle equipment manufacturers located outside of the United States (foreign manufacturers). Every manufacturer offering a motor vehicle or item of motor vehicle equipment for importation into the United States is statutorily required to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions and requirements may be made for and on behalf of the manufacturer. (49 U.S.C. 30164) These designations are required to be filed with NHTSA.

Description of the Need for the Information and Proposed Use of the Information: NHTSA needs this information in case it needs to advise a foreign manufacturer of a safety related defect in its products so that the manufacturer can, in turn, notify

purchasers and correct the defeat. This information also enables NHTSA to serve a foreign manufacturer with all administrative and judicial processes, notices, orders, decisions and requirements.

Estimates of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information: NHTSA estimates that the number of respondents per year is 70. Each respondent provides the information once. NHTSA estimates it takes one hour to write the letter to NHTSA providing the information. The estimated total burden on all respondents for this standard is 70 hours per year.

Based on an assumed clerical cost of $20.00 per hour, it costs each manufacturer $20.00 to write the letter, and postage (on the average from a foreign country) of approximately $1.00 per letter. Thus, each response costs the manufacturer a total of $21.00. Since NHTSA estimates the number of respondents per year is 70, the total cost on all respondents per year is approximately $1,470.00.

There are no recordkeeping costs to the manufacturers.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: September 26, 2002.

Heidi L. Coleman,

Assistant Chief Counsel for Traffic Injury Control and General Law.

[FR Doc. 02–24938 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13357; Notice 1]

Uniroyal Goodrich Tire Manufacturing, Receipt of Application for Decision of Inconsequential Noncompliance

Uniroyal Goodrich Tire Manufacturing (Uniroyal) has determined that a total 11,262 P155/80R 13 79S Uniroyal Tiger Paw AWP tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New Pneumatic Tires.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Uniroyal has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

During the period of the 5th through the 48th weeks of 2000, the Woodburn, Indiana plant of Uniroyal Goodrich Tire Manufacturing produced and cured a total of 11,262 tires with erroneous marking. Of this total, no more than 3,796 may have been delivered to end users. The remaining tires have been isolated in Uniroyal warehouses and will be brought into compliance.

FMVSS No. 109 (S4.3(e)) requires that each tire shall have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area if different.

The noncompliance with S4.3(e) relates to the mold number. The tires were marked: SIDEWALL 2 Plies instead of the required marking of: SIDEWALL 1 Ply.

Uniroyal does not believe that this marking error will impact motor vehicle safety because the tires meet all applicable Federal Motor Vehicle Safety performance standards, and the noncompliance is one of labeling.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: (30 days after Publication Date).

Authority: 49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 26, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–24937 Filed 9–30–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34249 (Sub-No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Petition for exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34249 [1] to permit the trackage rights arrangement to extend only until October 24, 2002.

DATES: This exemption is effective on October 24, 2002. Petitions to stay must be filed by October 15, 2002. Petitions to reopen must be filed by October 17, 2002.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34249 (Sub-No. 1) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Robert T. Opal, General Commerce Counsel, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339).

SUPPLEMENTARY INFORMATION: Additional information is contained in

[1] On August 30, 2002, UP concurrently filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) between BNSF milepost 6.1 near Fort Worth, TX, and BNSF milepost 218.1 near Temple, TX. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 34249 (STB served Sept. 18, 2002). Trackage rights operations under the exemption were scheduled to be consummated on or after September 9, 2002.

the Board's decision. Copies of the decision may be purchased from Dā 2 Dā Legal Copy Service by calling (202) 293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: September 24, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–24737 Filed 9–30–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34232]

Kansas & Oklahoma Railroad, Inc.—Lease Exemption—Union Pacific Railroad Company

Kansas & Oklahoma Railroad, Inc. (K&O), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Union Pacific Railroad Company 27 miles of rail line located between milepost 485.0, at Newton, KS, and milepost 512.0, at McPherson, KS. K&O will be the operator of the line.

Because K&O's projected annual revenues will exceed $5 million, K&O certified to the Board on July 11, 2002, that it had sent the required notice of the transaction to the national offices of all labor unions representing employees on the line on July 10, 2002, and that it had posted a copy of the notice at the workplace of employees on the affected lines on June 28, 2002. *See* 49 CFR 1150.42(e).

The transaction was scheduled to be consummated on or shortly after September 17, 2002 (7 days after the notice of exemption was filed and more than 60 days after K&Os certification to the Board that it had complied with the Boards rule at 49 CFR 1150.42(e)).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34232, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: September 23, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–24604 Filed 9–30–02; 8:45am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 587]

Information Quality Guidelines

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of final guidelines.

SUMMARY: The Surface Transportation Board (Board) is adopting Information Quality Guidelines (I.Q. Guidelines). The I.Q. Guidelines contain the Board's information resource management procedures for reviewing and substantiating the quality of information before it is disseminated to the public, and the procedures by which an affected person may obtain correction of information disseminated by the Board that does not comply with the I.Q. Guidelines.

DATES: The Board's I.Q. Guidelines are effective October 1, 2002.

FOR FURTHER INFORMATION CONTACT: John M. Atkisson (202) 565–1710. (Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.)

SUPPLEMENTARY INFORMATION: By decision served April 1, 2002, and published in the **Federal Register** on the same date (67 FR 15450), the Board initiated this proceeding and sought comments from interested parties on the Board's draft I.Q. Guidelines. The draft I.Q. Guidelines have been revised in response to comments received from interested parties. A frequent user of the Board's Reading Room misunderstood the scope of the I.Q. Guidelines, prompting us to specify with greater particularity which information is subject to them. General comments on other agencies' guidelines from the Center for Regulatory Effectiveness led to amplification of our procedure for making corrections in the event erroneous information is disseminated by the Board. In addition, the draft I.Q. Guidelines have been revised in response to suggestions of the Office of Management and Budget.

The Board's final I.Q. Guidelines are posted on the Board's Web site, www.stb.dot.gov. Additional information is contained in the Board's decision. Copies of this decision, containing the I.Q. Guidelines, may be purchased from Da-2-Da Legal Copy Service, Suite 405, 1925 K Street, NW., Washington, DC 20006, telephone (202) 293–7776, da2dalegal@earthlink.net.

Authority: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; 114 Stat. 2763).

Decided: October 1, 2002.

By the Board, John M. Atkisson, Designated Official.

Vernon A. Williams,

Secretary.

[FR Doc. 02–24738 Filed 9–30–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Senior Executive Service Combined Performance Review Board (PRB)

AGENCY: Bureau of Engraving and Printing, Treasury Department.

ACTION: Notice of members of Combined Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Combined PRB for the Bureau of Engraving and Printing, the Financial Management Service, the U.S. Mint and the Bureau of the Public Debt. The Board reviews the performance appraisals of career senior executives below the level of bureau head and principal deputy in the four bureaus, except for executives below the Assistant Commissioner level in the Financial Management Service. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

Composition of Combined PRB: The Board shall consist of at least three voting members. In case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the Combined PRB members are as follows:

Primary Members

Joel C. Taub, Associate Director (Management), E&P

Frederick A. Pyatt, Assistant Commissioner (Office of Investor Services), PD
Jay M. Weinstein, Associate Director & CFO, Mint
Scott Johnson, Assistant Commissioner (Management)/CFO, FMS

Alternate Members

Gregory D. Carper, Associate Director (Chief Financial Officer), E&P
Cynthia Z. Springer, Assistant Commissioner (Office of Information Technology), PD
Bradford E. Cooper, Associate Director for Manufacturing, Mint
Judith Tillman, Assistant Commissioner (Financial Operations), FMS

DATES: Membership is effective on September 25, 2002.

FOR FURTHER INFORMATION CONTACT: Joel C. Taub, Associate Director (Management), Bureau of Engraving and Printing, 14th and C Sts, SW., Washington DC 20228, (202) 874–2040.

This notice does not meet the Department's criteria for significant regulations.

Joel C. Taub,

Associate Director (Management), Bureau of Engraving and Printing.

[FR Doc. 02–24818 Filed 9–30–02; 8:45 am]

BILLING CODE 4840–01–M

DEPARTMENT OF TREASURY

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Emily A. Parker, Deputy Chief Counsel (Operations)
2. Gary B. Wilcox, Deputy Chief Counsel (Technical)
3. Thomas R. Thomas, Deputy Division Counsel (Small Business/Self-Employed)
4. Joseph F. Maselli, Area Counsel, Division Counsel (Large & Mid-Size Business)
5. Heather C. Maloy, Associate Chief Counsel (Passthroughs & Special Industries)
6. Sarah Hall Ingram, Associate Chief Counsel/Division Counsel (Tax Exempt and Government Entities).

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: September 16, 2002.

B. John Williams, Jr.,

Chief Counsel, Internal Revenue Service.

[FR Doc. 02–24673 Filed 9–30–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Final Information Quality Guidelines

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Final guidelines.

SUMMARY: These final guidelines implement section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658). Section 515 directs the Office of Management and Budget (OMB) to issue government-wide guidelines that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies. By October 1, 2002, agencies must issue their own implementing guidelines that include an administrative mechanism allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with agency and OMB guidelines.

DATES: Effective date: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth Little, Office of Information and Technology, Department of Veterans Affairs, Washington, DC 20420. Telephone (202) 273–8051 or by e-mail to *515.POCS@mail.va.gov.*

SUPPLEMENTARY INFORMATION: VA has developed guidelines for reviewing and substantiating (by documentation or other means selected by the agency) the quality (including the objectivity, utility, and integrity) of information before it is disseminated. In addition, VA has established administrative correction procedures allowing affected persons to seek and obtain, where appropriate, correction of information disseminated by VA that does not comply with OMB or VA guidelines. VA will apply these standards with flexibility in a manner appropriate to the nature and timeliness of information to be disseminated and incorporate them into existing VA information resources management and administrative practices.

The guidelines are also available at *www.va.gov/oirm/s515.*

Dated: September 25, 2002.

By direction of the Secretary:

Ernesto Castro,

Director, Records Management Service.

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated By VA

I. Introduction

The Office of Management and Budget (OMB) required VA to prepare guidelines to ensure the quality of information disseminated by the Department. This is in response to Section 515 requirements of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658). Section 515 directed OMB to issue Government-wide guidelines that provided policy and procedural guidance to Federal agencies for issuing their own guidelines for ensuring the quality of disseminated information.

The guidelines contained herein will apply flexible, appropriate, and timely quality standards to the review and substantiation of data and information before it is disseminated to the public. They will be incorporated into existing VA information resources management and administrative practices and will include an administrative procedure to allow affected persons to seek and obtain corrected information. VA will report annually, beginning January 1, 2004, to the Director of OMB, the number and nature of complaints received and the resolutions issued.

These guidelines are subject to the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. Chapter 35); OMB Circular A–130; Freedom of Information Act (FOIA) (5 U.S.C. 552); the Computer Security Act of 1987; and VA Directive 6102, Internet/Intranet Services.

II. Policy

VA will ensure and maximize the quality, objectivity, utility, and integrity of information it disseminates to the public. VA will take appropriate steps to incorporate information quality criteria into its information dissemination practices, and will ensure that the quality of disseminated information is consistent with VA's and OMB's performance standards. Additional levels of quality standards may be adopted as appropriate for specific categories of information.

III. Implementation

Except for those categories of information that are specifically exempted from coverage, (see section C, Exceptions), these guidelines apply to all information disseminated by VA and VA initiated or sponsored dissemination of information by VA grantees, contractors, or cooperators on or after October 1, 2002, regardless of when the information was first disseminated.

VA's Assistant Secretary for Information and Technology/Chief Information Officer (CIO) serves as the Department official charged with oversight of these guidelines. VA officials are responsible for distributing these guidelines and any modifications hereafter to appropriate offices within their organizations.

A. Scope

The guidelines apply to all information VA disseminates to the public (except as noted in section C) in all forms of media, *e.g.*, printed and electronic (the Internet and other technologies). Information dissemination products include books, papers, CD–ROMs, electronic documents, or other documentary material.

The guidelines apply to information disseminated by VA from a web page except for requests for corrections of typographical errors, web page malfunctions, or non-VA hyperlinks from VA's website.

VA will apply a higher quality standard for ''influential'' information that has a capacity to cause an adverse or financial impact on public policy or legislative matters relative to services provided to veterans. The more important the information, the higher the standard that is applied, *e.g.*, influential scientific, financial or statistical information.

As recommended by OMB, in some cases, when VA-disseminated information is collected from a variety of sources, the Department will ensure the information is regularly updated, revised and held in strict confidence. In such cases, the essence of the guidelines will still apply.

The guidelines will be applied in a common sense and workable manner. They will not impose unnecessary administrative burdens that would inhibit VA organizations from taking advantage of the Internet and other technologies to disseminate information to the public.

B. Application

VA Administrations and Staff Offices will develop processes for reviewing the quality of information before it is disseminated. VA offices will treat information quality as an integral part of the development of information, including creation, collection, maintenance, and dissemination, and will substantiate the quality of information disseminated through documentation or other means appropriate to the information. Originating offices will use internal peer reviews and other review mechanisms to ensure that disseminated information is objective, unbiased and accurate in both presentation and substance. It is important that VA offices make use of the PRA clearance process to help improve the quality of information before it is disseminated to the public. The PRA clearance submission to OMB will include the additional requirement that all proposed collections of information that will be disseminated to the public should be collected, maintained, and used in a way consistent with VA's and OMB's information quality guidelines.

VA will apply reproducibility standards to applicable original and supporting data according to ''commonly accepted scientific, financial, or statistical standards.'' VA organizations will be flexible in determining what constitutes ''original and supporting'' data. When original or supporting data must be generated, sound statistical methods will be applied. VA will apply a consistent reproducibility standard to transparency for how analytical results are generated (*e.g.*, specific data used, various assumptions employed, specific analytical methods used, and statistical procedures employed). These methods will allow any qualified person to conduct an independent re-analysis, if necessary. This independent re-analysis should produce substantially the same results as the original research.

In cases where public access to data and methods may not occur due to other compelling interests, (*i.e.*, ethical, feasibility, or confidentiality constraints), VA will perform rigorous robustness checks to analytic results and document what checks were undertaken. VA offices should; however, disclose the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed. VA will address ethical, feasibility, and confidentiality issues with care. Reproducibility of data is limited by the requirement that VA comply with Federal confidentiality statutes, such as the Privacy Act, 5 U.S.C. 552a, and 38 U.S.C. 5701, 5705, and 7332.

C. Exceptions

The guidelines do not apply to the dissemination of information limited to Government employees or Department contractors or grantees, intra- or inter-Departmental use or sharing of Government information. They do not apply to correspondence with individuals, press releases (unless they contain new substantive information not covered by a previous information dissemination subject to the guidelines), archival records, library holdings and distribution limited to: public filings, subpoenas, or adjudicative processes. These guidelines also do not cover responses to requests for Department records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, or other similar laws.

The guidelines are not designed for individuals who are seeking corrections of personal information or information related to death and disability payments, education, home loans, disability, medical care, insurance, burial and survivor benefits or related information pertaining to specific VA claims, benefits records, or services delivered. Information pertaining to VA services can be obtained by calling VA's toll-free number at 1–800–827–1000.

The guidelines generally do not govern a third-party's dissemination of information (the exception being where VA adopts the information as its own).

The guidelines do not apply to opinions, if it is clear that what is being offered is someone's opinion, rather than fact or the Department's views.

Excluded also from the definition of dissemination are responses to FOIA requests and some scientific research (*see* section on ''*Third Party Dissemination*'').

D. Policy for Release of Information

Under the Freedom of Information Act requirements, VA's policy is to disclose its records upon request, except for those records that are protected from disclosure by law.

E. Third-Party Dissemination

The standards of these guidelines apply not only to information that VA generates, but also to information that other parties provide to VA, if the other parties seek to have VA rely upon or disseminate this information or if VA decides to do so. If VA is to rely on technical, scientific, or economic information submitted by a third party, that information would need to meet appropriate standards of quality, including objectivity and utility.

VA does not ''initiate'' the dissemination of information when Federally employed scientists, Federal grantees, or contractors publish and communicate their research findings in the same manner as their academic colleagues. This applies even though VA has funded the research and may retain ownership or other intellectual property rights.

If VA, through a procurement contract or a grant, provides for a person to conduct research, and VA directs the person to disseminate the results (or VA reviews and approves the results before dissemination), then VA has ''sponsored'' the dissemination of this information, and the information is subject to these guidelines.

By contrast, if VA provides funding to support research, and if the researcher (not VA) decides to disseminate the results and determines the content and presentation of the dissemination, then VA has not ''sponsored'' the dissemination. The information is not subject to these guidelines even though VA has funded the research and may retain ownership or other intellectual property rights.

To avoid confusion regarding whether the Department is sponsoring the dissemination, the researcher should include an appropriate disclaimer in the publication or speech to the effect that the ''views are mine, and do not necessarily reflect the views'' of VA. On the other hand, subsequent VA dissemination of such information requires that the information adhere to VA's information quality guidelines.

F. Peer Review Process

VA will use peer reviews for covered information that are consistent with VA's and OMB's peer review standards. Transparency is important for peer review, and VA's guidelines set minimum standards for the transparency of VA-sponsored peer review. If data and analytical results have been subjected to formal independent, external peer review, the information may generally be presumed, subject to possible rebuttal, to be of acceptable objectivity. The intensity of peer reviews will be commensurate with the significance of the risk or its management.

Peer reviewers must be selected primarily on the basis of technical expertise, be expected to disclose to VA prior technical/policy positions they may have taken on the issues at hand, be expected to disclose to VA their sources of personal and institutional funding (private or public sector), and conduct their reviews in an open and rigorous manner.

As an organization responsible for dissemination of vital health and medical information, VA will interpret reproducibility and peer-review standards in a manner appropriate to assure timely flow of vital information from VA to medical providers, patients, health agencies and the

public. VA may temporarily waive information quality standards in urgent situations (*e.g.*, imminent threats to public health or homeland security) in accordance with the latitude specified in OMB's and VA's guidelines.

When VA disseminates influential analyses of risks to human health, safety, and the environment, if at all, it will apply the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g–1(b)(3)(A) & (B)) to the extent feasible.

IV. Administrative Correction Procedures

An administrative process is available to allow affected persons to seek and obtain, where appropriate, timely correction of information that does not meet the stated VA or OMB guidelines. The correction and appeal processes have been designed to be flexible, appropriate in nature, and timely in responding to a request for correction. It is available for genuine and valid requests for correction of information that do not meet the stated guidelines. In determining whether to accept a request for correction of information, VA will consider whether the information or request for correction is obsolete. If the information was disseminated more than a year before the request for correction is received, and it does not have a continuing significant impact on VA projects or policy decisions or on private sector decisions, VA may regard the information as obsolete for purposes of processing a correction request.

A. Information Correction Process

If an affected person believes that disseminated information is not accurate, clear, complete or unbiased because it is not consistent with OMB's and VA's standards, he or she may challenge or submit a complaint by written correspondence or via VA's homepage:

1. Write to: Director, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. In submitting written requests, the envelope and the request both should be clearly marked ''Data Quality Complaint'; or

2. Access VA's home page at *www.va.gov* and select the ''Contact VA'' link that appears at the bottom of the page.

Requests for correction of information will be routed to the appropriate VA Administration or Staff Office for review. VA will respond to all requests for corrections within 60 calendar days of receipt. If the request requires more than 60 calendar days to resolve, VA will inform the complainant that more time is required and indicate the reason why and an estimated decision date. If the VA office receiving the complaint determines that the request does not adequately and reasonably describe the disseminated information source, the complainant will be advised that additional information is needed. If the challenged information is determined to be correct or valid, the complainant will be provided with a statement as to why the request for correction is not processed and how to file an appeal. If the challenged information is determined to be incorrect, VA will notify the complainant of its intent to correct the information, and the corrective steps proposed.

In cases where VA disseminates a study, analysis, or other information prior to final VA action or information product, requests for correction will be considered prior to final action or information product in those cases where VA has determined that an earlier response would not unduly delay issuance of VA's action or information product, and the complainant has shown a reasonable likelihood of suffering actual harm from VA's dissemination if the complaint is not resolved prior to VA's final action or information product.

B. Information Appeal Process

If affected persons who request corrections of information do not agree with VA's decision (including the corrective action, if any), they may file an appeal in writing within 60 calendar days to the office indicated in the denial correspondence. The envelope and reconsideration request both should be clearly marked ''Information Correction Reconsideration Request.'' It is important that correspondents state why they disagree. The appropriate VA organization will review the appeal and act upon the request for reconsideration. The correspondent will be notified within 60 calendar days whether the request was granted or denied and what corrective action, if any, VA will take on the appeal. If the request requires more than 60 calendar days to resolve, the agency will inform the complainant that more time is required and indicate the reason why and an estimated decision date.

To ensure objectivity, the VA organization that originally disseminated the information does not have responsibility for both the initial response and any subsequent appeal. In addition, if VA believes other agencies may have an interest in the appeal, VA will consult with those other agencies about their possible interest.

C. Administrative Management of Corrected Records

Corrective actions will vary. Possibilities include immediate correction or replacement of information on the Department of Veterans Affairs Web site (<*http://www.va.gov/*>), revision of subsequent issues of recurring products, and issuance of errata for printed reports and other data products.

V. Reporting Requirements to OMB

On October 1, 2002, VA must publish notice in the **Federal Register** of the availability of the Department's final information quality guidelines, and also post them on VA's Web site.

On January 1, 2004, VA will electronically submit an annual fiscal report to OMB, with a recurring report due on January 1 each year thereafter. The report will provide information (both quantitative and qualitative where appropriate) on the number, nature, and resolution of complaints received by VA regarding its perceived or confirmed failure to comply with OMB and VA guidelines.

VI. Definitions

VA has adopted the definition of terms set forth in the OMB guidelines. The following information explains further the way VA uses some of the terms:

A. ''Affected'' persons are individuals or entities that may use, benefit or be harmed directly by the disseminated information at issue. These guidelines are not designed for individuals to seek corrections of personal information or information related to personal services, benefits, or claims for benefits.

B. ''Dissemination'' of information means VA-initiated or sponsored distribution of information to the public.

C. ''Influential'' information is determined when VA can reasonably discern that dissemination of information will, or does have, a clear and substantial impact on important public policies or important private sector decisions. This type of information must have a significant impact on VA's public policy or legislative matters relative to delivery of veterans' benefits or health care services. VA's influential information includes the following categories:

1. Statistical information obtained from original data collections; administrative records; compilations of data from primary sources such as forecasts and estimates derived from statistical models, expert analyses, data collection, and analysis and interpretations of statistical information.

2. Financial information referring to Government revenues and expenditures.

3. Scientific information designating the method of research in which a hypothesis, formulated after systematic, objective collection of data is tested empirically (relying on experiment and observation rather than theory).

D. ''Information,'' for purposes of these guidelines, including the administrative correction/appeal procedures, means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition does not include:

1. Opinions, where the presentation makes clear that the statements are subjective opinions, rather than facts, or a determination of the Department. However, any underlying information published by the Department upon which the opinion is based may be subject to these guidelines.

2. Information originated by, and attributed to, non-Department sources, provided the Department does not expressly rely upon that information in formulating policy. Examples include: information reported and duly attributed in materials prepared and disseminated by the Department's hyperlinks on the Department's Web site to information that others disseminate; and reports of advisory committees and international organizations published on the Department's Web site;

3. Statements related solely to the internal personnel rules and practices of Department and other materials produced for Department employees, contractors, agents or alumni;

4. Descriptions of VA, its responsibilities and its organizational components;

5. Statements, the modification of which might cause harm to national security, including harm to the national defense or foreign relations of the United States and statements of U.S. foreign policy;

6. Materials covered by the United States Information and Educational Exchange Act of 1948 (the Smith-Mundt Act), 22 U.S.C. Sec. 1416–1a (Ban on domestic activities);

7. Testimony and other submissions by Department officials to Congress and administrative bodies;

8. Submissions by Department officials in court;

9. Testimony by Department officials in court (unless it contains new substantive information not covered by previously disseminated information subject to these guidelines).

10. Investigatory material compiled pursuant to U.S. law or for law enforcement purposes in the United States or abroad; or

11. Statements which are, or which reasonably may be expected to become, part of subpoenas or adjudicative processes, the subject of litigation, or other dispute resolution proceedings.

E. ''Quality'' is the encompassing term of which ''utility,'' ''objectivity,'' and ''integrity'' are constituents. VA applies these terms to the guidelines as follows:

1. ''Utility'' refers to the usefulness of the information to the intended users. VA will achieve utility by staying informed of information needs and developing new data, models, and information products where appropriate.

2. ''Objectivity'' focuses on whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased. VA will achieve objectivity by using reliable data sources and sound analytical techniques, and preparing information products that are carefully reviewed and use proven methods by qualified people. The objectivity standard will not override other compelling interests such as privacy, intellectual property, and other confidentiality protections.

3. ''Integrity'' refers to the protection of VA information from unauthorized, unanticipated, or unintentional access or revision to ensure that the information remains authentic and is not compromised. To ensure the integrity of information that the Department collects, administers, and disseminates, VA has implemented rigorous information security controls to protect its information systems and resources. VA protects the confidentiality of its sensitive information by implementing security policies, programs, and procedures mandated by Federal law and guidance. These Department-wide activities comply with the statutory requirements created to protect sensitive information gathered and maintained on individuals by the Federal Government. These requirements are contained in the following Federal information security laws and regulations:

- Clinger-Cohen Act of 1996.
- Computer Security Act of 1987 (Pub. L. 100–235).
- Government Information Security Reform Act (GISRA) (Pub. L. 106–398, Title X, Subtitle G).
- Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- OMB Circulars A–123, A–127, and A–130 and their appendices.
- Paperwork Reduction Act of 1995.
- Privacy Act of 1974.

F. ''Reproducibility'' means that information is capable of being substantially reproduced with essentially the same result, subject to an acceptable degree of imprecision or margin. With respect to analytical results, ''capable of being substantially reproduced'' means that independent analysis of the original or supporting data using identical methods would generate similar analytical results.

G. ''Transparency'' refers to the clear, obvious and precise nature of the information. When VA disseminates influential information, a high degree of transparency about data and methods will be maintained to facilitate its reproducibility by qualified third parties. Methods to implement VA's guidelines will be transparent by providing documentation, ensuring quality by reviewing underlying methods used in developing data, consulting (as appropriate) with experts and users, and keeping users informed about corrections and revisions.

[FR Doc. 02–24917 Filed 9–30–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
October 1, 2002

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 2930, et al.

Permits for Recreation on Public Lands; Final Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2930, 3800, 6300, 8340, 8370, and 9260

[WO–250–1220–PA–24 1A]

RIN 1004–AD25

Permits for Recreation on Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule updates the regulations of the Bureau of Land Management (BLM) that tell how to obtain recreation permits for commercial recreational operations, competitive events and activities, organized group activities and events, and individual recreational use of special areas. It establishes a new system for determining costs for reimbursement to BLM, helping to ensure a fair return to the public for special uses of the public lands. It adds new regulations on how to obtain Recreation Use Permits for fee areas, such as campgrounds, certain day use areas, and recreation-related services.

The final rule also meets the policy goal of reorganizing the regulations in a more systematic way. The rule relocates the regulations to the subchapter dealing with other land use authorizations, reorganizes them into an order that flows more logically, and simplifies the language.

The final rule is necessary for several reasons. First, it emphasizes and highlights the cost recovery requirements for issuing recreation permits. Second, it updates BLM regulations to reflect changes over the last 15 years in recreational activities and large-scale events. Third, it provides guidance and standards for use of developed recreation sites.

EFFECTIVE DATE: October 31, 2002.

ADDRESSES: You may send inquiries or suggestions to: Department of the Interior, Bureau of Land Management, Mail Stop WO–250, 1849 C St., NW., Attention: Lee Larson, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lee Larson at (202) 452–5168. Persons who use a telecommunications device for the deaf (TDD) may contact Mr. Larson by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background
II. Responses to Comments
III. Final Rule as Adopted
IV. Procedural Matters

I. Background

BLM published the regulations at 43 CFR part 8370 on September 12, 1978 (43 FR 40738). These regulations covered only Special Recreation Permits for use of lands other than developed recreation sites. BLM has reserved a separate subpart 8371 on use of fee areas and developed sites since 1978. BLM amended subpart 8372—Special Recreation Permits Other Than on Developed Recreation Sites—on August 29, 1984 (49 FR 34337), by defining ''actual expenses,'' by revising the section on ''Enforcement,'' by adding a section on exceptions to the Special Recreation Permit requirements, and by revising the section on ''Fees.'' They were amended again on March 31, 1988 (53 FR 10394), by adding a section on ''Appeals'' that allows appeals but places decisions in full force and effect pending appeal unless the Secretary of the Interior decides otherwise.

BLM published the proposed rule on Permits for Recreation on Public Lands in the **Federal Register** on May 16, 2000 (65 FR 31234). The proposed rule, while it revised and redesignated the entire subpart 8372 in the CFR, focused on how to obtain recreation permits for commercial recreational operations, competitive events and activities, organized group activities and events, and individual recreational use of special areas. It proposed a cost recovery system. It also proposed new regulations for campgrounds and other fee areas.

The period for public comment on the proposed rule expired on July 17, 2000. BLM received about 400 public comment letters or other communications during this comment period.

II. Responses to Comments

In this portion of the Supplementary Information, we will discuss the sections of the proposed rule upon which the public commented, or that need to be changed for some other reason. If we do not discuss a particular section or paragraph, it means that no public comments addressed the provision. However, we may change wording of other sections where we find clarification or style changes necessary or appropriate, and there is no other need for substantive amendment in the final rule.

Section 2931.3 Authorities

One comment suggested adding the Recreational Fee Demonstration Program authorization (Pub. L. 104–134) to the authorities listed. This program allows BLM to keep fees generated at recreational sites, through a permanent appropriation, in a special Treasury account that carries over from year to year. It also allows more innovative fee collection approaches, including cooperation with other Federal agencies and State and local government, and collection of fees where we had not collected them before.

This Program is a temporary program established by Congress. Unless Congress makes the authority permanent, we cannot cite it as authorization for general fee and permit regulations.

Section 2932.5 Definitions

Actual expenses. One comment addressed the definition of ''actual expenses.'' The comment suggested that insurance and bonding costs, contingency funds (that trip organizers may set up to replace lost or damaged equipment, for example), and amortization should be counted in the calculation to determine whether an activity is noncommercial because the participants share the expenses.

BLM will consider amortization when the equipment being used belongs to all of the participants rather than just one. Otherwise, one person is receiving a financial benefit from the trip, making the trip commercial. We agree that insurance covering a group for a specific activity may conceivably be a shared expense, and have amended the definition of ''actual expenses'' so that the regulations would not prevent that. BLM does not require bonds for noncommercial, noncompetitive outings. The regulations do not disqualify trips from being noncommercial because of contingency funds, so long as they are used to defray actual expenses of the activity or returned to the participants.

Commercial use. Several comments questioned the definition of ''commercial use.'' One stated that the definition was not clear and might lead BLM to determine that an outdoor retailer must obtain a Special Recreation Permit (SRP) if any of their customers used public land for recreation. The comment urged that the text be amended to provide that only persons providing goods and services or both on public lands, as opposed to retail outlets on private land, will need SRPs.

Some comments disagreed that public advertising should be a criterion for deciding whether an event or activity was commercial. They suggested that BLM define the term ''public advertising.'' Some wanted

announcements to members of organizations included in the definition while others wanted communications within groups to be specifically excluded.

Two comments addressed paragraph (1)(iv) of the definition of ''commercial use.'' One respondent found the paragraph ambiguous, unworkable, and dependant on the perception of the participant. The other comment supported the definition but suggested changing ''participants pay for'' to ''the permittee receives payment for.'' The comment stressed that the requirement should bind the permittee, not the participant. Our response to this comment is that the section is a definition. It does not itself impose requirements on any party. ''Participants pay for * * *'' is a good description of an action that would identify a use as commercial.

One comment suggested changing the definition to: ''Commercial use is providing goods or services on BLM administered lands and related waters for compensation of any kind.''

One comment agreed that the definition of ''commercial'' is appropriate, but stated that it should be modified to clarify that a fee or donation used to offset the administrative expenses of a trip program qualifies the activity as commercial in nature. Specifically, it urged that we add at the end of the sentence at (1)(ii): ''including compensation for administrative expenses associated with the activity, whether those expenses are paid by contribution or by trip fees.''

If the definition of ''commercial use'' is read in its entirety, the meaning is clear. It refers only to uses occurring on public lands and related waters. We have added language to the definition to make it clear that the commercial operator is the person or organization that leads or sponsors the activity, not the retailer who sells recreational equipment to the general public.

The common meaning of ''public advertising'' is generally well understood to include appeals and inducements to the general public through newspapers, broadcast media, Internet sites available to the general public, listing on public or community event calendars, publicly displayed signs, posters and flyers. Public advertising does not include communications within the known membership of an identifiable group. The proposed regulation specified but did not define ''public advertising.'' In the final rule, we have changed the definition of ''commercial use'' to specify that it is paid advertising that qualifies a use as commercial. We believe the suggestion in the comment to include announcements to group members in public advertising to be overly broad. If a private, social organization plans an activity on public land, information about the activity must be shared with the membership. This might take place in organization news letters, bulletins, posters in the club house, etc. All these communications tools could be considered advertising if we adopted the approach the comment suggested. Paid advertising outside the organization would be considered public advertising, but we do not consider that publicity such as a notice on a public bulletin board alone makes a trip commercial.

The definition as proposed provides an adequate description to allow BLM staff and members of the public to decide whether an activity is commercial.

The plain text of paragraph (1)(ii) is quite clear when it says that collection of a fee or other compensation that is not strictly a sharing of actual expenses or exceeds actual expenses incurred for the purposes of the activity, service or use, makes an event commercial. If an event organizer collects a fee to cover overhead or administrative costs, BLM would conclude that the use is commercial.

Organized group activity. We have amended the definition of ''organized group activity'' to make it clear that it covers only recreational use. See the discussion of section 2932.11, below, for an explanation.

Section 2932.11 When Do I Need a Special Recreation Permit?

Numerous comments addressed organized group permits.

Most of these comments were opposed to implementation of a group permit regulation. Most of them based their opposition on their interpretation of the definition of ''organized group activity,'' contending that, as written, it could require a permit for anyone wishing to use public lands anywhere at any time. Most also mentioned the right to freedom of assembly, contending that the proposed regulation abrogates that right.

Several comments supported the elimination of the 50-vehicle ceiling for permit waivers, but suggested another threshold for when BLM should require group permits. Several other comments suggested that this is a new requirement, and therefore is a major action that requires further review.

The definition of ''organized group activity'' in § 2932.5 clearly concerned many of the respondents. As proposed, the definition was:

''Organized group activity'' means a structured, ordered, consolidated, or scheduled meeting on or occupation of the public lands for the purpose of recreational or other use that is not commercial or competitive.

This definition does lend itself to the interpretation described by those who commented, by expanding the scope of the definition to include meetings and other non-recreational uses. We have amended the definition in the final rule to make it clear that it covers only recreational uses.

We have also amended § 2932.11 to provide that organizers of group events or activities need a permit only if required by a BLM management or activity plan or when we determine that resource concerns, potential user conflicts, or public health and safety concerns indicate that a permit is necessary. We have also amended the rule to treat small group events the same way we treat small competitive events. That is, we may waive the permit requirement (see § 2932.12) if an organized event is not commercial, not advertised, does not pose appreciable risks to people or the environment, and does not require special BLM management or monitoring.

Any threshold on the number of people making up a group that needs a permit would be difficult to establish on a national basis. BLM will determine the threshold, if any, for each area. (For example, 10 people in a sensitive riparian area may constitute an organized group, but a less sensitive upland area may be able to handle 200 people without special management attention.) BLM will base this determination on planning, resource concerns, potential user conflicts, public health and safety, or a combination of these factors.

The requirement for a group permit is not new. Our approach is similar to that of the National Park Service, which codified implementing regulations at 36 CFR 71.10 in 1974. BLM's authority for this type of permit is section 4 of the Land and Water Conservation Fund Act (LWCFA) of 1965 (16 U.S.C. 460*l*–1 *et seq.*).

One comment addressed the effect of the proposed rule on institutional groups. It suggested that the permit waiver requirements are overly broad, and would essentially prevent any institution from qualifying for a waiver for any type of use.

We may require academic, educational, scientific, and research groups to obtain a permit, depending

upon how they structure their trips. For example, if BLM determines that the institutional group is commercial use or if the primary purpose of a use is recreational, and academic aspects are incidental, we would not waive the permit requirement. If the use is noncommercial, the primary purpose is academic, the use supports management objectives, and BLM has either requested the institution to complete a project or study, or BLM can benefit from a project or study that the institution proposes and intends to complete if permitted, BLM could issue an administrative use authorization. BLM may issue permits to use special areas to institutional groups making noncommercial use of these areas on a cost sharing basis. Where BLM has allocated access to particular kinds of uses and numbers of trips through land use planning, we may award additional, non-allocated permits on a space available basis.

Section 2932.14 Do I Need a Special Recreation Permit To Hunt, Trap, or Fish?

A number of comments questioned why hunting, fishing, and trapping were singled out as activities not needing a permit. Some described this section as arbitrary and capricious for including only these uses, and not other, less consumptive uses. One comment noted that these uses still need a permit if they meet the requirements of commercial, competitive, or organized group permits. One comment concerned the requirement for guides involved in hunting, fishing, and trapping to acquire an SRP. The respondent suggested that the provision should indicate that the guide would need an SRP only if the guiding is taking place on public lands and related waters. The comment writer also wanted the rule to provide that drop-off or air taxi service would not require an SRP.

The intent of this section is to reiterate that hunting, fishing, and trapping primarily fall under the purview of the States. However, both the proposed rule and the final rule require a commercial enterprise that provides guide or outfitter service in support of hunting, fishing, or trapping to have a Special Recreation Permit. However, we have amended this provision to make it clear that if an organized group wished to go on a hunting trip on public lands, or someone wanted to hold a fishing tournament as a competitive event, BLM would require a Special Recreation Permit. The point of this amendment is that if the subject of an activity or event is hunting or fishing, it does not excuse the organizer or sponsor from obtaining a permit if the regulations otherwise require a permit because the event is commercial or competitive.

The title of the regulations, ''Part 2930—Permits for Recreation on Public Lands,'' limits the content of the regulations to permits for recreational use of public lands. For the purposes of brevity, we do not repeat the phrase, ''on public land and related waters,'' throughout the text.

Drop-off/pickup air taxi services that meet the definition of ''commercial use'' in § 2932.5 would need an SRP unless they had an airport lease or right of way for commercial use.

Section 2932.22 When Do I Apply for a Special Recreation Permit?

We received 6 comments that primarily addressed the requirement that applicants submit applications for Special Recreation Permits at least 180 days before their activities are to begin. Several other comments addressed this issue along with other concerns.

Most of these comments maintained that 180 days would be too far in advance, particularly for small competitive groups, or small organized groups and event sponsors, to have to apply.

Several of the comments also stated that it would not be fair to applicants to tell them as late as four months after they submitted their applications that we would not be able to issue a permit in time for their activity to take place, as provided in proposed § 2932.25.

On the other hand, none of the commercial outfitters who addressed this issue objected to the 180 day advance requirement.

While the preamble states that the local BLM office may provide for a shorter review period, this exception is not reflected in the regulation. The BLM handbook also specifies that we may be able to act on applications filed fewer than 180 days before your proposed activity or event.

We believe that 180 days is a reasonable requirement for permits that require environmental assessment beyond that already covered in a land use plan, programmatic EA, or categorical exclusion. If the proposed activity occurs in critical habitat for a threatened or endangered species, for example, BLM may have to engage in lengthy consultation with another agency. Therefore, we believe that the 180 day requirement reflects BLM's needs for most proposed competitive, commercial, and organized group or event activities. In some cases (for example, where there is great demand for access to the public lands), local offices may need to require that applications be submitted in advance of 180 days. This may happen when it is necessary to schedule a series of separate annual events on succeeding weekends. However, we have amended the provision in the final rule to make it clear that BLM may reduce the time requirement for events or activities that do not require extensive environmental documentation or consultation. We have also revised section 2932.25 to provide for earlier warning from BLM that permit application will require more than routine review.

Section 2932.24 What information Must I Submit With My Application?

Comments from the outfitter community suggested that we should amend § 2932.24(a)(3) by adding a provision for applications to include a statement of how the applicant's activity would contribute to the public's use and enjoyment of the land and resources that we manage.

While this information would be useful, and BLM would certainly consider it when evaluating an application (as provided in §2932.26), it is not necessary. Further, it might be misleading to make it a requirement for applications. Lack of a concrete public benefit does not disqualify an activity that is the object of a Special Recreation Permit application. We do not want to suggest in the regulations that a general public benefit is a prerequisite for obtaining a permit under these regulations.

Section 2932.31 How Does BLM Establish Fees for Special Recreation Permits?

A few comments that addressed this section did not recommend any change to the Proposed Rule. However, they strongly urged BLM to seek professional guidance from the appraisal industry, user groups, and others concerned with or affected by how fees will be determined, when we compile our fee schedules.

We concur with these comments, and plan such consultation. No change in the rule is necessary to respond to these comments.

More than 200 comments addressed the cost recovery provisions in paragraph (d) of this section (paragraph (e) in the final rule). About 20 of these came from outfitters and commercial operators. However, most of these comments came from participants in a single event, Burning Man in Nevada. Nearly all the comments opposed imposition of both cost recovery and use fees for the same permit. Several comments suggested that the 50 hour

threshold for charging cost recovery is too low, and suggested that cost recovery should be charged after 75–100 hours of BLM staff time, or 200 hours, in the case of some comments. Nearly all the comments from participants in the Burning Man event agreed that BLM should recover our administrative costs. However, they thought that BLM should not ''profit'' by charging both cost recovery and use fees, which many dubbed ''double dipping.''

Outfitters and commercial operators generally opposed cost recovery on permit renewals. Also, most of them raised the issue of how cost recovery should be applied in the case of multi-year permits.

Outfitters and several other respondents suggested that the costs of preparing programmatic environmental assessments (EAs) not be included in cost recovery charges, since the benefits fall to the general public and succeeding applicants, while the cost falls to one applicant.

There were a number of comments that asked us not to charge any fees for land which is publicly owned and already supported through taxes. Many of these comments also questioned whether BLM would wisely use the fees we collect.

BLM received its authority to seek cost recovery associated with issuing authorizations to use the public lands in 1976 from section 304(b) of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1734(b)). We selected the 50-hour threshold for charging full cost recovery because it is consistent with the BLM's Lands and Realty program, and is consistent with the approach of the U.S. Forest Service, which issues Special Use Permits to authorize general land uses as well as recreation. Cost recovery guidelines in Office of Management and Budget (OMB) Circular A–25 direct Federal agencies to limit cost recovery to situations when a service or privilege provides special benefits to an identifiable recipient, beyond those that accrue to the general public. Consequently, costs associated with development of programmatic EAs would not normally trigger cost recovery fee, because BLM does not assign them to the single initial applicant.

As to permit renewals, the practical effect of the rule as written, with its 50-hour threshold, is that permit renewals will not trigger cost recovery, unless you propose a substantial change in your operation that would require additional environmental analysis.

In response to the concerns expressed by the public about the appearance of double charging, we have made several changes in paragraph (e). These changes should have the effect of clarifying when cost recovery charges apply and when permit fees apply to commercial, competitive, and organized group activities or events. We separated cost recovery requirements for commercial use from competitive or organized group/event use. We did this to distinguish between the commercial fee that BLM assesses for the privilege of using the public lands for a business, versus the need to assess cost recovery for either type of use to help pay for the preparation of an authorization and for its administration.

- The costs would have to reach the threshold in one year for cost recovery to be invoked on a multi-year permit;
- We specifically exclude programmatic or general land use plan documentation from cost recovery, except if the documentation work has been done because of or to benefit a specific applicant;
- In cases where we charge for cost recovery for recreational events (as opposed to commercial use), the final rule provides that the charges will be in place of permit fees.
- In some cases where we would normally charge for cost recovery, we may elect to charge a permit fee instead of cost recovery if the permit fee is greater than cost recovery would be.

Section 2932.33 When Are Fees Refundable?

Comments from the outfitter community suggest removing the prerequisite that BLM actually award a permit to someone else before we refund fees to an applicant who cancels or reduces his or her application for a Special Recreation Permit. They suggest that the standard should be whether the outfitter relinquished the use in time to make it available to others, not whether others have actually applied for the use and the agency is able to award it. (Note that this provision pertains to fees, not cost recovery requirements.)

We agree with the comment and have removed the words ''and we are able to award such use.'' The sentence in question only applies to areas where use is allocated to commercial or non-commercial use or both. An area where recreation use has been ''allocated'' is an area where demand has outstripped supply, or use needs to be restricted to protect the resources. Management or operations plans for allocated areas will determine the amount of time BLM would normally need to reallocate your use, and thus the deadline for you to notify us and qualify for a refund or credit. However, whether to provide a refund is at the discretion of BLM.

Section 2932.34 When May BLM Waive Special Recreation Permit Fees?

One comment stated that this section made it too easy for organizers of activities that the comment described as clearly commercial to obtain fee waivers. The comment urged that organizers of activities that are commercial in nature should not be able to avoid paying fees merely because the users have certain characteristics, or label themselves in certain ways.

The language in the proposed rule was very similar to that in the previous regulation at 43 CFR 8372.4(c)(2)–(3), which directed that BLM not assess fees for scientific and educational outings. In the proposed rule, we attempted to clarify this provision to eliminate the possibility that recreational outings may obtain a fee waiver because they have educational aspects, such as a professor accompanying a group of tourists to explain the geology or history of an area. As a practical matter, BLM has granted very few fee waivers under this authority. An applicant's status as an academic, scientific, research, or therapeutic institution is not, by itself, a basis for waiving fees. BLM has a responsibility to evaluate proposals to determine whether fee waivers are warranted. A professor proposing to take students onto public lands for research or study for academic credit would qualify for a waiver under this regulation. However, groups proposing activities meeting the definition of commercial use would not be granted fee waivers if they merely belong to an academic, scientific, research, or therapeutic institution. The key factor is whether the activity itself, rather than the sponsoring institution, qualifies for a waiver. We did not amend this provision in the final rule.

Section 2932.42 How Long Is My Special Recreation Permit Valid?

A comment from a trade association representing outfitters recommended that, considering the investment required by outfitters, the maximum term for SRPs should be 10 years, unless BLM finds that special circumstances require a shorter period.

As a practical matter, the renewal and transfer policies contained in the proposed rule improve tenure over that provided in the previous regulations. Section 2932.51 makes it clear that BLM will renew a permit if it is in good standing and consistent with our land use plans and policies, and if the permittee has a satisfactory record of performance. This regulation follows

existing BLM policy on permit renewal and transfers. Regardless of the term of the permit, BLM may cancel or amend it for cause as described in 2932.56.

However, BLM recognizes that the maximum of a 5-year permit is a matter of concern for the outfitting and guiding community. Elsewhere in today's **Federal Register** appears a proposed rule that would change the maximum term for a Special Recreation Permit to 10 years. Because this is a substantial change that was not discussed in the proposed rule, it is necessary and appropriate to allow a period of time for public comment.

Section 2932.43 What Insurance Requirements Pertain to Special Recreation Permits?

We received fewer than 10 comments addressing insurance and bonding issues. Outfitters and commercial interests generally supported the insurance requirements as they relate to their activities. However, other comments addressed bonding or insurance requirements for organized group activities or events. One comment was opposed to any insurance or bonding requirement. The others suggested changes to ensure that the requirements are based on the kind of event or activity for which BLM is issuing permits. According to these comments, there are many types of group activities or recreation events that may require a permit, but for which insurance or bonding should not be necessary because the event or activity poses no risk to participants or the environment. One respondent suggested that BLM establish criteria for when we would waive insurance and bonding requirements. Two comments suggested that any requirement for insurance for small groups would be onerous and would force small groups or events to either proceed without authorization (and risk prosecution) or cancel their proposed activity or event.

One comment suggested that there should not be an exception excusing vendors from obtaining insurance, and one comment suggested that BLM impose fines and penalties on permittees that cause environmental degradation or other damage rather than require insurance or bonding for possible damages occurring under an organized group or event Special Recreation Permit.

One comment suggested insurance coverage requirements should be published and updated in the same fashion as fees.

This section of the proposed rule was essentially unchanged from the previous regulations in subpart 8372. We added the provision that BLM may require insurance or bonding for organized groups or events, leaving the final decision on insurance and bonding requirement for groups and events to the BLM. We realize and agree that many small scale activities and events will not and should not require insurance or bonding, but do not believe it is reasonable to establish national criteria for waiving insurance requirements.

BLM's Special Recreation Permit Handbook, which will be available in field offices and on the internet soon after the effective date of this final rule, will contain criteria for our determination of minimum insurance coverage requirements. The amounts of coverage we require vary based on the risk involved in the activity. That risk depends on the nature of the activity, the conditions where the activity will take place, the number of participants, skill level of the participants, and risk management implemented by the permittee. In other words, the local BLM office administering the event can best determine what coverage you need, as opposed to BLM headquarters setting limits on a national basis. Our actual experience is that most permittees carry more insurance than BLM would normally require.

As written, the exception for vendors is not a blanket exception. Rather, it gives the BLM the discretion to require insurance for vendors when necessary. Not all vending poses risks to the public (tee-shirt sales, for example), while others (such as food sales) will require insurance.

Imposition of fines and penalties on permittees who cause damage, rather than requiring up-front insurance or bonding, would not assure the public that its interests are being protected. Fines are often uncollectible. Civil judgments are difficult to obtain and collect. Damage repair in such cases would at best take longer.

Section 2932.52 How Do I Apply for a Renewal?

Some comments expressed concern about the requirement in the proposed rule that an application for renewal be made ''in the same form as for a new permit.'' The concern is the regulation may imply a full, ''from scratch'' evaluation.

That is not the intent, and we have amended the text to say ''on the same form.'' You must file renewals on the SRP application form, and should file updates to operations plans at the same time. You need only write ''unchanged'' on the parts of the form where permit needs and other information have not changed. We expect that processing renewals will be much less involved than issuing new permits. For example, an application to continue a previously approved use usually does not require preparation of a new NEPA document. However, if field conditions have changed, we may need to conduct new environmental analyses.

Section 2932.54 When May I Transfer My Special Recreation Permit to Other Individuals, Companies, or Entities?

Comments from the outfitting community expressed concern that the language in this section may provide an avenue for a local manager to reduce or destroy the market value of an outfitting company by denying transfers or withholding approval of certain transfers to target specific operations or styles of operations.

BLM recognized the need for guidance on transfers and published its national Special Recreation Permit Policy in 1984 (49 FR 5300, February 10, 1984), which, among other things, authorized transfers. We process transfers under the following guidelines:

1. You must provide adequate documentation to BLM that you intend a bona fide business transfer or sale. The transfer or sale must include a substantial portion of the equipment and other tangible assets needed to conduct a business. BLM will not approve any attempted transfer or sale of authorized use alone.

2. The previous permittee generally should have operated at an acceptable standard for at least one full year.

3. BLM will evaluate the proposed business sale and transfer the permit privileges to a qualified buyer, if—

- The transfer is consistent with planning decisions; and
- The proposed sale includes tangible property necessary to conduct the activities authorized.

4. The proposed permittee must provide a written operation plan to BLM, including any anticipated operational changes from the present permittee.

This section of the final rule codifies and improves BLM's policy on permit transfers.

The discussion in the preamble of the May 16, 2000, proposed rule stated that BLM will allow a transfer as long as you meet the requirements of this section. This policy, that we will approve a permit transfer only if the business or a substantial part of it is sold, continues in this final rule.

Section 2932.55 When Must I Allow BLM To Examine My Permit Records?

One comment stated the section was overreaching, saying that it would attempt to authorize BLM to obtain

privileged material from attorneys, accountants, and other professionals.

The intent of the rule is to allow the BLM to meet its legislative and regulatory requirements in FLPMA, LWCFA, and OMB Circular A–25. For BLM to meet its legislative requirements to protect natural resources and to help ensure public health and safety, we issue stipulations with each permit. We use monitoring and an evaluation process to help us ensure that permittees provide the public with qualified, experienced guides. It also helps to ensure that the permittee follows permit stipulations to protect natural and cultural resources. Finally, audits help ensure that the public receives fair compensation from businesses conducted on public lands by allowing us to review the financial aspects of their permit operations and make sure adequate fees are paid. OMB Circular A–25 emphasizes this requirement. We need to ensure that BLM has access to records regardless of the entity that physically possesses them. BLM would certainly respect items covered by attorney/client and other privileges. It is up to you or your attorney to assert that privilege if and when BLM requests documents you believe to be privileged. Accounting records relating to the SRP are precisely the types of information the BLM would seek to review. Such confidential information may be protected from public disclosure under the Freedom of Information Act (5 U.S.C. 551 *et seq.*). BLM would protect it to the extent allowable by law.

Section 2932.56 When will BLM Amend, Suspend, or Cancel My Permit?

Several comments suggested removing the third reason for altering a permit, protection of the environment. These respondents found the requirement to be vague, given the contentious nature of determining carrying capacities of the land and associated waters and the environmental effects of various activities. The comments suggested that BLM should be obligated to perform some level of investigation or analysis to ensure that the outfitters' actions are responsible for undesired environmental impacts before imposing the sanctions provided for in this section.

BLM will not amend, suspend, or cancel a permit without a good reason. Doing so would be arbitrary and capricious, and could not bear the scrutiny of administrative or judicial review. BLM will only alter a permit for environmental protection reasons after we perform a thoroughly documented analysis and the permittee has an opportunity to review it. The provision needs to remain in the regulations. Protecting the public lands from unnecessary or undue degradation is a core duty of BLM and we would be remiss in not including environmental considerations as a basis for modifying a permit. The same reasoning applies to suspensions and cancellations of permits.

BLM may suspend or amend a permit if—

- There is a problem with public safety;
- There are clear violations of permit stipulations to protect public safety or the environment; or
- Resource or legal conditions change during the permit period (for example, a threatened or endangered species listing occurs that affects the permit area).

The BLM will use the annual evaluation process to determine whether there is any failure to perform or any violation of a permit that would lead to canceling a permit. If the reason for the adverse action is out of your control, (such as the endangered species listing just mentioned) BLM will consult with you to come to an amicable solution, if possible. Administrative procedures are always available to a permittee affected by an adverse action. This includes appeal to IBLA under 43 CFR part 4, specifically § 4.410, and any other administrative remedy applicable to the permittee.

One comment suggested that BLM should have authority to suspend a permit or deny a new application for a permit because of violations of similar stipulations on another permit.

We agree with this comment. We have amended § 2932.56(b)(2) by removing the final phrase, ''while exercising your privileges under your Special Recreation Permit.'' This removes the requirement that your disqualifying conduct is specific to the subject permit, rather than to any similar permit. Further, any action that violates environmental or natural resource law may also be disqualifying, whether you have a permit or not.

Issuing permits to individuals who have histories of violating the conditions of their permits is an ongoing problem for all Federal agencies. Additional authority is necessary to deny permits to individuals or companies that have habitually violated permit conditions. Authority is needed to deny permits to individuals that have had permits canceled by other agencies and to those individuals who have a demonstrated history of willful destruction of private, state, or Federal properties, especially in relation to natural, cultural, and historical resources. We have had a number of former permittees who have had permits canceled for cause by one BLM office, or by another agency, who subsequently apply for and receive a BLM permit from another office, only to cause similar problems in the new area. BLM needs authority to stop this from occurring. It is our responsibility, as a regulatory agency, to give the public a reasonable assurance that businesses operating on the public lands are responsible and have a sense of stewardship and the duty of care for the lands they operate on and the clients they serve and who provide a safe and high quality experience to the public requesting these kinds of services.

Several comments addressed the language at paragraph (c): ''If we suspend your permit, your responsibilities under the permit would continue during the suspension.'' In certain situations, it may be necessary for BLM to suspend assigned authorized use for a period of time. Examples of such instances include periods of high fire danger, flood conditions or high water, presence of health hazards, or high likelihood of degradation of environmental resources. These situations are usually temporary and will not normally extend the life of the permit. Situations could arise where only a portion of a permit would be suspended, and BLM would allow the permittee to continue operating in the areas not subjected to the suspension; in such cases permit obligations would continue. These suspensions may not have any affect on the reporting requirements, payment of fees, or expiration date of the permit.

III. Final Rule as Adopted

This portion of the Supplementary Information describes and explains section-by-section changes we have made in the final rule that were not prompted by public comments. The changes recognize—

- Longstanding field practice,
- Statutory law,
- Need for internal consistency in the final rule,
- Need for improved clarity in the regulations, or
- Some combination of these factors.

Section 2932.12 When May BLM Waive the Requirement To Obtain a Permit?

We have revised paragraph (c)(5) in the final rule. This paragraph states the final criterion for waiving the permit requirement for competitive events. We added the lack of need for specific

management by BLM personnel as a reason for waiving the permit requirement.

This change makes the text for competitive events consistent with the text changes resulting from public comment for organized group or event use. It recognizes that some competitive events are so small that they have such inconsequential effects that we do not need to exercise any control over them. The ''requires no specific management'' wording makes it clear that BLM recognizes no need to make any on-site management changes, *e.g.*, closing a recreation site to public use because it is reserved for an event. An example might be a Boy Scout orienteering competition with a limited number of participants. Although it would be technically competitive, it would not be commercial, award cash prizes, advertise, or appreciably affect the environment. It probably would not require monitoring under paragraph (c)(5), and in most circumstances would not require BLM management action before, during, or after the event. The local BLM manager would have discretion in this case to require or waive the permit, perhaps requiring one if only to be aware that there are a certain number of children on the public lands in a particular area, and possibly needing protection or rescue.

Section 2932.34 When May BLM Waive Special Recreation Permit Fees?

We have amended this section to make it clear that to have a fee waiver approved for educational, scientific, or research uses, you must be an accredited institution. Without this change, the provision would be unnecessarily vague.

Section 2932.52 How Do I Apply for a Renewal?

We have amended paragraph (b) by removing the requirement that BLM ''establish and publish deadlines for submitting renewal applications.'' Instead, establishment of such deadlines for submitting renewal applications will be discretionary with the local BLM manager.

This change relieves BLM of the unnecessary burden of publishing deadlines for renewal applications in the **Federal Register** or newspapers. BLM mostly communicates directly with permittees, and if the renewal deadline is not stated in the original permit, we will alert the permittee as the deadline approaches. There is no need to publish application deadlines for renewal of permits. The change is also consistent with current language in the Special Recreation Permit Manual/Policy Statement and Handbook.

Section 2932.54 When May I Transfer My Special Recreation Permit to Other Individuals, Companies, or Entities?

BLM has amended paragraph (b) of this section to make it clear that the transferee must meet all BLM requirements, including the payment of fees, before we will allow a transfer and issue a new SRP. Read in isolation, the proposed rule provision seemed to require only the payment of fees. The revised provision makes it clear that a transferee must meet all BLM requirements before we will allow a permit to be transferred.

Section 2932.57 Prohibited Acts and Penalties

We have added two provisions to the list of Prohibited acts. The first prohibits permittees from interfering with other users of the public lands. The second prohibits refusal to disperse when BLM has suspended or canceled a permit.

The first of these is based on 43 CFR 9239.2–5, which in turn implements an 1885 law prohibiting interference with persons using or traveling on public lands (23 Stat. 322; 43 U.S.C. 1063). The second addition is similar to a prohibited act already in the recreation regulations at §8365.1–4, which prohibits failure to disperse when directed by BLM. The prohibitions, in other words, are not new in this rule, and would apply to special recreation permittees whether they appear in part 2930 or not.

We have also made changes in the penalty provisions of paragraph (b) of this section. Paragraph (b)(1) is amended to refer to the penalties in 18 U.S.C. 3571 as well as FLPMA.

This will ensure that the fines that became applicable in 1987 under the alternative fines section in the U.S. Criminal Code are applicable. Also, any future increases in fines will also be applicable because they most likely will be increased in section 3571.

We also have added a new paragraph (b)(3) that imposes the penalties in 18 U.S.C. 3571 on failing to obtain any permit or pay any fee required in subpart 2932, pursuant to the Land and Water Conservation Fund Act, as amended.

This amendment places in subpart 2932 the penalty provisions already found in §9268.3(e)(1) of BLM's law enforcement regulations. This is needed to allow us to apply criminal penalties provided by the Land and Water Conservation Fund Act and to ensure that we have access to those infraction level penalties in locations where the class A misdemeanor penalty may lead to procedural problems.

Subpart 2933—Recreation Use Permits for Fee Areas

Recreation use permits (RUP) are authorizations for short term recreational use of developed facilities, equipment, services, or specialized sites furnished at Federal expense. RUPs are most frequently used in BLM to authorize individual and group recreational use of these sites. Sites that charge a fee meet the fee criteria established by the LWCFA, as amended. BLM issues RUPs to ensure that the people of the United States receive a fair and equitable return for the use of these facilities and to help recover the cost of construction, operation, maintenance, administration, and management of the permits.

BLM has been able to administer and manage these types of sites through fee provisions in the LWCFA, 36 CFR Part 7, and policy. Keeping up with the growing demands of users and the complexity of uses, their compatibility or lack thereof, and conflicting types and amounts of use, is becoming more difficult without regulations. The purpose of this rule is to allow BLM to notify the public in a more detailed and formal way of our policies and the laws and regulations for administering and managing these areas.

This subpart codifies a permit system pertaining to ''fee areas'' on public lands managed by BLM. Fee areas are sites that provide specialized facilities, equipment, or services related to outdoor recreation. These include areas that are developed by BLM, receive regular maintenance, may have on-site staffing, and are supported by Federal funding. Not all fee areas necessarily have all of these attributes. Examples of fee areas are campgrounds that include improvements such as picnic tables, toilet facilities, tent or trailer sites, and drinking water; and specialized sites such as swimming pools, boat launch facilities, guided tours, hunting blinds, and so forth. The provisions in these regulations are codifications of existing procedures and policies. They are designed to allow the most efficient administration possible of the permit system, and the easiest access by the public.

The provisions in this subpart did not attract public comments. However, we have found it necessary to add a section on prohibited acts and penalties. We will propose this new section in a new proposed rule after publication of this final rule.

Cross-references

Finally, the final rule changes cross-references in other parts of Title 43 from subpart 8372 to part 2930.

IV. Procedural Matters

The principal author of this final rule is Lee Larson of the Recreation Group, Washington Office, BLM, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and was not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

During fiscal year 1996, BLM issued just over 21,000 Special Recreation Permits, with revenues totaling a little over $1.5 million deposited into the Land and Water Conservation Fund (LWCF). During fiscal year 1997, BLM issued just over 32,000 Special Recreation Permits, with revenues totaling about $2.9 million, of which nearly $1.9 million was deposited into the LWCF with the balance attributed to the Fee Demonstration Project and other miscellaneous accounts. During fiscal year 1998, BLM issued just over 37,500 such permits, and collected just over $4.8 million in fees, of which nearly $1.6 million was deposited into the LWCF, with the balance attributed to the Fee Demonstration Project and other miscellaneous accounts. (These numbers are derived from the Public Land Statistics; the variety of laws directing the revenues to numerous funds accounts for different average fees from year to year. We give these numbers to illustrate that the revenues charged under BLM's recreation program are minuscule compared with those realized by the overall national recreation industry.) Special Recreation Permits are generally obtained by commercial outfitters and guides (about 2,500), river running companies (about 800), sponsors of competitive events (about 1,000), ''snow bird'' seasonal mobile home campers who use BLM's long term visitor areas (about 14,000), and private individuals and groups using certain special areas. Under current regulations, use fees are to be collected according to a schedule established by the Director, BLM, and published periodically in the **Federal Register**. BLM may charge actual costs if they exceed the fee on the schedule. The schedule is based on 3 percent of the gross annual receipts of the permittee or an $80 flat annual fee, whichever is greater. Snow birds pay a flat seasonal fee of $100. The flat annual fee for commercial outfitters and guides is adjusted periodically in line with the Implicit Price Deflator. The final rule provides for use fees to equal fair market value, which can be determined through comparative market analysis, competitive bidding, or other means. The State of Colorado charges river outfitters 5 percent of gross receipts to run trips on the Arkansas River, which features the Royal Gorge. This may be an indication of the type of fee increase that may be phased in under the final rule. BLM will determine fair market values for outfitter permits on a local or regional level, based on comparative market analyses and considering public input.

During fiscal year 1996, BLM issued over 116,000 Recreation Use Permits for use of fee sites, with revenues totaling about $600,000. During fiscal year 1997, BLM issued about 184,000 Recreation Use Permits for use of fee sites, with revenues totaling about $705,000. During fiscal year 1998, BLM issued about 280,000 Recreation Use Permits for use of fee sites, with revenues totaling about $1.3 million. The cost of such a permit averaged just over $5.00 for 1996, just under $4.00 for 1997, and a little over $4.60 for 1998. The final rule allows BLM to charge fees based on the types of services or facilities provided at the fee site, the cost of providing them, and fees charged by public and private entities at similar sites nearby. Changes caused by this rule are not quantifiable in this document, but will not result in charges greater than fair market value. Any increase in prices for these users would have to have economic consequences of hundreds of dollars per permit for the effect on the economy to total $100 million, the threshold for a major rule in the Executive Order.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). According to the president of the American Recreation Coalition, outdoor recreation is a $350 billion industry made up of small businesses. As stated in the previous section, BLM fees collected for Special Recreation Permits in fiscal year 1997 were about $2.9 million. BLM revenues collected thus amounted in that year to less than 1/1,000 of 1 percent of the gross industrial revenues, and not all of the BLM revenues were collected from commercial recreationists. The results in other years are similar. BLM considers that increases in these fees to fair market value could not create a significant impact on the outdoor recreation industry. However, BLM recognizes that most commercial recreation enterprises—outfitters, guides, river-running companies, local retail outlets—are small businesses, and that about 3,500 of them annually hold BLM commercial or competitive permits. For these reasons, any changes in fees to fair market value will be phased in, and fees will be set locally and only after opportunity for public participation leading to decisions on fair market value.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

Does not have an annual effect on the economy of $100 million or more. See the discussion under Regulatory Planning and Review, above.

Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule will have no effect on the 3 percent basic use fee that BLM's fee schedule (set by the 1984 policy, not regulations) requires outfitters to pay. The rule imposes cost recovery requirements provided for in section 304 of FLPMA (43 U.S.C. 1734), and in the Land and Water Conservation Fund Act (16 U.S.C. 460*l et seq.*, 460*l*–5), and Office of Management and Budget Circular No. A–25. The cost increases under this rule will be de minimus in the context of the entire outdoor recreation industry, and even in the context of the small proportion of it that uses public lands managed by BLM. See the discussion above under Regulatory Flexibility Act.

Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to

compete with foreign-based enterprises. The adjustment of user fees to fair market value and the implementation of cost recovery should not affect the ability of mostly small businesses evenly treated to compete with one another. Recreationists are not likely to be driven to foreign recreation markets by finding an increase in user fees in the western part of this country, due to the insignificance of such increases compared to the costs of travel to comparable foreign recreation destinations. Much recreation equipment is manufactured in foreign countries, but it is sold by small business retailers in this country. The adjustment of user fees to fair market value should not affect buyers' choice of foreign versus domestic made equipment.

The Small Business Administration established the Small Business and Agricultural Regulatory Enforcement Ombudsman and ten Regional Fairness Boards to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman annually evaluates these enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on enforcement aspects of this rule, you may call 1–888–734–4247.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The rule has no effect on governmental or tribal entities. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. While the final rule provides for permits to be canceled under certain circumstances, including violations of law or regulations, or failure to comply with permit stipulations, and while for some commercial permittees a Special Recreation Permit may be essential to the exercise of property rights in a business, the rule does not allow such a forfeiture without due process of law. A takings implications assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule does not preempt State law.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. The rule does not limit land use by energy companies. It applies only to permits for recreational use of public lands, how BLM issues and administers them.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in the proposed rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1004–0110. The section of this final rule with information collection requirements is section 2932.24, and BLM estimates the public reporting burden of this section to average, respectively, one-half hour per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, Bureau of Land Management, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 401–LS, Washington, DC 20240, and Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: 1004–0110.

National Environmental Policy Act

Based on an environmental assessment approved May 5, 2000, we have determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

List of Subjects

43 CFR Part 2930

Penalties; Public lands; Recreation and recreation areas; Reporting and recordkeeping requirements; Surety bonds

43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas

43 CFR Part 6300

Penalties, Public lands, Reporting and recordkeeping requirements, Wilderness areas.

43 CFR Part 8340

Public lands, Recreation and recreation areas, Traffic regulations

43 CFR Part 8370

Penalties; Public lands; Recreation and recreation areas; Reporting and recordkeeping requirements; Surety bonds

43 CFR Part 9260

Continental shelf, Forests and forest products, Law enforcement, Penalties, Public lands, Range management, Recreation and recreation areas, Wildlife.

Dated: July 8, 2002.

Rebecca W. Watson,

Assistant Secretary of the Interior.

For the reasons explained in the preamble, and under the authority of 43 U.S.C. 1740, chapter II, subtitle B of title 43 of the Code of Federal Regulations is amended as follows:

1. Part 2930 is added to read as follows:

PART 2930—PERMITS FOR RECREATION ON PUBLIC LANDS

Subpart 2931—Permits for Recreation; General

Sec.

2931.1 What are the purposes of these regulations?
2931.2 What kinds of permits does BLM issue for recreation-related uses of public lands?
2931.3 What are the authorities for these regulations?
2931.8 Appeals.
2931.9 Information collection.

Subpart 2932—Special Recreation Permits for Commercial Use, Competitive Events, Organized Groups, and Recreation Use in Special Areas

2932.5 Definitions.
2932.10 When you need Special Recreation Permits.
2932.11 When do I need a Special Recreation Permit?
2932.12 When may BLM waive the requirement to obtain a permit?
2932.13 How will I know if individual use of a special area requires a Special Recreation Permit?
2932.14 Do I need a Special Recreation Permit to hunt, trap, or fish?
2932.20 Special Recreation Permit applications.
2932.21 Why should I contact BLM before submitting an application?
2932.22 When do I apply for a Special Recreation Permit?
2932.23 Where do I apply for a Special Recreation Permit?
2932.24 What information must I submit with my application?
2932.25 What will BLM do when I apply for a Special Recreation Permit?
2932.26 How will BLM decide whether to issue a Special Recreation Permit?
2932.30 Fees for Special Recreation Permits.
2932.31 How does BLM establish fees for Special Recreation Permits?
2932.32 When must I pay the fees?
2932.33 When are fees refundable?
2932.34 When may BLM waive Special Recreation Permit fees?
2932.40 Permit stipulations and terms.
2932.41 What stipulations must I follow?
2932.42 How long is my Special Recreation Permit valid?
2932.43 What insurance requirements pertain to Special Recreation Permits?
2932.44 What bonds does BLM require for a Special Recreation Permit?
2932.50 Administration of Special Recreation Permits.
2932.51 When can I renew my Special Recreation Permit?
2932.52 How do I apply for a renewal?
2932.53 What will be my renewal term?
2932.54 When may I transfer my Special Recreation Permit to other individuals, companies, or entities?
2932.55 When must I allow BLM to examine my permit records?
2932.56 When will BLM amend, suspend, or cancel my permit?
2932.57 Prohibited acts and penalties.

Subpart 2933—Recreation Use Permits for Fee Areas

2933.10 Obtaining Recreation Use Permits.
2933.11 When must I obtain a Recreation Use Permit?
2933.12 Where can I obtain a Recreation Use Permit?
2933.13 When do I need a reservation to use a fee site?
2933.14 For what time may BLM issue a Recreation Use Permit?
2933.20 Fees for Recreation Use Permits.
2933.21 When are fees charged for Recreation Use Permits?
2933.22 How does BLM establish Recreation Use Permit fees?
2933.23 When must I pay the fees?
2933.24 When can I get a refund of Recreation Use Permit fees?
2933.30 Rules of conduct.
2933.31 What rules must I follow at fee areas?
2933.32 When will BLM suspend or revoke my permit?

Authority: 43 U.S.C. 1740; 16 U.S.C. 460*l*–6a.

PART 2930—PERMITS FOR RECREATION ON PUBLIC LANDS

Subpart 2931—Permits for Recreation; General

§ 2931.1 What are the purposes of these regulations?

The regulations in this part—

(a) State when you need a permit to use public lands and waters for recreation, including recreation-related business;

(b) Tell you how to obtain the permit;

(c) State the fees you must pay to obtain the permit; and

(d) Establish the framework for BLM's administration of your permit.

§ 2931.2 What kinds of permits does BLM issue for recreation-related uses of public lands?

The regulations in this part establish permit and fee systems for:

(a) Special Recreation Permits for commercial use, organized group activities or events, competitive use, and for use of special areas; and

(b) Recreation use permits for use of fee areas such as campgrounds and day use areas.

§ 2931.3 What are the authorities for these regulations?

(a) The statutory authorities underlying the regulations in this part are the Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and the Land and Water Conservation Fund Act, as amended, 16 U.S.C. 460*l*–6a.

(1) The Federal Land Policy and Management Act (FLPMA) contains the Bureau of Land Management's (BLM's) general land use management authority over the public lands, and establishes outdoor recreation as one of the principal uses of those lands (43 U.S.C. 1701(a)(8)). Section 302(b) of FLPMA directs the Secretary of the Interior to regulate through permits or other instruments the use of the public lands, which includes commercial recreation use. Section 303 of FLPMA contains BLM's authority to enforce the regulations and impose penalties.

(2) The Land and Water Conservation Fund (LWCF) Act, as amended, authorizes BLM to collect fees for recreational use (16 U.S.C. 460*l*–6a(a), (c)), and to issue special recreation permits for group activities and recreation events, and limits the services for which we may collect fees (16 U.S.C. 460*l*–6a(a), (b), (g)).

(3) The Sentencing Reform Act (18 U.S.C. 3571) is the authority for the possible penalties for violations of these regulations.

(b) The regulations at 36 CFR part 71 require all Department of the Interior bureaus to use the criteria in that part to set recreation fees. These criteria are based on the LWCF Act and stated in §§ 71.9 and 71.10 of that part.

§ 2931.8 Appeals.

(a) If you are adversely affected by a decision under this part, you may appeal the decision under parts 4 and 1840 of this title.

(b) All decisions BLM makes under this part will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted under § 4.21(b) of this title.

§ 2931.9 Information collection.

The information collection requirements in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0119. BLM will use the information to determine whether we should grant permits to applicants for Special Recreation Permits on public lands. You must respond to requests for information to obtain a benefit.

Subpart 2932—Special Recreation Permits for Commercial Use, Competitive Events, Organized Groups, and Recreation Use in Special Areas

§ 2932.5 Definitions.

Actual expenses means money spent directly on the permitted activity. These may include costs of such items as food, rentals of group equipment, transportation, and permit or use fees. Actual expenses do not include the rental or purchase of personal equipment, amortization of equipment, salaries or other payments to participants, bonding costs, or profit.

Commercial use means recreational use of the public lands and related waters for business or financial gain.

(1) The activity, service, or use is commercial if—

(i) Any person, group, or organization makes or attempts to make a profit, receive money, amortize equipment, or obtain goods or services, as compensation from participants in recreational activities occurring on public lands led, sponsored, or

organized by that person, group, or organization;

(ii) Anyone collects a fee or receives other compensation that is not strictly a sharing of actual expenses, or exceeds actual expenses, incurred for the purposes of the activity, service, or use;

(iii) There is paid public advertising to seek participants; or

(iv) Participants pay for a duty of care or an expectation of safety.

(2) Profit-making organizations and organizations seeking to make a profit are automatically classified as commercial, even if that part of their activity covered by the permit is not profit-making or the business as a whole is not profitable.

(3) Use of the public lands by scientific, educational, and therapeutic institutions or non-profit organizations is commercial and subject to a permit requirement when it meets any of the threshold criteria in paragraphs (1) and (2) of this definition. The non-profit status of any group or organization does not alone determine that an event or activity arranged by such a group or organization is noncommercial.

Competitive use means—

(1) Any organized, sanctioned, or structured use, event, or activity on public land in which 2 or more contestants compete and either or both of the following elements apply:

(i) Participants register, enter, or complete an application for the event;

(ii) A predetermined course or area is designated; or

(2) One or more individuals contesting an established record such as for speed or endurance.

Organized group activity means a structured, ordered, consolidated, or scheduled event on, or occupation of, public lands for the purpose of recreational use that is not commercial or competitive.

Special area means:

(1) An area officially designated by statute, or by Presidential or Secretarial order;

(2) An area for which BLM determines that the resources require special management and control measures for their protection; or

(3) An area covered by joint agreement between BLM and a State under Title II of the Sikes Act (16 U.S.C. 670a *et seq.*)

Vending means the sale of goods or services, not from a permanent structure, associated with recreation on the public lands or related waters, such as food, beverages, clothing, firewood, souvenirs, photographs or film (video or still), or equipment repairs.

§ 2932.10 When you need Special Recreation Permits.

§ 2932.11 When do I need a Special Recreation Permit?

(a) Except as provided in § 2932.12, you must obtain a Special Recreation Permit for:

(1) Commercial use, including vending associated with recreational use; or

(2) Competitive use.

(b) If BLM determines that it is necessary, based on planning decisions, resource concerns, potential user conflicts, or public health and safety, we may require you to obtain a Special Recreation Permit for—

(1) Recreational use of special areas;

(2) Noncommercial, noncompetitive, organized group activities or events; or

(3) Academic, educational, scientific, or research uses that involve:

(i) Means of access or activities normally associated with recreation;

(ii) Use of areas where recreation use is allocated; or

(iii) Use of special areas.

§ 2932.12 When may BLM waive the requirement to obtain a permit?

We may waive the requirement to obtain a permit if:

(a) The use or event begins and ends on non-public lands or related waters, traverses less than 1 mile of public lands or 1 shoreline mile, and poses no threat of appreciable damage to public land or water resource values;

(b) BLM sponsors or co-sponsors the use. This includes any activity or event that BLM is involved in organizing and hosting, or sharing responsibility for, arranged through authorizing letters or written agreements; or

(c) The use is a competitive event that—

(1) Is not commercial;

(2) Does not award cash prizes;

(3) Is not publicly advertised;

(4) Poses no appreciable risk for damage to public land or related water resource values; and

(5) Requires no specific management or monitoring.

(d) The use is an organized group activity or event that—

(1) Is not commercial;

(2) Is not publicly advertised;

(3) Poses no appreciable risk for damage to public land or related water resource values; and

(4) Requires no specific management or monitoring.

§ 2932.13 How will I know if individual use of a special area requires a Special Recreation Permit?

BLM will publish notification of the requirement to obtain a Special Recreation Permit to enter a special area in the **Federal Register** and local and regional news media. We will post permit requirements at major access points for the special area and provide information at the local BLM office.

§ 2932.14 Do I need a Special Recreation Permit to hunt, trap, or fish?

(a) If you hold a valid State license, you do not need a Special Recreation Permit to hunt, trap, or fish. You must comply with State license requirements for these activities. BLM Special Recreation Permits do not alone authorize you to hunt, trap, or fish. However, you must have a Special Recreation Permit if BLM requires one for recreational use of a special area where you wish to hunt, trap, or fish.

(b) Outfitters and guides providing services to hunters, trappers, or anglers must obtain Special Recreation Permits from BLM. Competitive event operators and organized groups may also need a Special Recreation Permit for these activities.

§ 2932.20 Special Recreation Permit applications.

§ 2932.21 Why should I contact BLM before submitting an application?

If you wish to apply for a Special Recreation Permit, we strongly urge you to contact the appropriate BLM office before submitting your application. You may need early consultation to become familiar with BLM practices and responsibilities, and the terms and conditions that we may require in a Special Recreation Permit. Because of the lead time involved in processing Special Recreation Permit applications, you should contact BLM in sufficient time to complete a permit application ahead of the 180 day requirement (see § 2932.22(a)).

§ 2932.22 When do I apply for a Special Recreation Permit?

(a) For all uses requiring a Special Recreation Permit, except private, noncommercial use of special areas (see paragraph (b) of this section), you must apply to the local BLM office at least 180 days before you intend your use to begin. Through publication in the local media and on-site posting as necessary, a BLM office may require applications for specific types of use more than 180 days before your intended use. A BLM office may also authorize shorter application times for activities or events that do not require extensive environmental documentation or consultation.

(b) BLM field offices will establish Special Recreation Permit application procedures for private noncommercial

individual use of special areas, including when to apply. As you begin to plan your use, you should call the field office with jurisdiction.

§ 2932.23 Where do I apply for a Special Recreation Permit?

You must apply to the local BLM office with jurisdiction over the land you wish to use.

§ 2932.24 What information must I submit with my application?

(a) Your application for a Special Recreation Permit for all uses, except individual and noncommercial group use of special areas, must include:

(1) A completed BLM Special Recreation Application and Permit form;

(2) Unless waived by BLM, a map or maps of sufficient scale and detail to allow identification of the proposed use area; and

(3) Other information that BLM requests, in sufficient detail to allow us to evaluate the nature and impact of the proposed activity, including measures you will use to mitigate adverse impacts.

(b) If you are an individual or noncommercial group wishing to use a special area, contact the local office with jurisdiction to find out the requirements, if any.

§ 2932.25 What will BLM do when I apply for a Special Recreation Permit?

BLM will inform you within 30 days after the filing date of your application if we must delay a decision on issuing the permit. An example of when this could happen is if we determine that we cannot complete required environmental assessments or consultations with other agencies within 180 days.

§ 2932.26 How will BLM decide whether to issue a Special Recreation Permit?

BLM has discretion over whether to issue a Special Recreation Permit. We will base our decision on the following factors to the extent that they are relevant:

(a) Conformance with laws and land use plans;

(b) Public safety,

(c) Conflicts with other uses,

(d) Resource protection,

(e) The public interest served,

(f) Whether in the past you complied with the terms of your permit or other authorization from BLM and other agencies, and

(g) Such other information that BLM finds appropriate.

§ 2932.30 Fees for Special Recreation Permits.

§ 2932.31 How does BLM establish fees for Special Recreation Permits?

(a) The BLM Director establishes fees, including minimum annual fees, for Special Recreation Permits for commercial activities, organized group activities or events, and competitive events.

(b) The BLM Director may adjust the fees as necessary to reflect changes in costs and the market, using the following types of data:

(1) The direct and indirect cost to the government;

(2) The types of services or facilities provided; and

(3) The comparable recreation fees charged by other Federal agencies, non-Federal public agencies, and the private sector located within the service area.

(c) The BLM Director will publish fees and adjusted fees in the **Federal Register**.

(d) The State Director with jurisdiction—

(1) Will set fees for other Special Recreation Permits (including any use of Special Areas, such as per capita special area fees applicable to all users, including private noncommercial visitors, commercial clients, and spectators),

(2) May adjust the fees when he or she finds it necessary,

(3) Will provide fee information in field offices, and

(4) Will provide newspaper or other appropriate public notice.

(e)(1) *Commercial use.* In addition to the fees set by the Director, BLM, if BLM needs more than 50 hours of staff time to process a Special Recreation Permit for commercial use in any one year, we may charge a fee for recovery of the processing costs.

(2) *Competitive or organized group/event use.* BLM may charge a fee for recovery of costs to the agency of analyses and permit processing instead of the Special Recreation Permit fee, if—

(i) BLM needs more than 50 hours of staff time to process a Special Recreation Permit for competitive or organized group/event use in any one year, and

(ii) We anticipate that permit fees on the fee schedule for that year will be less than the costs of processing the permit.

(3) *Limitations on cost recovery.* Cost recovery charges will be limited to BLM's costs of issuing the permit, including necessary environmental documentation, on-site monitoring, and permit enforcement. Programmatic or general land use plan NEPA documentation are not subject to cost recovery charges, except if the documentation work done was done for or provides special benefits or services to an identifiable individual applicant.

(f) We will notify you in writing if you need to pay actual costs before processing your application.

§ 2932.32 When must I pay the fees?

You must pay the required fees before BLM will authorize your use and by the deadline or deadlines that BLM will establish in each case. We may allow you to make periodic payments for commercial use. We will not process or continue processing your application until you have paid the required fees or installments.

§ 2932.33 When are fees refundable?

(a) *Overpayments.* For multi-year commercial permits, if your actual fees due are less than the estimated fees you paid in advance, BLM will credit overpayments to the following year or season. For other permits, BLM will give you the option whether to receive refunds or credit overpayments to future permits, less processing costs.

(b) *Underuse.*

(1) Except as provided in paragraph (b)(2) of this section, for areas where BLM's planning process allocates use to commercial outfitters, or non-commercial users, or a combination, we will not make refunds for use of the areas we allocate to you in your permit if your actual use is less than your intended use.

(2) We may consider a refund if we have sufficient time to authorize use by others.

(c) *Non-refundable fees.* Application fees and minimum annual commercial use fees (those on BLM's published fee schedule) are not refundable.

§ 2932.34 When may BLM waive Special Recreation Permit fees?

BLM may waive Special Recreation Permit fees on a case-by-case basis for accredited academic, scientific, and research institutions, therapeutic, or administrative uses.

§ 2932.40 Permit stipulations and terms.

§ 2932.41 What stipulations must I follow?

You must follow all stipulations in your approved Special Recreation Permit. BLM may impose stipulations and conditions to meet management goals and objectives and to protect lands and resources and the public interest.

§ 2932.42 How long is my Special Recreation Permit valid?

You may request a permit for a day, season of use, or other time period, up

to a maximum of 5 years. BLM will determine the appropriate term on a case-by-case basis.

§ 2932.43 What insurance requirements pertain to Special Recreation Permits?

(a) All commercial and competitive applicants for Special Recreation Permits, except vendors, must obtain a property damage, personal injury, and public liability insurance policy that BLM judges sufficient to protect the public and the United States. Your policy must name the U.S. Government as additionally insured or co-insured and stipulate that you or your insurer will notify BLM 30 days in advance of termination or modification of the policy.

(b) We may also require vendors and other applicants, such as organized groups, to obtain and submit such a policy. BLM may waive the insurance requirement if we find that the vending or group activity will not cause appreciable environmental degradation or risk to human health or safety.

§ 2932.44 What bonds does BLM require for a Special Recreation Permit?

BLM may require you to submit a payment bond, a cash or surety deposit, or other financial guarantee in an amount sufficient to cover your fees or defray the costs of restoration and rehabilitation of the lands affected by the permitted use. We will return the bonds and financial guarantees when you have complied with all permit stipulations. BLM may waive the bonding requirement if we find that your activity will not cause appreciable environmental degradation or risk to human health and safety.

§ 2932.50 Administration of Special Recreation Permits.

§ 2932.51 When can I renew my Special Recreation Permit?

We will renew your Special Recreation Permit upon application at the end of its term only if—

(a) It is in good standing;

(b) Consistent with BLM management plans and policies; and

(c) You and all of your affiliates have a satisfactory record of performance.

§ 2932.52 How do I apply for a renewal?

(a) You must apply for renewal on the same form as for a new permit. You must include information that has changed since your application or your most recent renewal. If information about your operation or activities has not changed, you may merely state that and refer to your most recent application or renewal.

(b) BLM will establish deadlines in your permit for submitting renewal applications.

§ 2932.53 What will be my renewal term?

Renewals will generally be for the same term as the previous permit.

§ 2932.54 When may I transfer my Special Recreation Permit to other individuals, companies, or entities?

(a) BLM may transfer a commercial Special Recreation Permit only in the case of an actual sale of a business or a substantial part of the business. Only BLM can approve the transfer or assignment of permit privileges to another person or entity, also basing our decision on the criteria in § 2932.26.

(b) The approved transferee must complete the standard permit application process as provided in § 2932.20 through 2932.24. Once BLM approves your transfer of permit privileges and your transferee meets all BLM requirements, including payment of fees, BLM will issue a Special Recreation Permit to the transferee.

§ 2932.55 When must I allow BLM to examine my permit records?

(a) You must make your permit records available upon BLM request. BLM will not ask to inspect any of this material later than 3 years after your permit expires.

(b) BLM may examine any books, documents, papers, or records pertaining to your Special Recreation Permit or transactions relating to it, whether in your possession, or that of your employees, business affiliates, or agents.

§ 2932.56 When will BLM amend, suspend, or cancel my permit?

(a) BLM may amend, suspend, or cancel your Special Recreation Permit if necessary to protect public health, public safety, or the environment.

(b) BLM may suspend or cancel your Special Recreation Permit if you—

(1) Violate permit stipulations, or

(2) Are convicted of violating any Federal or State law or regulation concerning the conservation or protection of natural resources, the environment, endangered species, or antiquities.

(c) If we suspend your permit or a portion thereof, all of your responsibilities under the permit will continue during the suspension.

§ 2932.57 Prohibited acts and penalties.

(a) *Prohibited acts.* You must not—

(1) Fail to obtain a Special Recreation Permit and pay the fees required by this subpart;

(2) Violate the stipulations or conditions of a permit issued under this subpart;

(3) Knowingly participate in an event or activity subject to the permit requirements of this subpart if BLM has not issued a permit;

(4) Fail to post a copy of any commercial or competitive permit where all participants may read it;

(5) Fail to show a copy of your Special Recreation Permit upon request by either a BLM employee or a participant in your activity.

(6) Obstruct or impede pedestrians or vehicles, or harass visitors or other persons with physical contact while engaged in activities covered under a permit or other authorization; or

(7) Refuse to leave or disperse, when directed to do so by a BLM law enforcement officer or State or local law enforcement officer, whether you have a required Special Recreation Permit or not.

(b) *Penalties.*

(1) Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), if you are convicted of committing any prohibited act in paragraph (a) of this section, or of violating any regulation in this subpart or any condition or stipulation of a Special Recreation Permit, you may be subject to a fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.

(2) You may also be subject to civil action for unauthorized use of the public lands or related waters and their resources, for violations of permit terms, conditions, or stipulations, or for uses beyond those allowed by the permit.

(3) If you are convicted of failing to obtain a permit or paying a fee required in this subpart, you may be subject to a fine under 18 U.S.C. 3571, pursuant to the Land and Water Conservation Fund Act, as amended.

Subpart 2933—Recreation Use Permits for Fee Areas

§ 2933.10 Obtaining Recreation Use Permits.

§ 2933.11 When must I obtain a Recreation Use Permit?

You must obtain a Recreation Use Permit for individual or group use of fee areas. These are sites where we provide or administer specialized facilities, equipment, or services related to outdoor recreation. You may visit these areas for the uses and time periods BLM specifies. We will post these uses and limits at the entrance to the area or site, and provide this information in the local BLM office with jurisdiction over the area or site. You may contact this

office for permit information when planning your visit.

§ 2933.12 Where can I obtain a Recreation Use Permit?

You may obtain a permit at self-service pay stations, from personnel at the site, or at other specified locations. Because these locations may vary from site to site, you should contact the local BLM office with jurisdiction over the area or site in advance for permit information.

§ 2933.13 When do I need a reservation to use a fee site?

Most sites are available on a first come/first serve basis. However, you may need a reservation to use some sites. You should contact the local BLM office with jurisdiction over the site or area to learn whether a reservation is required.

§ 2933.14 For what time may BLM issue a Recreation Use Permit?

You may obtain a permit for a day, season of use, year, or any other time period that we deem appropriate for the particular use. We will post this information on site, or make it available at the local BLM office with jurisdiction over the area or site, or both.

§ 2933.20 Fees for Recreation Use Permits.

§ 2933.21 When are fees charged for Recreation Use Permits?

You must pay a fee for individual or group recreational use if the area is posted to that effect. You may also find fee information at BLM field offices or BLM Internet websites.

§ 2933.22 How does BLM establish Recreation Use Permit fees?

BLM sets recreation use fees and adjusts them from time to time to reflect changes in costs and the market, using the following types of data:

(a) The direct and indirect cost to the government;

(b) The types of services or facilities provided; and

(c) The comparable recreation fees charged by other Federal agencies, non-Federal public agencies, and the private sector located within the service area.

§ 2933.23 When must I pay the fees?

You must pay the required fees upon occupying a designated recreation use facility, when you receive services, or as the BLM's reservation system may require. These practices vary from site to site. You may contact the local BLM office with jurisdiction over the area or site for fee information.

§ 2933.24 When can I get a refund of Recreation Use Permit fees?

If we close the fee site for administrative or emergency reasons, we will refund the unused portion of your permit fee upon request.

§ 2933.30 Rules of conduct.

§ 2933.31 What rules must I follow at fee areas?

You must comply with all rules that BLM posts in the area. Any such site-specific rules supplement the general rules of conduct contained in subpart 8365 of this chapter relating to public safety, resource protection, and visitor comfort.

§ 2933.32 When will BLM suspend or revoke my permit?

(a) We may suspend your permit to protect public health, public safety, the environment, or you.

(b) We may revoke your permit if you commit any of the acts prohibited in subpart 8365 of this chapter, or violate any of the stipulations attached to your permit, or any site-specific rules posted in the area.

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

2. The authority citation for part 3800 continues to read as follows:

Authority: 5 U.S.C. 552; 16 U.S.C. 1131–1136, 1271–1287, 1901; 25 U.S.C. 463; 30 U.S.C. 21 *et seq.*, 21a, 22 *et seq.*, 1601; 43 U.S.C. 2, 154, 299, 687b–687b–4, 1068 *et seq.*, 1201, 1701 *et seq.*; 62 Stat. 162.

3. Section 3802.1–1(d) is amended by removing the phrase ''subpart 8372 of this title'' and adding in its place the phrase ''part 2930 of this chapter.''

PART 6300—MANAGEMENT OF DESIGNATED WILDERNESS AREAS

4. The authority citation for part 6300 continues to read as follows:

Authority: 43 U.S.C. 1701 *et seq.*, 16 U.S.C. 1131 *et seq.*

5. Section 6302.20(i) is amended by removing the phrase ''section 8372.0–5(c)'' and adding in its place the phrase ''section 2932.5.''

PART 8340—OFF–ROAD VEHICLES

6. The authority citation for part 8340 is revised to read as follows:

Authority: 43 U.S.C. 1201, 43 U.S.C. 315a, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 460*l-6a*, 16 U.S.C. 1241 *et seq.*, and 43 U.S.C. 1701 *et seq.*

7. Section 8344.1 is amended by revising the cross-reference ''subpart 8372'' to read ''part 2930.''

PART 8370—USE AUTHORIZATIONS [REMOVED]

8. Part 8370 is removed.

PART 9260—LAW ENFORCEMENT—CRIMINAL

9. The authority citation for part 9260 continues to read as follows:

Authority: 16 U.S.C. 433; 16 U.S.C. 460*l*–6a; 16 U.S.C. 670j; 16 U.S.C. 1246(i); 16 U.S.C. 1338; 18 U.S.C. 1851–1861; 18 U.S.C. 3551 *et seq.*; 43 U.S.C. 315(a); 43 U.S.C. 1061, 1063; 43 U.S.C. 1733.

10. Section 9268.3 is amended by removing from the first sentence of paragraph (e)(1) the phrase ''subpart 8372 of this title'' and adding in its place the phrase ''part 2930 of this chapter.''

[FR Doc. 02–24748 Filed 9–30–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2930

[WO–250–1220–PA–24 1A]

RIN 1004–AD45

Permits for Recreation on Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its regulations on Special Recreation Permits by changing the maximum term for these permits to 10 years instead of 5 years. The reason for this change is to add a reasonable expectation of continuity for outfitters, guides, and other small businesses that provide services to recreationists on public lands.

BLM also proposes to amend its regulations on Recreation Use Permits for fee areas by adding a section on prohibited acts and penalties. This new provision is necessary to give BLM law enforcement personnel authority to cite persons who do not pay fees or otherwise do not follow the regulations on Recreation Use Permits.

DATES: You should submit your comments by December 2, 2002. BLM will not necessarily consider comments postmarked or received by messenger or electronic mail after the above date.

ADDRESSES:

Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, VA 22153, Attn: RIN 1004-AD45.

Personal or messenger delivery: Room 401, 1620 L Street, NW, Washington, DC 20036.

Direct internet response: *http://www.blm.gov/nhp/news/regulatory/index.html*

Internet e-mail: *WOComment@blm.gov.* (Include ''Attn: AD45'')

FOR FURTHER INFORMATION CONTACT: Lee Larson at (202) 452–5168 as to the substance of the proposed rule, or Ted Hudson at (202) 452–5042 as to procedural matters. Persons who use a telecommunications device for the deaf (TDD) may contact either individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

A. How Do I Comment on the Proposed Rule?

If you wish to comment, you may submit your comments by any one of several methods.

- You may mail comments to Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, VA 22153, Attn: RIN 1004–AD45.
- You may deliver comments to Room 401, 1620 L Street, NW, Washington, DC 20036.
- You may comment via the Internet by accessing our automated commenting system located at *http://www.blm.gov/nhp/news/regulatory/index.html* and following the instructions there.
- You may also comment via email to *WOComment@blm.gov.* We intend this address for use by those who want to keep their comments confidential and for those who are unable, for whatever reason, to use the Internet site. Please submit email comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: AD45'' and your name and return address in your email message.

If you do not receive a confirmation that we have received your electronic message, contact us directly at (202) 452–5030.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted By Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES:** Personal or messenger delivery'' during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We intend to post all comments on the Internet. If you are requesting that your comment remain confidential, do not send us your comment to the direct internet response website. Use mail, messenger, or email (include your request for confidentiality) to *WOComment@blm.gov.* We will post all electronically-received comments online as soon as we receive them.

II. Background

BLM published the proposed rule on Permits for Recreation on Public Lands in the **Federal Register** on May 16, 2000 (65 FR 31234). That proposed rule included a new subpart containing regulations on recreation use permits. These permits are for use of BLM fee areas. Fee areas are sites that provide specialized facilities, equipment, or services related to outdoor recreation. These include areas that are developed by BLM, receive regular maintenance, may have on-site staffing, and are supported by Federal funding. Not all fee areas necessarily have all of these attributes. Examples of fee areas are campgrounds that include improvements such as picnic tables, toilet facilities, tent or trailer sites, and drinking water; and specialized sites such as swimming pools, boat launch facilities, places with guided tours, hunting blinds, and so forth. The final rule containing these regulations appears elsewhere in this issue of the **Federal Register**.

The final rule left substantially intact the existing regulations on the length of terms for commercial Special Recreation Permits. Those regulations provide for a maximum term of 5 years, allowing applicants to request permit terms up to that length and authorizing BLM to issue them for no more than that length of time.

One comment on the proposed rule from an association representing commercial outfitters and guides recommended that, considering the investment required by outfitters, the maximum term for Special Recreation Permits should be 10 years, unless BLM finds that special circumstances require a shorter period.

BLM recognizes that the 5-year maximum term for permits is a matter of concern for the outfitting and guiding community, and agrees that a 10-year

term may be more desirable from both a business and a land management perspective.

From the business perspective, the change would improve the ability of outfitters and guides to justify financing from lenders and would allow them to amortize equipment fully within the permit term, if BLM in fact sets their term at 10 years. It would improve the business climate for larger scale commercial permits and operations, in turn improving business stability and diversification within local economies.

From the perspective of the land manager, extending the maximum permit term from 5 to 10 years allows BLM greater range and flexibility to set a term for the permit appropriate for the activity in light of, and commensurate with—

- The level of investment required by the permittee;
- The geographic location and resource considerations;
- Anticipated changes or time frames in land use allocations or planning decisions;
- Our experience in managing and monitoring the type of permitted use; and
- The type, complexity, and extent of the proposed activity.

The rule would not automatically set the term of all permits at 10 years. Rather, it would simply allow the authorized officer to select an appropriate term for up to 10 years.

Finally, the change would lead to a small but real reduction in administrative costs by reducing the analysis and paperwork required for more frequent permit renewal.

However, since the matter was not raised in the 2000 proposed rule, it is appropriate to request public comment on the matter. Therefore, we are including this provision in this proposed rule.

III. Discussion of Proposed Rule

Section 2932.42 How Long Is My Special Recreation Permit Valid?

We propose to amend this section solely by changing the maximum Special Recreation Permit term to 10 years. BLM would consider each application separately, and could issue a permit for any period of time from the 10-year maximum term to down to a season or even a single day. We would consider the purpose of the permit, the needs of the permittee, and the public interest in determining the appropriate term.

Permittees are subject to rigorous monitoring and may lose their permits for poor performance under other provisions of the regulations (see §2932.56 of the final rule published in today's **Federal Register**). This proposed rule would have no impact on our ability to ensure that permittees are well-qualified and carry out their activities in a manner that protects the health of the public lands and serves the recreating public. It would, on the other hand, allow outfitters, guides, and river-running enterprises to amortize their equipment fully within a permit term, avoid the expense and inconvenience of more frequent permit renewal, secure financing more easily (based on lenders knowing that permit terms are longer), and engage in long-term business planning.

This change should benefit existing permit holders, but it may reduce the ability of outfitters who currently do not hold a permit to obtain one, but only in areas where resource sensitivity or high demand for a limited recreational resource requires BLM to impose limits on use allocations. BLM is also seeking comments on, and may include in the final rule additional data about, the economic impact of this rule, including its effects on the availability of loans and investments that the outfitter industry needs to support its operations and provide recreational services to its customers. BLM does not expect this rule to present a substantial departure from current commercial outfitter operations on BLM lands or the ability of BLM staff to monitor and enforce permit compliance. However, BLM is seeking comments from the public on this issue to ensure that this rule will adequately address any outstanding concerns that may arise from its implementation. Specifically, we invite comments offering answers to the following questions:

- Is the proposed rule an appropriate way to encourage business stability while allowing appropriate levels of competition and ranges of services?
- What problems have outfitters had obtaining financing under the current permit term limitation? Have lenders cited short permit terms as a reason for denying longer-term financing?
- Is there specific guidance BLM should issue to its field offices to assure fair and uniform implementation of this rule, and reduce pressure for automatic approval of 10-year permit terms?
- How would the proposed rule affect BLM's ability to manage permits even if on-the-ground conditions change?
- What substantial or additional benefit would the proposed rule provide to small businesses that is not available under the current 5 year maximum term?

We are also interested in anecdotal information concerning the following issues:

- What has prompted BLM to deny permit renewal?
- What problems have outfitters had obtaining financing under the present permit term limitation?
- What may be the tax consequences of allowing permits to last 10 years?

Subpart 2933—Recreation Use Permits for Fee Areas

The May 16, 2000, proposed rule did not include enforcement language for fee areas. In this new proposed rule we would amend this subpart on Recreation Use Permits by adding a new section on prohibited acts and penalties. Under this new §2933.33, persons using campgrounds and other fee areas would be cited and penalized if they do not—

- Obtain a permit,
- Pay necessary fees, or
- Display proof of payment as required by BLM and posted at the site.

They may also be cited and penalized if they—

- Use forged permits, or
- Use another person's permit.

This new section would also state that failure to display proof of payment on a vehicle parked in a fee area is evidence of non-payment.

Finally, the new section would list the penalties that may be imposed upon conviction.

The existing regulation at 43 CFR 8365.2–3(a), which requires visitors to pay fees imposed under 36 CFR part 71, is insufficient because part 71 has not been amended since 1981, and thus does not include fees provided for in numerous amendments of the Land and Water Conservation Fund Act since that time. Further, fee areas now include many more facilities besides developed campgrounds, and methods and proof of payment have changed so radically that law enforcement has encountered difficulties in enforcing these requirements and seeking prosecution of violators. Field offices are trying to solve these problems, primarily with supplementary rules under 43 CFR 8365.1–6.

IV. Procedural Matters

The principal author of this proposed rule is Lee Larson of the Recreation Group, Washington Office, BLM, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

Regulatory Planning and Review (E.O. 12866)

This rule is not a significant rule and is not subject to review by the Office of

Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

The first change in the proposed rule would be to increase the maximum term for Special Recreation Permits from 5 to 10 years. During fiscal year 2001, BLM issued about 34,500 Special Recreation Permits, and collected about $4 million in fees. We give these figures to illustrate that the revenues collected under BLM's recreation program are minuscule compared with those realized by the overall national recreation industry, which, according to industry sources, is a $350 billion industry. Special Recreation Permits are generally obtained by commercial outfitters and guides, including river-running companies (about 3,000), sponsors of competitive events (about 1,000), ''snow bird'' seasonal mobile home campers who use BLM's long term visitor areas (about 14,000), and private individuals and groups using certain special areas.

The proposal to increase the maximum term for Special Recreation Permits would affect primarily the first of these categories: commercial outfitters and guides, and river-running companies. The rule would not change the fee structure at all, but would benefit these businesses by giving them a more secure tenure in their permits. This in turn would help them justify financing from lenders and allow them to amortize equipment fully within the permit term.

The second change in the proposed rule affects Recreation Use Permits. During fiscal year 2001, BLM issued about 670,000 Recreation Use Permits for use of fee sites, with revenues totaling about $3.9 million. The cost of such a permit averaged a little under $6.00.

This proposed rule will have no effect on fees, and should have no effect on the number of Recreation Use Permits BLM will issue. It would merely add a section—

- Making failure to obtain a permit, failure to pay for one, and fraudulent use of permits or other documents to avoid paying a fee, prohibited acts;
- Making failure to display a permit, where local rules require it, evidence of failure to pay; and
- Stating the standard statutory maximum penalties for violation that a magistrate could impose.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). According to the president of the American Recreation Coalition, outdoor recreation is a $350 billion industry made up of small businesses. None of these small businesses will be affected more than incidentally by making failure to pay for or obtain a fee area Recreation Use Permit a prohibited act. There is no way to quantify how many of these permits BLM issues to small entities, but it must be a minuscule share of the campground and similar permits BLM issues to the general recreating public.

Changing the maximum term for Special Recreation Permits from 5 to 10 years will benefit small businesses as explained in the previous section of this part of the Preamble. However, we cannot quantify the benefits accruing from increased permit tenure. The rule will benefit about 3,000 commercial outfitters and guides and river-running outfitters, all of whom operate small businesses, and some of whom hold multiple Special Recreation Permits.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- Does not have an annual effect on the economy of $100 million or more. See the discussion under Regulatory Planning and Review, above.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule does not change fees, but only provides a mechanism for enforcing their collection. See the discussion above under Regulatory Flexibility Act.
- Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Recreationists are not likely to resort to foreign recreation markets because failure to pay a campground fee becomes a punishable offense.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The rule has no effect on governmental or tribal entities. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. The enforcement provision proposed does not include any language requiring or authorizing forfeiture of personal property or any property rights. A takings implications assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule does not preempt State law.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have found that this final rule would not include policies that have tribal implications. The rule would not affect lands held for the benefit of Indians, Aleuts, and Eskimos. The rule would apply only to BLM campgrounds and other fee areas on BLM lands.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required. We base this finding on an environmental assessment of the proposed rule dated August 22, 2002, which you will find in the administrative record for the rule.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed rule clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; *for example,* § 2932.42 How long is my Special Recreation Permit valid?)

(5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION:** section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

If you have any comments that concern how we could make this proposed rule easier to understand, in addition to sending the original to the address shown in **ADDRESSES,** above, please send a copy to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: *Execsec@ios.doi.gov.*

List of Subjects in 43 CFR Part 2930

Penalties; Public lands; Recreation and recreation areas; Reporting and recordkeeping requirements; Surety bonds.

Dated: August 30, 2002.

Rebecca W. Watson,

Assistant Secretary of the Interior.

For the reasons explained in the preamble, and under the authority of 43 U.S.C. 1740, part 2930, chapter II, subtitle B of title 43 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2930—PERMITS FOR RECREATION ON PUBLIC LANDS

1. The authority citation for part 2930 continues to read as follows:

Authority: 43 U.S.C. 1740; 16 U.S.C. 460*l*–6a.

Subpart 2932—Special Recreation Permits for Commercial Use, Competitive Events, Organized Groups, and Recreation Use in Special Areas

2. Revise §2932.42 to read as follows:

§ 2932.42 How long is my Special Recreation Permit valid?

You may request a permit for a day, season of use, or other time period, up to a maximum of 10 years. BLM will determine the appropriate term on a case-by-case basis.

Subpart 2933—Recreation Use Permits for Fee Areas

3. Add § 2933.33 to read as follows:

§ 2933.33 Prohibited acts and penalties.

(a) *Prohibited acts.* You must not—

(1) Fail to obtain a use permit or pay any fees that this subpart or the Land and Water Conservation Fund Act, as amended, requires;

(2) Fail to pay any fees within a time that the local BLM office sets after you have begun occupying a designated use facility;

(3) Fail to display any required proof of payment of fees;

(4) Willfully and knowingly possess, use, publish as true, or sell to another, any forged, counterfeited, or altered document or instrument used as proof of or exemption from fee payment; or

(5) Willfully and knowingly use any document or instrument used as proof of or exemption from fee payment, that BLM issued to or intended another to use, or

(6) Falsely represent yourself to be a person to whom BLM has issued a document or instrument used as proof of or exemption from fee payment.

(b) *Evidence of nonpayment.* BLM will consider as evidence of non-payment failure to display proof of payment, where required, on your unattended vehicle parked within a fee area.

(c) *Responsibility for penalties.* If another driver incurs a penalty when using a vehicle registered in your name, you and the driver are jointly responsible for the penalty, unless you can show that the vehicle was used without your permission.

(d) *Types of penalties.* You may be subject to the following fines or penalties for violating the provisions of this section.

If you are convicted of	Then you may be subject to...	Under...
(1) Any act prohibited by paragraph (a) of this section.	A fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.	The Federal Land Policy and Management Act 1976 (43 U.S.C. 1733(a)).
(2) Violating any regulation in this subpart or any condition of a Recreation Use Permit.	A fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.	The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)).
(3) Failing to obtain any permit or to pay any fee required in this subpart.	A fine in accordance with 18 U.S.C. 3571	The Land and Water Conservation Fund Act, as amended.

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Part III

Department of Housing and Urban Development

24 CFR Part 92
HOME Investment Partnerships Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 92

[Docket No. FR–4111–F–03]

RIN 2501–AC30

HOME Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes several streamlining and clarifying amendments to the regulations for the HOME Investment Partnerships Program (HOME Program). The final rule incorporates a number of statutory changes to the HOME Program. The final rule also updates the regulations to reflect the provision of housing assistance to Indian tribes under the Native American Housing Assistance and Self-Determination Act of 1996. Further, the rule clarifies the consortia requalification requirements by codifying the streamlined approach adopted beginning with the Fiscal Year (FY) 1999 grant cycle. The final rule also adjusts the HOME allocation formula to reflect the use of 2000 Census data, and requests public comment on this amendment. Further, the final rule increases the flexibility of participating jurisdictions in using program income to pay administrative costs. Additionally, the final rule makes several other non-substantive corrections and clarifications to the regulations.

DATES: *Effective Date:* October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Virginia Sardone, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7164, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–2470. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

I. Background

The HOME Investment Partnerships Program (HOME Program) is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA). Through the HOME Program, HUD allocates funds by formula among eligible State and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income families. Generally, HOME funds must be matched by nonfederal resources. State and local governments that become participating jurisdictions may use HOME funds to carry out multiyear housing strategies through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance. Participating jurisdictions may provide assistance in a number of eligible forms, including loans, advances, equity investments, interest subsidies, and other forms of investment that HUD approves. HUD's regulations for the HOME Program are located in 24 CFR part 92 (consisting of §§ 92.1 through 92.552).

This final rule makes a number of amendments to the HOME Program regulations to:

1. Incorporate a number of statutory changes to the program made by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, approved October 27, 1997) (the FY 1998 HUD Appropriations Act) and the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276, approved October 21, 1998) (QHWRA);

2. Update the regulations to reflect the provision of block grant housing assistance to Indian tribes under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) and HUD's implementing regulations at 24 CFR part 1000;

3. Clarify the consortia requalification requirements by codifying the streamlined approach adopted beginning with the Fiscal Year 1999 grant cycle;

4. Make an adjustment to the HOME allocation formula to reflect the use of 2000 Census data and request public comment on this amendment;

5. Increase the flexibility of participating jurisdictions in using a portion of program income to pay administrative costs; and

6. Make several other non-substantive corrections and clarifications to the regulations.

The following sections of this preamble describe the changes made by this final rule in greater detail.

II. Incorporation of Statutory Changes to the HOME Program (§§ 92.50, 92.209, 92.214, 92.217, and 92.254)

A. Section 214 of the FY 1998 HUD Appropriations Act—Revision to Minimum Participation Threshold (§ 92.50(d)(3) and (d)(4))

Section 214 of the FY 1998 HUD Appropriations Act amended Title II of NAHA to permit participating jurisdictions whose annual HOME allocation falls below the $500,000 minimum participation threshold ($335,000 in years in which the HOME appropriation is less than $1.5 billion) to continue to receive HOME allocations (except for consortia that fail to renew the membership of all member jurisdictions). This statutory change eliminated the problem of participating jurisdictions with small allocations losing their allocations from such causes as a decrease in the HOME appropriation, an increase in the total amount of set-asides from the HOME appropriation, or an increase in the number of participating jurisdictions. Sections 92.50(d)(3) and (4) are amended to reflect this statutory change.

B. Section 514 of QHWRA—Elimination of Federal Preferences (§ 92.209(c)(2) and (d)(3))

Section 514 of QHWRA amended section 6(c)(4)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) to eliminate Federal preferences for selecting public housing residents and establish a system of local selection preferences. The HOME Program regulations reference this section of the 1937 Act with respect to eligibility for HOME tenant-based rental assistance and written tenant selection criteria for HOME-assisted rental housing. Accordingly, this final rule removes § 92.209(c)(2), which requires that at least 50 percent of families assisted with HOME tenant-based rental assistance qualify or would qualify in the near future for a Federal preference. The final rule also removes § 92.209(d)(3), which requires that written tenant selection criteria for HOME-assisted rental housing give reasonable consideration to the housing needs of families that qualify for a Federal preference. The final rule also makes conforming changes to §§ 92.209(c)(3)(iv), 92.209(c)(4), and 92.253(d)(3), which reference the Federal preference requirements currently contained in § 902.209(c)(2) and (d)(3). Participating jurisdictions using HOME funds for tenant-based rental assistance programs may establish local preferences for the provision of this assistance.

C. Section 522 of QHWRA—Prohibition on Use of HOME Funds for Public Housing Activities (§ 92.214)

Section 522 of QHWRA amended section 9 of the 1937 Act, which had the effect of extending the prohibition in NAHA against the use of HOME funds for public housing modernization and operating subsidy to cover new construction of public housing as well. Accordingly, this final rule updates the HOME regulations at § 92.214, which lists those activities for which the expenditure of HOME funds is prohibited, to reflect this statutory amendment.

D. Section 599B of QHWRA—Income Eligibility (§ 92.217; § 92.254(a)(7) and (a)(8))

Section 599B of QHWRA eliminated the requirement that HOME-assisted homebuyers qualify as income eligible at the time of occupancy or when the HOME funds are invested, whichever is later. Section 599B requires the homebuyer to qualify as low-income: (1) In the case of a contract to purchase existing housing, at the time of purchase; (2) in the case of a lease-purchase agreement for existing housing or for housing to be constructed, at the time the agreement is signed; or (3) in the case of a contract to purchase housing to be constructed, at the time the contract is signed. This final rule amends § 92.254(a)(7), which establishes the income eligibility requirements for lease-purchase agreements, to reflect the changes made by section 599B of QHWRA. The final rule also creates a new § 92.254(a)(8) to address income eligibility requirements for contracts for purchase. Further, the final rule makes a conforming change to § 92.217, which regards income targeting for homeownership. In addition, the final rule corrects the designations of current §§ 92.254(a)(5)(ii)(A)(*6*) and (*7*), which should be properly designated as §§ 92.254(a)(6) and (7).

III. Changes Regarding the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (§§ 92.2 and 92.50(b))

NAHASDA established a new Indian housing block grant program for Indian tribes and terminated grants by HUD to Indian tribes and Indian housing authorities under existing HUD housing programs, including the Indian HOME program. However, NAHASDA does not affect § 92.201(b)(5) of the HOME regulation, which provides that States may fund housing projects on Indian reservations. Accordingly, this final rule makes the following changes:

A. Definition of ''Homeownership'' (§ 92.2)

This final rule amends the definition of the term ''homeownership'' in § 92.2 to eliminate an inconsistency between the definition and a provision of NAHASDA. The definition of ''homeownership'' currently includes 99-year leasehold interests. This is inconsistent with section 702 of NAHASDA, which only authorizes leases with terms not exceeding 50 years. This inconsistency effectively precludes the use of HOME funds to provide homeownership opportunities on any trust or restricted Indian lands unless a waiver is obtained. Consequently, the HOME regulation is being amended so that, on trust or restricted Indian lands, a 50-year leasehold interest will constitute homeownership.

B. Set-Aside of HOME Funds for Indian Tribes (§ 92.50(b))

Section 92.50(b) is amended to eliminate the reference to reserving a portion of each annual appropriation of HOME funds for Indian tribes. Section 217(a) of NAHA required that 1 percent of the annual HOME appropriation be set aside for use in a competitive program for Indian tribes (the Indian HOME Program). NAHASDA eliminated the Indian HOME Program. Accordingly, Indian tribes no longer receive HOME grants from HUD. This final rule removes the outdated reference to the set-aside for Indian tribes.

IV. Clarification of Consortia Requalification Requirements (§ 92.101)

Several years ago, HUD convened an internal working group to examine the consortia qualification and requalification process and make recommendations to simplify and streamline the process. The primary recommendation of the working group was to eliminate the practice of having each member jurisdiction sign a new consortium agreement at each requalification. This practice was imposing a significant burden on consortia, particularly geographically large, rural consortia comprised of many small jurisdictions. The working group recommended that the HOME consortium qualification guidance be revised to permit an ''opt out'' policy similar to that permitted for urban counties in the Community Development Block Grant (CDBG) Program.

Beginning with the Fiscal Year 1999 consortium qualification cycle, HUD permitted consortia to adopt an automatic renewal process similar to the CDBG urban county process. If this option is exercised, the consortium's lead agency must notify each member jurisdiction of the requalification and of the right to elect not to continue to participate in the consortium for the ensuing three-year period. No action is required of member jurisdictions that wish to continue participation in a consortium, resulting in a significant reduction in burden. This streamlined approach is consistent with the requirements outlined in the HOME regulations at § 92.101 and no amendment to the rule was required for its implementation. However, for purposes of greater clarity, HUD is amending the HOME regulations to reference this streamlined procedure.

V. Change to Allocation Formula (§ 92.50(c)(3))

This final rule makes a minor revision to HOME allocation formula at § 92.50(c) to reflect the use of data from the 2000 Census beginning with the FY 2003 HOME allocation. The HOME formula allocates funds based on six variables that all require use of data from the Census Bureau. Currently, HOME formula allocations are based on data from the 1990 Census. The lack of updated data during the decade has been a detriment to participating jurisdictions that have relative increases in affordable housing problems as reflected by the formula factors. Changes in local conditions such as poverty, inadequate rental housing and tight rental markets all affect the distribution of affordable housing problems over a decade.

To better reflect these changes in local conditions, HUD intends to acquire and apply 2000 Census data for HOME formula allocations beginning with the FY 2003 allocation. The 2000 Census provides data for the HOME formula variables consistent with the current definitions of those variables, except for the pre-1950 renters-in-poverty variable described in § 92.50(c)(3). The 1990 Census provides data concerning pre-1950 renter-*family-households*-in-poverty. Accordingly, § 92.50(c)(3) refers to ''[r]ental units built before 1950 occupied by poor *families*'' (emphasis added). Under the 2000 Census, the only publicly available data concerns pre-1950 renter-*households*-in-poverty. Consequently, the switch to 2000 census data requires that § 92.50(c)(3) be updated to refer to ''poor households'' rather than ''poor families.''

HUD's analysis of 1990 Census data shows that this regulatory change will have a relatively minor effect on HOME formula allocations. If pre-1950 renter-households (rather than renter families) had been used for the formula allocations based upon 1990 Census data, about 85 percent of participating jurisdictions would have received allocations within 5 percent of the allocations that they did receive.

HUD would need to procure a special tabulation of 2000 Census data from the Census Bureau in order to continue using the ''renter-families in poverty'' measure in future HOME formula allocations. However, a special tabulation of this data would not be available until late 2003, thereby further delaying the use of updated census data in HOME formula allocations. Further, using a special tabulation not only would deprive all participating jurisdictions from using the updated data, but also would preclude participating jurisdictions and other interested parties from independently accessing these data through public sources. The change will also be beneficial in that this formula factor will reflect pre-1950 households occupied by poor renters who are single and not living in a family household. However, like other poverty measures that focus on households rather than families, the revision will have the drawback of including non-family households composed entirely of college students among the poor.

Although HUD has determined that the impact of this change on HOME formula allocations will be minimal, and that prior notice and comment is unnecessary, HUD invites interested members of the public to submit comments on the change. Comments should be submitted to the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this preamble, above. HUD will consider whether further changes should be made to this section as a result of the issues raised by the commenters.

VI. Use of Program Income To Pay Administrative Costs (§ 92.207)

This final rule amends § 92.207 to provide participating jurisdictions with greater flexibility in the use of program income to pay administrative costs. The current HOME Program regulations state that a participating jurisdiction is permitted to use up to 10 percent of program income deposited in its local account during the program year for administrative and planning costs. This provision prohibits a participating jurisdiction from counting toward its administrative allowance a portion of any program income that it permitted State recipients or subrecipients to retain pursuant to a HOME written agreement. To count 10 percent of program income received by State recipients and subrecipients toward the participating jurisdiction's administrative allowance, the funds have to be returned to the participating jurisdiction's local HOME account. HUD did not intend to place such restrictions on the use of program income for administrative and planning costs. Consequently, § 92.207 is amended to permit participating jurisdictions to use 10 percent of both program income deposited in the local HOME account and program income earned and reported by State recipients and subrecipients for eligible administrative and planning costs. Participating jurisdictions may permit State recipients and subrecipients to use this additional authority for administrative and planning costs or may use it for administrative costs of the participating jurisdiction, provided that the overall 10 percent limitation is not exceeded.

VII. Miscellaneous Corrections and Clarifications (§§ 92.214, 92.353, 92.504, 92.506, and 92.508)

A. Prohibited Activities (§ 92.214(a))

This final rule clarifies § 92.214(a) by adding an item to the list of activities for which expenditure of HOME funds is prohibited. Specifically, the final rule adds a new § 92.214(a)(9), which specifies that delinquent taxes, fees, or charges levied on a property to receive HOME assistance may not be paid with HOME funds. HUD has interpreted the HOME statute to prohibit the use of HOME funds for these purposes since the inception of the program. HUD continues to receive questions, however, regarding the use of HOME funds to pay delinquent taxes, fees, and charges so frequently that they are being added to the list of prohibited activities in order to eliminate further confusion.

HOME funds can be used to pay for reasonable acquisition costs. Back property taxes, construction liens, and similar encumbrances, however, are obligations incurred by the seller prior to the date of the purchase of the property with HOME funds rather than the costs of acquisition. There is no prohibition against the seller using the proceeds of a HOME-assisted purchase to satisfy these liens and deliver clear title to the purchaser.

B. Incorrect Subpart Reference (§ 92.353(e))

This final rule amends § 92.353(e) to correct a typographical error. The current regulation erroneously refers to 24 CFR part 42, subpart B. The correct reference is subpart C.

C. Written Agreements (§ 92.504)

The HOME regulations at § 92.504 provide details about the requirements that must be included in each type of HOME written agreement. Several applicable requirements of subpart H, however, are inadvertently omitted from § 92.504(c)(3), which covers written agreements between participating jurisdictions and the owners, developers, and sponsors of HOME-assisted housing. Consequently, this final rule amends § 92.504(c)(3)(v), which currently addresses only affirmative marketing requirements, to outline all subpart H requirements that must be included in these agreements.

D. Audit requirements (§ 92.506)

Section 92.506 of the rule, which requires participating jurisdictions, State recipients, and subrecipients to obtain independent audits, is amended to reflect a change in citation. The regulations currently contain outdated cites to 24 CFR parts 44 and 45. The correct citations are now 24 CFR 84.26 and 24 CFR 85.26, respectively, for nonprofit organizations and for States and units of general local government.

E. Recordkeeping requirements (§ 92.508(a)(3)(xiii))

This final rule adds a new § 92.508(a)(3)(xiii) to correct a drafting oversight and makes explicit the requirement that participating jurisdictions maintain records documenting the results of the site and neighborhood standards review that they are required to undertake for rental of new construction projects. While HUD has included this information collection requirement in its submissions to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the requirement has not been made explicit in the recordkeeping section of the HOME regulations.

VIII. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impractical, unnecessary, or contrary to the public

interest'' (see 24 CFR 10.1). For the following reasons, HUD finds that it is unnecessary and contrary to the public interest to delay the effectiveness of these regulatory amendments in order to solicit prior public comment. As described below, the amendments do not impose new substantive requirements, but update the HOME regulations to reflect existing program procedures, streamline existing requirements to minimize administrative burden on participating jurisdictions, and clarify the regulations by correcting typographical errors.

First, the statutory changes made by the FY 1998 HUD Appropriations Act and QHWRA that are being incorporated by this final rule were determined by HUD to be immediately effective upon enactment of the legislation and HUD is not exercising any discretionary authority with respect to these changes. The changes regarding NAHASDA do not impose new regulatory requirements, but update the HOME regulations to reflect the establishment of the Indian Housing Block Grant program and the elimination of the separate Indian HOME Program. The regulatory amendment streamlining the consortium requalification process updates the HOME regulations to reflect existing practice, and provides a substantial benefit in the form of reduced administrative burden to HOME consortium without harming the interests of any other concerned party. The revision to the formula allocation requirements updates the HOME regulations to provide for the use of the most recent census data and better reflect changes in the demographics of poverty and the inadequacy of rental housing. The amendment regarding the use of program income corrects a drafting error that placed an undue restriction on the use of program income for administrative and planning costs. Finally, the final rule makes several miscellaneous corrections and clarifications that do not impose new substantive requirements, but merely correct typographical errors and clarify existing HUD procedures.

IX. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive HOME formula allocations are relatively larger cities, counties or states.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the HOME Program is 14.239.

List of Subjects in 24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 92 as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for 24 CFR part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. In § 92.2, revise the definition of the term ''*homeownership*'' by adding a new penultimate sentence to read as follows:

§ 92.2 Definitions.

* * * * *

Homeownership * * * For purposes of housing located on trust or restricted Indian lands, homeownership includes leases of 50 years. * * *

* * * * *

3. In § 92.50, revise paragraphs (b), (c)(3), (d)(3), and the second sentence of paragraph (d)(4) to read as follows:

§ 92.50 Formula allocation.

* * * * *

(b) *Amounts available for allocation; State and local share.* The amount of funds that are available for allocation by the formula under this section is equal to the balance of funds remaining after reserving amounts for insular areas, housing education and organizational support, other support for State and local housing strategies, and other purposes authorized by Congress, in accordance with the Act and appropriations.

* * * * *

(c) * * *

(3) Rental units built before 1950 occupied by poor households.

* * * * *

(d) * * *

(3) To determine the maximum number of units of general local government that receive a formula allocation, only one jurisdiction (the unit of general local government with the smallest allocation of HOME funds) is dropped from the pool of eligible

jurisdictions on each successive recalculation, except that jurisdictions that are participating jurisdictions (other than consortia that fail to renew the membership of all of their member jurisdictions) are not dropped. Then the amount of funds available for units of general local government is redistributed to all others. This recalculation/redistribution continues until all remaining units of general local government receive an allocation of $500,000 or more or are participating jurisdictions. Only units of general local government which receive an allocation of $500,000 or more under the formula or which are participating jurisdictions will be awarded an allocation. In fiscal years in which Congress appropriates less than $1.5 billion of HOME funds, $335,000 is substituted for $500,000.

(4) * * * These reductions are made on a *pro rata* basis, except that no unit of general local government allocation is reduced below $500,000 (or $335,000 in fiscal years in which Congress appropriates less than $1.5 billion of HOME funds) and no participating jurisdiction allocation which is below this amount is reduced.

* * * * *

4. In § 922.101, revise paragraphs (a)(1) and (a)(3) and add paragraph (f), to read as follows:

§ 92.101 Consortia.

(a) * * *

(1) One or more members of a proposed consortium or an existing consortium whose consortium qualification terminates at the end of the fiscal year, must provide written notification to the HUD Field Office of its intent to participate as a consortium in the HOME Program for the following fiscal year. HUD shall establish the deadline for this submission.

* * * * *

(3) Before the end of the fiscal year in which the notice of intent and documentation are submitted, HUD must determine that a proposed consortium has sufficient authority and administrative capability to carry out the purposes of this part on behalf of its member jurisdictions. HUD will endeavor to make its determination as quickly as practicable after receiving the consortium's documentation in order to provide the consortium an opportunity to correct its submission, if necessary. If the submission is deficient, HUD will work with the consortium to resolve the issue, but will not delay the formula allocations. HUD, at its discretion, may review the performance of an existing consortium that wishes to requalify to determine whether it continues to have sufficient authority and administrative capacity to successfully administer the program.

* * * * *

(f) The consortium agreement may, at the option of its member units of general local government, contain a provision that authorizes automatic renewals for the successive qualification period of three Federal fiscal years. The provision authorizing automatic renewal must require the lead consortium member to give the consortium members written notice of their right to elect not to continue participation for the new qualification period.

5. In § 92.207, revise the third sentence of the introductory paragraph to read as follows:

§ 92.207 Eligible administrative and planning costs.

* * * A participating jurisdiction may also expend, for payment of reasonable administrative and planning costs, a sum up to ten percent of the program income deposited into its local account or received and reported by its State recipients or subrecipients during the program year. A participating jurisdiction may expend such funds directly or may authorize its State recipients or subrecipients, if any, to expend all or a portion of such funds, provided total expenditures for planning and administrative costs do not exceed the maximum allowable amount. Reasonable administrative and planning costs include:

* * * * *

6. In § 92.209, remove paragraph (c)(2) and redesignate paragraphs (c)(3) and (c)(4) as (c)(2) and (c)(3), respectively; remove redesignated paragraph (c)(2)(iv); and revise the first sentence of redesignated paragraph (c)(3), to read as follows:

§ 92.209 Tenant-based rental assistance: Eligible costs and requirements.

* * * * *

(c) * * *

(3) *Existing tenants in the HOME-assisted projects.* A participating jurisdiction may select low-income families currently residing in housing units that are designated for rehabilitation or acquisition under the participating jurisdiction's HOME program. Participating jurisdictions using HOME funds for tenant-based rental assistance programs may establish local preferences for the provision of this assistance. * * *

* * * * *

7. In § 92.214, revise paragraph (a)(4), remove paragraph (a)(5), redesignate paragraphs (a)(6) through (a)(8) as paragraphs (a)(5) through (a)(7), respectively, and add new paragraph (a)(8) to read as follows:

§ 92.214 Prohibited activities.

(a) * * *

(4) Provide assistance authorized under section 9 of the 1937 Act (Public Housing Capital and Operating Funds);

* * * * *

(8) Pay delinquent taxes, fees or charges on properties to be assisted with HOME funds.

* * * * *

8. Revise § 92.217 to read as follows:

§ 92.217 Income targeting: Homeownership.

Each participating jurisdiction must invest HOME funds made available during a fiscal year so that with respect to homeownership assistance, 100 percent of these funds are invested in dwelling units that are occupied by households that qualify as low-income families.

§ 92.253 [Redesignated]

9. In § 92.253, remove paragraph (d)(3) and redesignate paragraphs (d)(4) and (d)(5) as (d)(3) and (d)(4), respectively.

10. In § 92.254, redesignate paragraphs (a)(5)(ii)(A)(*6*) and (*7*) as (a)(6) and (a)(7), respectively; revise redesignated paragraph (a)(7); and add paragraph (a)(8), to read as follows:

§ 92.254 Qualification as affordable housing: Homeownership.

(a) * * *

(7) *Lease-purchase.* HOME funds may be used to assist homebuyers through lease-purchase programs for existing housing and for housing to be constructed. The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed. If HOME funds are used to acquire housing that will be resold to a homebuyer through a lease-purchase program, the HOME affordability requirements for rental housing in § 92.252 shall apply if the housing is not transferred to a homebuyer within forty-two months after project completion.

(8) *Contract to purchase.* If HOME funds are used to assist a homebuyer who has entered into a contract to purchase housing to be constructed, the homebuyer must qualify as a low-income family at the time the contract is signed.

* * * * *

11. Revise § 92.353(e) to read as follows:

§ 92.353 Displacement, relocation, and acquisition.

* * * * *

(e) *Residential antidisplacement and relocation assistance plan.* The participating jurisdiction shall comply with the requirements of 24 CFR part 42, subpart C.

* * * * *

12. Revise § 92.504(c)(3)(v) to read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspections.

* * * * *

(c) * * *

(v) *Other program requirements.* The agreement must require the owner, developer or sponsor to carry out each project in compliance with the following requirements of subpart H of this part:

(A) If the project contains 5 or more HOME-assisted units, the agreement must specify the owner or developer's affirmative marketing responsibilities as enumerated by the participating jurisdiction in accordance with § 92.351.

(B) The federal requirements and nondiscrimination established in § 92.350.

(C) Any displacement, relocation, and acquisition requirements imposed by the participating jurisdiction consistent with § 92.353.

(D) The labor requirements in § 92.354.

(E) The conflict of interest provisions prescribed in § 92.356(f).

* * * * *

13. Revise § 92.506 to read as follows:

§ 92.506 Audit.

Audits of the participating jurisdiction, State recipients, and subrecipients must be conducted in accordance with 24 CFR 84.26 and 85.26.

14. Add § 92.508(a)(3)(xiii) to read as follows:

§ 92.508 Recordkeeping.

(a) * * *

(3) * * *

(xiii) Records demonstrating that a site and neighborhood standards review was conducted for each project which includes new construction of rental housing assisted under this part to determine that the site meets the requirements of 24 CFR 983.6(b), in accordance with § 92.202.

* * * * *

Dated: September 23, 2002.

Donna M. Abbenante,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 02–24820 Filed 9–30–02; 8:45 am]

BILLING CODE 4210–29–P

Federal Register

Tuesday,
October 1, 2002

Part IV

Department of the Interior

Bureau of Indian Affairs

Collection of Water Delivery and Electric Service Data for the Operation of Irrigation and Power Projects and Systems: Proposed Collection of Water Delivery and Electric Service Data; Comment Request; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Collection of Water Delivery and Electric Service Data for the Operation of Irrigation and Power Projects and Systems: Proposed Collection of Water Delivery and Electric Service Data; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) invites comments on two information collection requests which will be renewed. The two collections are: Electrical Service Application, 1076–0021, and Water Request, 1076–0141.

DATES: Comments must be received on or before December 2, 2002 to be assured of consideration.

ADDRESSES: Comments should be sent to: Ross Mooney, Bureau of Indian Affairs, Branch of Irrigation, Power, and Safety of Dams, Mail Stop 3061–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Ross Mooney at (202) 208–5480, or facsimile number: (202) 219–0006.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. The Bureau of Indian Affairs, Branch of Irrigation, Power, and Safety of Dams is proceeding with this public comment period as the first step in obtaining a normal information collection clearance from OMB. Each request contains (1) type of review, (2) title, (3) summary of the collection, (4) respondents, (5) frequency of collection, (6) reporting and record keeping requirements.

Please note that we will not sponsor nor conduct, and you need not respond to, a request for information unless we display the OMB control number and the expiration date.

Water Request

Type of review: Extension of a currently approved collection.

Title: Water Request 25 CFR 171.

Summary: In order for irrigators to receive water deliveries, information is needed by the BIA to operate and maintain its irrigation projects and fulfill reporting requirements. Section 171.7 of 25 CFR part 171, [Irrigation] Operation and Maintenance, specifies the information collection requirement. Water users must apply for water delivery. The information to be collected includes: name; water delivery location; time and date of requested water delivery; duration of water delivery; rate of water flow; number of acres irrigated; crop statistics; and other operational information identified in the local administrative manuals. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0141). All information is collected at least annually from each water user with a response required each time irrigation water is provided. Annual reporting and record keeping burden for this collection of information is estimated to average 8 minutes per request. There is a range of 1 to 10 requests from each irrigation water user each season with an average of 5 responses per respondent. For all 5 responses, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, the total per respondent is 40 minutes. The total number of respondents is estimated at 10,300 per year. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 6,867 hours.

Frequency of Collection: On occasion.

Description of Respondents: BIA Irrigation Project Water Users.

Total Respondents: 10,300.

Total Annual Responses: 51,500.

Total Annual Burden Hours: 6,867 hours.

Electric Service Application

Type of review: Extension of a currently approved collection.

Title: Electric Service Application—25 CFR part 175.

Summary: In order for electric power consumers to be served, information is needed by the BIA to operate and maintain its electric power utilities and fulfill reporting requirements. Section 175.22 of 25 CFR part 175, Indian electric power utilities, specifies the information collection requirement. Power consumers must apply for electric service. The information to be collected includes: name; electric service location; and other operational information identified in the local administrative manuals. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0021). All information is collected from each electric power consumer. Annual reporting and record keeping burden for this collection of information is estimated to average 30 minutes for each response for 3,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 1,500 hours.

Frequency of Collection: On Occasion.

Description of Respondents: BIA Electric Power Consumers.

Total Respondents: 3,000.

Total Annual Responses: 3,000.

Total Annual Burden Hours: 1,500 hours.

Request for Comments

The Bureau of Indian Affairs solicits comments in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) Evaluate the bureau'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. Any public comments will be addressed in the Bureau of Indian Affairs' submission of the information collect request to the Office of Management and Budget.

All comments are available for public review during regular business hours. There may be instance when we decide to withhold information, but if you wish us to withhold your name and address, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowed by law. We will not consider anonymous comments, and we will make public all comments from businesses and from individuals who represent businesses.

Dated: September 24, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–24819 Filed 9–30–02; 8:45 am]

BILLING CODE 4310–W7–P

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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.

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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. 3287/P.L. 107–225
To redesignate the facility of the United States Postal Service located at 900 Brentwood Road, NE, in Washington, D.C., as the ''Joseph Curseen, Jr. and Thomas Morris, Jr. Processing and Distribution Center''. (Sept. 24, 2002; 116 Stat. 1344)

H.R. 3917/P.L. 107–226
Flight 93 National Memorial Act (Sept. 24, 2002; 116 Stat. 1345)

H.R. 5207/P.L. 107–227
To designate the facility of the United States Postal Service located at 6101 West Old Shakopee Road in Bloomington, Minnesota, as the ''Thomas E. Burnett, Jr. Post Office Building''. (Sept. 24, 2002; 116 Stat. 1349)

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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Oct 16	Oct 31	Nov 15	Dec 2	Dec 16	Jan 14
Oct 17	Nov 1	Nov 18	Dec 2	Dec 16	Jan 15
Oct 18	Nov 4	Nov 18	Dec 2	Dec 17	Jan 16
Oct 21	Nov 5	Nov 20	Dec 5	Dec 20	Jan 21
Oct 22	Nov 6	Nov 21	Dec 6	Dec 23	Jan 21
Oct 23	Nov 7	Nov 22	Dec 9	Dec 23	Jan 21
Oct 24	Nov 8	Nov 25	Dec 9	Dec 23	Jan 22
Oct 25	Nov 12	Nov 25	Dec 9	Dec 24	Jan 23
Oct 28	Nov 13	Nov 29	Dec 12	Dec 27	Jan 27
Oct 29	Nov 13	Nov 29	Dec 13	Dec 30	Jan 27
Oct 30	Nov 14	Nov 29	Dec 16	Dec 30	Jan 28
Oct 31	Nov 15	Dec 2	Dec 16	Dec 30	Jan 29