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Presidential Documents

Proclamation 7603 of October 4, 2001

Child Health Day, 2002

By the President of the United States of America

A Proclamation

On Child Health Day, we renew our commitment to the well-being and safety of our children. Parents, families, teachers, and neighbors all play important roles in preparing children to face life's physical, spiritual, intellectual, and emotional demands. For the future of our country, we must work together to provide our young people with the knowledge and skills they need to be safe, self-confident, and successful.

From maintaining a healthy environment and high safety standards to providing immunizations and quality health care, children rely on our vigilance and support. Each year, 30 million children require emergency care due to acute illness and injury. We can all take important steps to help prevent these accidents and to improve the health and safety of young Americans.

Parents and other caregivers should be aware of the latest safety precautions and pay careful attention to consumer safety warnings. They should always secure infants, toddlers, and small children in safety seats and booster seats. Children should be taught always to wear their seatbelts when riding in a vehicle and to use protective gear when riding a bicycle, roller blading, skate boarding, playing sports, and participating in other similar activities. Parents should set a good example by refraining from smoking and should teach their children about the health risks of tobacco, drugs, and alcohol.

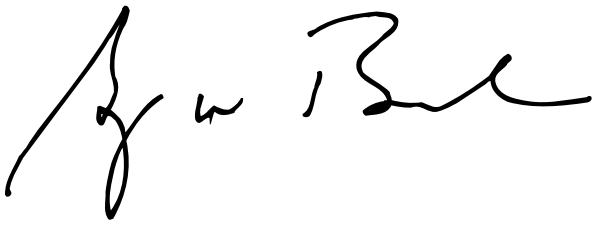
Child obesity has become a serious problem in this country. About 8 million young Americans—almost 15 percent of all children—are overweight. Obesity can cause medical complications that can lead to hospitalization for type 2 diabetes, sleep apnea, and asthma. Ensuring regular participation in physical activity can help children manage weight, control blood pressure, and maintain healthy bones, muscles, and joints.

My Administration is strongly committed to advancing programs that help children discover and understand the benefits of healthy living. The recently introduced HealthierUS Initiative will help Americans improve their health and quality of life through modest improvements in physical activity, nutrition, getting preventive screenings, and making healthy choices. Families play a vital role and can help to promote and encourage these beneficial habits.

By committing ourselves to health and safety, we better enable young people to achieve their goals, live longer, fuller lives, and we strengthen our Nation. The Congress, by a joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as ''Child Health Day'' and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Monday, October 7, 2002, as Child Health Day. On this day, and on every day throughout the year, I call upon families, schools, child health professionals, communities, and governments to help all of our children discover the rewards of good health and wellness.

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



[FR Doc. 02–25898
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Presidential Documents

Proclamation 7604 of October 4, 2002

German-American Day, 2002

By the President of the United States of America

A Proclamation

As the oldest and longest-lived democracy in the world, our Nation is committed to promoting freedom, protecting liberty, and pursuing peace. For over 225 years, America has been a place where people have come to realize their dreams and enjoy the blessings of religious tolerance and individual rights.

In 1683, 13 immigrant families left Germany to escape religious persecution and establish the first German settlement in North America in Germantown, Pennsylvania. Since that time, more than 7 million German immigrants have come to America, and through hard work, innovation, and dedication, they have influenced our Nation and strengthened our country. Each year, we celebrate German-American Day, which offers us the chance to reflect on the proud and important contributions that German Americans have made to the United States.

Carl Schurz, who emigrated from the Rhineland, served as a United States Senator and Secretary of the Interior. He said that German immigrants ''could render no greater honor to their former fatherland than by becoming conscientious and faithful citizens of their new country.'' As farmers, businessmen, scientists, artists, teachers, and politicians, German Americans have contributed to the values that make our Nation strong. Through his artistic abilities as a cartoonist and caricaturist during and following the Civil War, Thomas Nast established himself as a political voice for the underprivileged and champion of equal rights for all citizens.

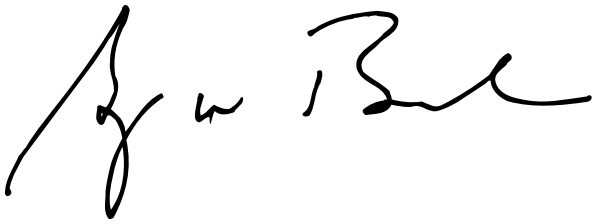
The important work of Joseph Pulitzer helped to create the American legacy of freedom of the press and to advance the field of journalism. Oscar Hammerstein is known as an integral figure in the history of the United States opera for building his second Manhattan Opera House in addition to several other theaters. This tradition of excellence continued with the musical talents of his grandson, Oscar Hammerstein II, as he elevated the American musical comedy to musical theater that Americans enjoy today. The efforts of German-American entrepreneurs Levi Strauss, the creator of blue jeans, and Walter Percy Chrysler, the first president of Chrysler Corporation in 1925, reflect the entrepreneurial spirit of our country. Today, German Americans continue to serve this Nation with distinction in our Armed Forces, in our communities, and throughout all sectors of our society.

On this day, we recognize the important and continuing relationship between Germany and the United States. Our friendship was forged after World War II and is based on mutual support and respect. Germany showed meaningful support for the United States after the September 11, 2001, terrorist attacks. On this day, I am pleased to call all Americans to celebrate the contributions that German Americans have made to our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 6, 2002, as

German-American Day. I encourage all Americans to recognize the contributions of our citizens of German descent to the liberty and prosperity of the United States, and to celebrate our close ties to the people of Germany.

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



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Presidential Documents

Title 3—

The President

Proclamation 7602 of October 4, 2002

Fire Prevention Week, 2002

By the President of the United States of America

A Proclamation

Every year, fires needlessly take lives and destroy homes, natural habitats, and livelihoods. This year, as we observe Fire Prevention Week, I ask all citizens to take responsible steps to prevent fires at home and outdoors and to ensure that safety and emergency plans are in place and in practice.

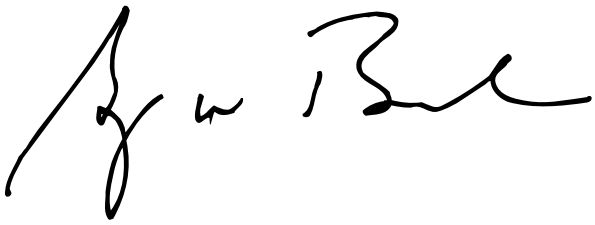
Approximately 3,500 Americans die each year in home fires; and 85 percent of all annual fire fatalities occur in residences. To prevent this tragic loss of life, the National Fire Protection Association, in partnership with the Federal Emergency Management Agency, the United States Fire Administration, and America's 26,354 fire departments, is sponsoring the 2002 Fire Prevention Week campaign, ''Team Up for Fire Safety.'' I encourage all Americans to heed the recommendations of fire safety experts by ensuring that every home is equipped with the appropriate number of properly installed and maintained smoke alarms and that every family has fire safety and escape plans. These measures will help to prevent fires and protect our families, our communities, and our firefighters.

America has faced a devastating wildfire season this year, and much wildlife habitat has been destroyed by fires in our overgrown forests. To reduce the threat of these catastrophic wildfires and to restore the health of America's forests, we must continue to develop improved forest management plans. My Healthy Forests Initiative aims to ensure our environment's health by thinning dangerous overgrowth. Firefighters and forest experts agree that we could strengthen the health of our forests by targeted thinning of dense forests and quickly restoring fire- damaged areas to prevent erosion. Through these improved forest policies, we can protect our citizens, prevent catastrophic fires, preserve healthy forests, and sustain wildlife habitat.

During Fire Prevention Week, our Nation also gives thanks for the invaluable service rendered by our firefighters, who risk their lives to preserve and protect our communities. These courageous public servants have inspired us with their dedication and professionalism. On September 11, 2001, we saw that our brave firefighters are among America's greatest heroes. As we remember the sacrifice of so many firefighters that day, let us draw great strength from their example of selfless service to others. These firefighters embodied the best of the American spirit.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 6 through October 12, 2002, as Fire Prevention Week. On Sunday, October 6, 2002, pursuant to Public Law 107–51, flags will be flown at half-staff on all Federal office buildings in honor of the National Fallen Firefighters Memorial Service. I invite the people of the United States to participate in this observance by flying our Nation's flag over their homes at half-staff on this day, to mark this week with appropriate programs and activities, and to renew efforts throughout the year to prevent fires and their tragic consequences.

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



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Presidential Documents

Executive Order 13275 of October 7, 2002

Creating a Board of Inquiry To Report on Certain Labor Disputes Affecting the Maritime Industry of the United States

WHEREAS, there exists a labor dispute between, on the one hand, employees represented by the International Longshore and Warehouse Union and, on the other hand, employers and the bargaining association of employers who are (1) U.S. and foreign steamship companies operating ships or employed as agents for ships engaged in service to or from the Pacific Coast ports in California, Oregon, and Washington, and (2) stevedore and terminal companies operating at ports in California, Oregon, and Washington; and

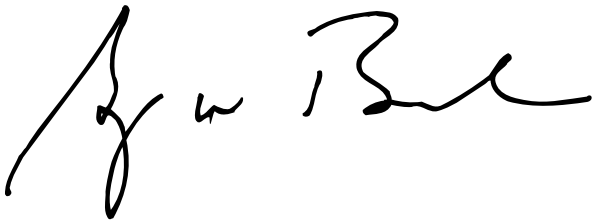
WHEREAS, such dispute has resulted in a lock-out that affects a substantial part of the maritime industry, an industry engaged in trade, commerce, transportation (including the transportation of military supplies), transmission, and communication among the several States and with foreign nations; and

WHEREAS, a continuation of this lock-out, if permitted to continue, will imperil the national health and safety;

NOW, THEREFORE, by virtue of the authority vested in me by section 206 of the Labor Management Relations Act, 1947 (61 Stat. 155; 29 U.S.C. 176) (the ''Act''), I hereby create a Board of Inquiry consisting of such members as I shall appoint to inquire into the issues involved in such dispute.

The Board shall have powers and duties as set forth in title II of the Act. The Board shall report to me in accordance with the provisions of section 206 of the Act no later than October 8, 2002.

Upon the submission of its report, the Board shall continue in existence in order to perform any additional functions under the Act, including those functions set forth in section 209(b), but shall terminate no later than upon completion of such functions.



THE WHITE HOUSE,

October 7, 2002.

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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 723 and 729

RIN 0560–AG75

2002 Farm Bill Regulations—Termination of Peanut Market Quota Program and Revised Flue-Cured Tobacco Reserve Stock Level

AGENCY: Farm Service Agency, Agriculture.

ACTION: Final Rule.

SUMMARY: This rule takes two actions to reflect new law enacted in the Farm Security and Rural Investment Act of 2002 (2002 Act). First, rules for the now terminated (as to 2002 and subsequent crops) marketing quota program for peanuts are removed. Second, the ''reserve stock level'' for flue-cured tobacco (used to set quotas) is changed. These two actions simply implement new law and in that sense are ministerial only.

EFFECTIVE DATE: October 9, 2002.

FOR FURTHER INFORMATION CONTACT: Daniel J. Stevens, USDA, Farm Service Agency, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250–0514, telephone 202–720–5291. Electronic mail: *Daniel_Stevens@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Loan Deficiency Payments—10.051.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

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. Further, this rule does not contain new information collections or revise those collection currently approved by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule because FSA is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule.

Unfunded Federal Mandates

This rule contains no Federal mandates for State, local, and tribal governments or the private sector as defined under the regulatory provisions of Title II of the Unfunded Mandate Reform Act (UMRA). Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Sections 1309 and 1310 of the 2002 Act terminated, beginning with the 2002 crop, the long standing marketing quota and price support program for peanuts. New and differing peanut programs were enacted in the same legislation. This rule removes, because of the new law, the marketing quota regulations in Chapter VII of Title 7 of the Code of Federal Regulations (CFR), specifically those at 7 CFR part 729. Removal of the price support regulations contained in Chapter XIV of Title 7 of the CFR will be covered by separate notice as will rules for the new program enacted in the 2002 Act. The revised text of 7 CFR part 729 will not affect the 2001 and preceding crops. Those crops remain subject to the previous rules.

Second, in the law that preceded the 2002 Act, the reserve stock level for flue cured tobacco was set to be the greater of 100,000 pounds (farm sales weight) or 15 percent of the national quota for that tobacco for the marketing year immediately preceding the marketing year for which the determination is being made. Section 1610 of the 2002 Act changed 100,000 pounds to 60,000 pounds and 15 percent to 10 percent. This rule implements that change too. Reserve stock levels serve a function in the calculation of national tobacco quotas.

List of Subjects

7 CFR Part 723

Agricultural commodities, Marketing quotas, Price support programs, Tobacco

7 CFR Part 729

Agricultural commodities, Marketing quotas, Price support programs

Accordingly, chapter VII is amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 is revised to read as follows:

Authority: 7 U.S.C. 1301 *et seq.*; 7 U.S.C. 1421; 7 U.S.C. 1445–1 and 1445–2.

2. Amend section 723.503 by revising paragraph (a)(3) to read as follows:

§ 723.503 Establishing the quotas.

(a) * * *

(3) Reserve stock level adjustment. The total calculated by adding the sums of paragraphs (a)(1) and (a)(2) of this section may be adjusted by the Director as necessary to maintain inventories of producer loan associations for burley and flue-cured tobacco at the reserve stock level. For burley, the reserve stock level is the larger of 50 million pounds farm sales weight or 15 percent of the previous year's national market quota. For flue-cured, the reserve stock level is the larger of 60 million pounds or 10 percent of the previous year's quota. The Director shall consider supply conditions when making any adjustment and a downward adjustment for burley tobacco may not exceed either 35 million pounds farm sales weight or 50 percent of the amount by which loan inventories exceed the reserve stock

level, whichever is larger. If the uncommitted pool stocks of burley tobacco for 2001 and subsequent crops equal or are less than the reserve stock level, then the downward adjustment in quota for that year may be made based on the reserve stock level for that kind of tobacco, with no downward limitation.

* * * * *

PART 729—[Revised]

3. 7 CFR Part 729 is revised to read as follows:

PART 1729—PEANUT MARKETING QUOTAS

Authority: 7 U.S.C. 7271; 15 U.S.C. 714b-c; 7 U.S.C. 7959.

§ 729.1 Applicablity to 1996 through 2001 crops of peanuts.

Sections 1309 and 1310 of the Farm Security Rural Investment Act of 2002 terminated, beginning with the 2002 crop, the marketing quota and price support program for peanuts. However, 7 CFR part 729, revised as of January 1, 2002 continues to apply to the 1996 through 2001 crops of peanuts.

Signed at Washington, DC on September 12, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–25271 Filed 10–8–02; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 32, and 35

RIN 3150–AF74

Medical Use of Byproduct Material; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on April 24, 2002 (67 FR 20250). This action in necessary to correct typographic and editorial errors.

EFFECTIVE DATE: October 24, 2002.

FOR FURTHER INFORMATION CONTACT: Anthony Tse, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6233; e-mail *ant@nrc.gov.*

SUPPLEMENTARY INFORMATION:

In rule FR Doc. 02–9663 published April 24, 2002, (67 FR 20250) make the following corrections:

1. On page 20253, third column, second paragraph, tenth line, the word ''Specialities'' should read ''Specialties.''

2. On page 20260, first column, second complete paragraph, tenth line, the word ''Specialities'' should read ''Specialties.''

3. On page 20342, second column, 14th line, ''2120 L Street NW. (Lower Level), Washington, DC'' should read ''One White Flint North, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852.''

4. On page 20350, first column, 25th line, insert the word ''contains'' after the word ''INFORMATION.''

§ 20.1002 [Amended]

5. In § 20.1002, 19th line, the comma after the word ''released'' should be deleted.

§ 20.1003 [Amended]

6. In § 20.1003, Occupational dose, 15th line, the comma after the word ''released'' should be deleted.

7. In § 20.1003, Public dose, 12th line, the comma after the word ''released'' should be deleted.

§ 20.1301 [Amended]

8. In § 20.1301(a)(1), tenth line, the comma after the word ''released'' should be deleted.

§ 32.72 [Amended]

9. In § 32.72, last line, after ''35.55(b)'', insert the words ''or, prior to October 25, 2004, 10 CFR 35.980(b).''

§ 35.6 [Amended]

10. In § 35.6(c), fifth line, the word ''license'' should read ''licensee.''

§ 35.12 [Amended]

11. In § 35.12(c)(1)(i), second line, the word ''Licens'' should read ''License.''

§ 35.13 [Amended]

12. In § 35.13(b)(1), fifth line, ''35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, or 35.960'' should read ''35.910(a), 35.920(a), 35.930(a), 35.940(a), 35.950(a), or 35.960(a)''.

13. In § 35.13(b)(2), fourth line, ''35.980'' should read ''35.980(a).''

14. In § 35.13(b)(3), third line, ''35.961'' should read ''35.961(a) or (b).''

§ 35.40 [Amended]

15. In § 35.40(a), fourth line, the word ''Megabequerels'' should read ''Megabecquerels.''

§ 35.51 [Amended]

16. In § 35.51(b)(1), eighth line, the words ''an individual who meets the requirements for'' should be deleted.

Dated at Rockville, Maryland, this 3rd day of October, 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 02–25658 Filed 10–8–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 02–12A]

RIN 1557–AC00

Assessment of Fees

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Final rule; technical correction.

SUMMARY: This final rule makes a correction to the final rule that the OCC published in the **Federal Register** on September 11, 2002 (67 FR 57509) amending 12 CFR 8.2(a). That provision sets forth the formula for the semiannual assessment the OCC charges each national bank.

EFFECTIVE DATE: This final rule is effective on October 9, 2002.

FOR FURTHER INFORMATION CONTACT: Michele Meyer, Counsel, Legislative and Regulatory Activities Division, 202–874–5090.

SUPPLEMENTARY INFORMATION: On November 16, 2001, the OCC published a final rule in the **Federal Register** that amended 12 CFR 8.2(a), which sets forth the formula for the semi-annual assessment that the OCC charges national banks. 66 FR 57645 (November 16, 2001). The objective of the rulemaking, as described in the preambles to the proposed and final rules, was to revise 12 CFR 8.2(a) only. However, in the published final rule, 12 CFR 8.2(a)(1) through (a)(6) were inadvertently deleted. 66 FR at 57647–48. A final rule published September 11, 2002 restored those deleted provisions of the regulation. 67 FR 57509 (September 11, 2002).

However, the September 11, 2002 final rule also restored erroneously 12 CFR 8.2(a)(7), which had been removed in a prior rulemaking. 66 FR 29890 (June 1, 2001). Today's final rule again removes that provision from the regulation.

This final rule takes effect immediately. The OCC has concluded that the notice and comment procedures prescribed by the Administrative

Procedure Act are unnecessary because this rule corrects a technical error without substantive change to the provision of § 8.2(a). *See* 5 U.S.C. 553(b)(3)(B). *Cf. United States National Bank of Oregon* v. *Independent Insurance Agents of America, Inc.,* 508 U.S. 439, 462 (1993) (error in punctuation construed so as not to defeat the ''true meaning'' of a Federal law that relocated but did not repeal the statutory provision authorizing national banks to sell insurance).

List of Subjects in 12 CFR Part 8

National banks, Reporting and recordkeeping requirements.

Accordingly, 12 CFR part 8 is amended by making the following correcting amendments:

PART 8—ASSESSMENT OF FEES

1. The authority citation for part 8 continues to read as follows:

Authority: 12 U.S.C. 93a, 481, 482, 1867, 3102, and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. In § 8.2, paragraphs (a)(1) through (a)(6), respectively, are republished and paragraph (a)(7) is removed, to read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

(1) Every national bank falls into one of the ten asset-size brackets denoted by Columns A and B. A bank's semiannual assessment is composed of two parts. The first part is the calculation of a base amount of the assessment, which is computed on the assets of the bank up to the lower endpoint (Column A) of the bracket in which it falls. This base amount of the assessment is calculated by the OCC in Column C.

(2) The second part is the calculation by the bank of assessments due on the remaining assets of the bank in excess of Column E. The excess is assessed at the marginal rate shown in Column D.

(3) The total semiannual assessment is the amount in Column C, plus the amount of the bank's assets in excess of Column E times the marginal rate in Column D: Assessments = C+[(Assets − E) × D].

(4) Each year, the OCC may index the marginal rates in Column D to adjust for the percent change in the level of prices, as measured by changes in the Gross Domestic Product Implicit Price Deflator (GDPIPD) for each June-to-June period. The OCC may at its discretion adjust marginal rates by amounts less than the percentage change in the GDPIPD. The OCC will also adjust the amounts in Column C to reflect any change made to the marginal rate.

(5) The specific marginal rates and complete assessment schedule will be published in the ''Notice of Comptroller of the Currency Fees'', provided for at § 8.8 of this part. Each semiannual assessment is based upon the total assets shown in the bank's most recent ''Consolidated Report of Condition (Including Domestic and Foreign Subsidiaries)'' (Call Report) preceding the payment date. The assessment shall be computed in the manner and on the form provided by the Comptroller of the Currency. Each bank subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth quarterly Call Report required by the Office under 12 U.S.C. 161 is subject to the full assessment for the next six-month period.

(6)(i) Notwithstanding any other provision of this part, the OCC may reduce the semiannual assessment for each non-lead bank by a percentage that it will specify in the Notice of Comptroller of the Currency Fees described in § 8.8.

(ii) For purposes of this paragraph (a)(6):

(A) *Lead bank* means the largest national bank controlled by a company, based on a comparison of the total assets held by each national bank controlled by that company as reported in each bank's Call Report filed for the quarter immediately preceding the payment of a semiannual assessment.

(B) *Non-lead bank* means a national bank that is not the lead bank controlled by a company that controls two or more national banks.

(C) *Control* and *company* have the same meanings as these terms have in sections 2(a)(2) and 2(b), respectively, of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(2) and (b)).

* * * * *

Dated: September 25, 2002.

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

[FR Doc. 02–25634 Filed 10–8–02; 8:45 am]

BILLING CODE 4810–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 37, 38, 39 and 40

RIN 3038–AB63

Amendments to New Regulatory Framework for Trading Facilities and Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting a number of technical amendments to its rules implementing the Commodity Futures Modernization Act of 2000 with respect to trading facilities and clearing organizations. The rules add new categories of exchange rules or rule amendments that need not be approved by or self-certified to the Commission; amend the definitions of ''rule'' and ''dormant contract;'' add new definitions of ''dormant contract market,'' ''dormant derivatives transaction execution facility,'' and ''dormant derivatives clearing organization''; and add a procedure for listing or relisting products for trading on a registered entity that has become dormant.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy E. Yanofsky, Assistant Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5260. e-mail: *NYanofsky@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission, on August 10, 2001, promulgated rules implementing the provisions of the Commodity Futures Modernization Act of 2000 (CFMA) relating to trading facilities.[1] 66 FR 42256. These rules, parts 36 through 40 of the Commission's rules, became effective on October 9, 2001.

The CFMA profoundly altered federal regulation of commodity futures and option markets. The new statutory framework established two categories of markets subject to Commission regulatory oversight, designated contract markets (contract markets) and registered derivatives transaction execution facilities (DTFs), and two categories of exempt markets, exempt boards of trade and, under section 2(h)(3) of the Commodity Exchange Act (Act), exempt commercial markets. The Commission's rules relating to trading facilities established administrative procedures necessary to implement the CFMA, interpreted certain of the CFMA's provisions and provided guidance on compliance with various of its requirements. In addition, the Commission, under its exemptive authority, in a limited number of instances, provided relief from, or

[1] The CFMA was intended, in part, ''to promote innovation for futures and derivatives,'' ''to reduce systemic risk,'' and ''to transform the role of the Commission to oversight of the futures markets.'' *See* section 2 of the CFMA.

greater flexibility than, the CFMA's provisions.

On April 26, 2002, the Commission proposed a limited number of amendments responding to initial issues that had arisen in administering its implementing rules, or which are technical in nature. 67 FR 20702. The Commission received three comment letters, all from contract markets. The commenters generally supported the proposed rules, but expressed concern about the intended scope of the proposed amendments relating to self-certification of exchange fees. The Commission agrees with these comments, and is amending rule 40.6(c) to better describe those categories of exchange fees that will be subject to the self-certification requirement and those that will not. In all other respects, the Commission is adopting the rules as proposed.[2]

II. The Final Rules

A. Dormant Contract Markets and Products

The Commission has long required boards of trade, before relisting a dormant contract for trading, to demonstrate that the contract continues to meet the Act's requirements. See 17 CFR 5.2. This requirement was based upon the premise that contracts that have been dormant for a significant period of time may not have been updated to reflect intervening changes in cash-market practices, and therefore may no longer meet applicable statutory and regulatory requirements. Accordingly, the relisting of a dormant contract was treated in some respects similarly to the designation of a new contract.

Part 40 of the Commission's rules implementing the CFMA retains the concept that the Act's requirements for listing a new product for trading should also be applicable when relisting a dormant contract for trading. Specifically, Commission rule 40.2 requires that, before either listing a contract or relisting a dormant contract for trading, registered entities certify that the product complies with the Act. The Commission proposed amending its part 40 requirements relating to dormant contracts in two ways.

First, the Commission proposed to revise the exemptive period in the definition of ''dormant contract'' in rule 40.1 from the time following ''initial listing'' to the time following initial exchange certification or Commission approval. The Commission originally used ''initial listing'' to mark the beginning of the exemptive period based upon its belief that registered entities routinely would certify products to the Commission shortly before trading was imminent as permitted by rule 40.2. However, many exchanges have continued their prior practice of fulfilling regulatory requirements well in advance of a product's anticipated listing date. In addition, some exchanges have certified to the Commission, but have never listed for trading, a number of new products. Accordingly, the Commission proposed that the exemptive period under the dormant contract definition begin running from the time of certification or Commission approval. Second, in light of the far greater rapidity with which markets innovate and change today compared to when the dormant contract rule was first promulgated and the lessened burden of a simple self-certification compared to the previous requirement that dormant contracts be approved by the Commission prior to relisting, and for consistency with the operation of other rules, the Commission proposed to amend rule 40.1 to reduce the grace period during which a new contract is exempt from being defined as dormant from 60 to 36 complete calendar months.

The Commission also proposed to amend rule 40.2 so that it would apply in instances where the registered entity itself has become dormant. Prior to enactment of the CFMA, the term ''designated contract market'' denoted the Commission-approved products traded on a board of trade.[3] Accordingly, prior to the CFMA, a board of trade's initial application for designation as a contract market in a commodity triggered review of both the general requirements for designation as a contract market as well as those requirements that were product-specific. If a board of trade determined to relist a contract for trading after all of its contracts had become dormant, the Commission would have reviewed both the terms and conditions of the product to be relisted as well as whether the board of trade continued to meet the general designation requirements. The Commission proposed to amend parts 37, 38, 39 and 40 of its rules to clarify that, when a registered entity that has become dormant determines to list or relist an initial product for trading (or in the case of a derivatives clearing organization, to accept a product for clearing), it must demonstrate that it continues to satisfy the criteria for designation or registration.[4] In making such a demonstration, a registered entity may rely upon previously-submitted materials that still pertain to, and accurately describe, current conditions.

No comments were received concerning these proposed amendments on dormant markets and products and the Commission is adopting the rules as proposed.

B. Product Approval Procedures

Contract markets or DTFs may request that the Commission review and approve new products and new rules or rule amendments. The Commission proposed amending rules 40.3 and 40.5 to include a provision similar to that for applications for contract market designation and DTF registration, that the applicant or submitting entity identify with particularity information in the submission that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification. *See* rules 38.3(a)(5) and 37.5(b)(5). As proposed, rule 40.3 also provided that the terms and conditions of products for which approval is voluntarily requested will be made publicly available at the time of their submission to the Commission to enable the Commission, by obtaining the views of market participants and others, to ascertain whether the proposed product would be readily susceptible to manipulation, or otherwise violate the Act.[5] Finally, the

[2] The Commission will consider as appropriate additional amendments to the rules implementing the CFMA related to trading facilities based upon further administrative experience.

[3] In contrast, the CFMA redefined the meaning of ''designated contract market'' to refer to the approved or licensed facility on which futures contracts and commodity options are traded.

[4] The definitions of ''dormant contract market,'' ''dormant derivatives transaction execution facility,'' and ''dormant derivatives clearing organization'' provide for a 36-month initial exemptive period that would begin when the Commission issues an order, including conditional orders, designating a contract market or registering a DTF or a derivatives clearing organization.

The Commission is also adopting, as proposed, two technical amendments related to continuing goodstanding designation or registration status. The first makes clear that the notification procedure available to contract markets to operate as a DTF applies only to active contract markets. Accordingly, before using this notification procedure, dormant contract markets must reinstate their active contract market status. Of course, they could also become a registered DTF by application. The second provides that, upon a change of ownership of a contract market or DTF, the new owners must certify that the facility continues to meet the respective designation or registration requirement.

[5] Commission staff routinely conduct trade interviews when reviewing novel instruments to ascertain the relative susceptibility of a product to being manipulated. To be meaningful, these interviews require the release of the proposed instrument's terms and conditions. Generally, the Commission also intends to continue its long-standing practice of requesting public comment on the terms and conditions of new products under review for Commission approval by publication of

Commission proposed a new rule 40.8 to make clear that all other information required by the core principles to be made public by a registered entity will be treated as public information by the Commission at the time the Commission issues an order of designation or registration, a registered entity is deemed approved, or a rule or rule amendment is approved or deemed approved by the Commission, or can first be made effective by the registered entity.[6]

No comments were received concerning these proposed amendments on product approval procedures and the Commission is adopting the rules as proposed.

C. Exchange Fees

The Commission also proposed to amend rules 40.1, 40.4 and 40.6 explicitly to address the procedures applicable to the imposition or amendment of exchange fees. The Commission's proposed rules provided that fees related to delivery of an enumerated agricultural commodity would be subject to the prior-approval requirements of the Act, and that all other fees would be subject only to the certification requirement. The Commission's proposed rules further provided that fees or fee changes of any type of less than $1.00 would be exempt from the certification requirement (or the prior-approval requirement, if applicable) as *de minimis*.[7]

The three contract markets that commented expressed concern that the Commission's proposed rule could be read to require the exchanges to certify all fees and fee changes of $1.00 or more, including fees established by an independent third party and fees that are administrative in nature. The Commission did not intend this result and accordingly is revising rule 40.6 to clarify the treatment of rules relating to fees. Under the final rules, certification will still be required for fees or fee changes that are related to delivery, trading, clearing and dispute resolution and that are $1.00 or more.[8] *See* rule 40.6(a).[9] Fees of $1.00 or more that are unrelated to the foregoing (delivery, trading, clearing and dispute resolution), or that are established by an independent third party,[10] will be exempt from certification but subject to notification under rule 40.6(c)(2)(v). Finally, neither the certification nor notification requirements will apply to fees that are under $1.00, or that relate to matters that are administrative in nature, such as dues, badges, telecommunications services, booth space, real time quotations, historical information, publications or software licenses. *See* rule 40.6(c)(3)(ii)(E).

D. Definition of Rule

The Commission proposed to amend the definition of ''rule'' in part 40.1[11] to exclude from its meaning exchange actions relating to the setting of margin levels, except with respect to security futures products and contracts on stock indices. Prior to the CFMA, section 5a(a)(12) of the Act required that all changes to contract terms and conditions, with the exception of rules relating to the setting of margin levels, be submitted to the Commission for prior approval. The ability to adjust margin levels was afforded this special status because of the recognized need for exchanges to change margin levels rapidly, often changing margin levels within a single trading session, in response to changing market conditions. In section 113 of the CFMA, Congress removed the prior-approval provision, providing instead that registered entities could amend their rules by self-certification. However, there is no indication that Congress intended thereby to affect the special status accorded rules relating to the setting of margin levels.[12] Accordingly, the Commission believes that specifically excluding the setting of margin levels (except with respect to stock index products and security futures products) from the definition of ''rule'' is consistent with Congress's intent and with the public interest.[13] One commenter, the New York Mercantile Exchange, stated that it appreciated this proposed clarifying amendment. The Commission is amending the definition of ''rule'' as proposed.

III. Cost-Benefit Analysis

Section 15 of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. Section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15 simply requires the Commission to ''consider the costs and benefits'' of its

notices in the **Federal Register**. In instances where notice in the **Federal Register** is impracticable or otherwise unnecessary, notice of a submission for voluntary approval and of the public availability of the proposed product's terms and conditions will be through the Commission's internet Web site (*http://www.cftc.gov*).

The terms and conditions of products eligible for trading by self-certification must be made publicly available by the contract market (Core Principle 7), or the DTF (Core Principle 4), and will be available from the Commission, at the time that the exchange legally could commence trading—the beginning of the business day following certification to the Commission.

[6] This requirement is limited to information required to be made public by a registered entity under a core principal, and does not apply to additional materials that may be filed in support of an application for designation or registration. For example, section 5(d)(7) of the Act requires contract markets to make publicly available information concerning ''the terms and conditions of the contracts of the contract market and the mechanisms for executing transactions on or through the facilities.''

[7] Separately, as proposed, the Commission has revised the list of rule amendments that are not material changes to futures contracts on the enumerated agricultural commodities to clarify that rule changes not required to be certified to the Commission under rule 40.6(c) are also not material.

[8] The $1.00 fee or fee change is on a per contract basis and not on a per unit basis.

[9] Such a certification includes the exchange's determination (which need not be separately stated) that the fee or fee change complies with the exchange's obligation under Core Principle 18 that its actions avoid resulting in an unreasonable restraint of trade or imposing any material anticompetitive burden on trading.

[10] These fees may include, for example, USDA grading and inspection charges.

[11] With respect in general to the defintion of ''rule,'' Commission staff in recent months has learned, through bulletins and notices to the members of registered entities, of a number of rule changes that were not appropriately submitted to the Commission for review under part 40. The Commission again reminds registered entities, as it did in its proposal, that the definition of ''rule'' under part 40 encompasses more than just provisions labeled as ''rules'' in rulebooks, but includes, among other things, resolutions, interpretations and stated policies. In order to relieve any administrative burdens, registered entities may submit rule changes to the Commission in the form of member bulletins and notices, so long as those submissions are labeled and, if necessary, certified in accordance with the procedural requirements of part 40. In this regard, the Commission notes that it does not interpret this requirement as expanding any requirement or its administrative practice with regard to rule submissions that existed prior to enactment of the CFMA. The Commission further notes that its rules provide several categories of exchange rules that registered entities are not required to certify or to report to the Commission in a weekly notification. The categories of rules that are exempt from the certification and notification requirements are those that, for instance, relate to the routine, daily administration, direction and control of employees. *See* rule 40.6(c)(3) for a complete list of rules that are exempt from both certification and notification requirements. In this **Federal Register** release, the Commission has expanded this category of exempt rules to include fees or fee changes that are eigther under $1.00 or that relate to matters that are administrative in nature.

[12] In this regard, Congress did not modify the Act's other provisions relating to margins. *See* section 2(a)(C)(v).

[13] The Commission is also adopting, as proposed, a number of technical amendments. Appendix C to part 40 details the information that foreign boards of trade should include in a request for no-action relief to offer and sell to persons in the United States foreign exchange-traded futures contracts on broad-based securities indices. The Commission is amending that guidance to incorporate the changes made by the CFMA to the criteria for approving such stock index futures contracts. The Commission is also, as proposed, making conforming changes to a number of delegations in the rules and to several other provisions.

action, in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission's proposal contained an analysis of its consideration of these costs and benefits and solicited public comment thereon. 67 FR 20704. The Commission specifically invited commenters to submit any data that they may have quantifying the costs and benefits of the proposed rules. *Id.* The Commission has considered all of the comments letters received, none of which specifically addressed the costs or benefits of the proposed rules. The commenters, however, did raise concerns about the possible unintended consequences of the Commission's proposal concerning exchange fees and the Commission has responded favorably to those concerns and thus has limited any unintended costs.

After considering the costs and benefits of these rules, the Commission had decided to adopt them as discussed above.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rules adopted herein would affect contract markets and other registered entities. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[14] In its previous determinations, the Commission has concluded that contract markets, DTFs and clearing organizations are not small entities for the purpose of the RFA.[15]

In the proposed rules, the Commission solicited comment on whether the rules as proposed would have a significant economic impact on a substantial number of small entities. The Commission received no comments in response to this request. The Commission hereby determines that the rules, as adopted herein, will not have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995

This rulemaking contains information-collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission submitted a copy of this section to the Office of Management and Budget (OMB) for its review. No comments were received in response to the Commission's invitation in the notice of proposed rulemaking to comment on any potential paperwork burden associated with these rules.

List of Subjects

17 CFR Part 37

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 38

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 39

Commodity futures, Consumer protection.

17 CFR Part 40

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000), and in particular, sections 1a, 2, 3, 4, 4c, 4i, 5, 5a, 5b, 5c, 5d, 6 and 8a thereof, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

1. The authority citation for part 37 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 6(c), 7a and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

2. Section 37.2 is revised to read as follows:

§ 37.2 Exemption.

Contracts, agreements or transactions traded on a derivatives transaction execution facility registered as such with the Commission under section 5a of the Act, the facility and the facility's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 37 and §§ 1.3, 1.31, 1.59(d), 1.63(c), 15.05, 33.10, part 40, part 41 and part 190 of this chapter, and as applicable to the market, parts 15 through 21 of this chapter, which are applicable to a registered derivatives transaction execution facility as though they were set forth in this section and included specific reference to derivatives transaction execution facilities.

3. Section 37.5 is amended by revising paragraphs (a), (b), and (f)(1) to read as follows:

§ 37.5 Procedures for registration.

(a) *Notification by contract markets.* (1) To operate as a registered derivatives transaction execution facility pursuant to section 5a of the Act, a board of trade, facility or entity that is designated as a contract market, which is not a dormant contract market as defined in § 40.1 of this chapter, must:

(i) Comply with the core principles for operation under section 5a(d) of the Act and the provisions of this part 37; and

(ii) Notify the Commission of its intent to so operate by filing with the Secretary of the Commission at its Washington, DC, headquarters a copy of the facility's rules (which may be trading protocols) or a list of the designated contract market's rules that apply to operation of the derivatives transaction execution facility, and a certification by the contract market that it meets:

(A) The requirements for trading of section 5a(b) of the Act; and

(B) The criteria for registration under section 5a(c) of the Act.

(2) Before using the notification procedure of paragraph (a) of this section for registration as a derivatives transaction execution facility, a dormant contract market as defined in § 40.1 of this chapter must reinstate its designation under § 38.3(a)(2) of this chapter.

(b) *Registration by application*—(1) *Initial registration.* A board of trade, facility or entity shall be deemed to be registered as a derivatives transaction execution facility thirty days after receipt (during the business hours

[14] 47 FR 18618–21 (Apr. 30, 1982).

[15] 47 FR 18618, 18619 (April 30, 1982) discussing contract markets); 66 FR 42256, 42268 (August 10, 2001) (discussing DTFs); 66 FR 45605, 45609 (August 29, 2001) (discussing DCOs).

defined in Sec. 40.1 of this chapter) by the Secretary of the Commission at its Washington, DC, headquarters, of an application for registration as a derivatives transaction execution facility unless notified otherwise during that period, or, as determined by Commission order, registered upon conditions, if:

(i) The application demonstrates that the applicant satisfies the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively;

(ii) The submission is labeled ''Application for DTF Registration'';

(iii) The submission includes:

(A) The derivatives transaction execution facility's rules, which may be trading protocols;

(B) Any agreements entered into or to be entered into between or among the facility, its operator or its participants, technical manuals and other guides or instructions for users of such facility, descriptions of any system test procedures, tests conducted or test results, and descriptions of the trading mechanism or algorithm used or to be used by such facility, to the extent such documentation was otherwise prepared; and

(C) To the extent that compliance with the requirements for trading or the criteria for recognition is not self-evident, a brief explanation of how the rules or trading protocols satisfy each of the conditions for registration;

(iv) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period;

(v) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(vi) The applicant has not instructed the Commission in writing at the time of submission of the application or during the review period to review the application pursuant to the time provisions of and procedures under section 6 of the Act.

(2) *Reinstatement of dormant registration.* Before listing products for trading, a dormant derivatives transaction execution facility as defined in § 40.1 must reinstate its registration under the procedures of paragraphs (a)(1) or (b)(1) of this section, as applicable; *provided however*, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

* * * * *

(f) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to exercise the functions provided under paragraph (d) of this section.

* * * * *

4. Section 37.6 is amended by revising paragraphs (a), (b), introductory text, (b)(1), (b)(2) and (b)(2)(i) introductory text, (b)(2)(iii), and (c) to read as follows:

§ 37.6 Compliance with core principles.

(a) *In general.* To maintain registration as a derivatives transaction execution facility upon commencing operations by listing products for trading or otherwise, or for a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter that has been reinstated under § 37.5(b)(2) upon recommencing operations by relisting products for trading or otherwise, and on a continuing basis thereafter, the derivatives transaction execution facility must have the capacity to be, and be, in compliance with the core principles of section 5a(d) of the Act.

(b) *New and reinstated derivatives transaction execution facilities.*—(1) *Certification of compliance.* Unless an applicant for registration or for reinstatement of registration has chosen to make a voluntary demonstration under paragraph (b)(2) of this section, a newly registered derivatives transaction execution facility at the time it commences operations, or a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter at the time that it recommences operations, must certify to the Commission that it has the capacity to, and will, operate in compliance with the core principles under section 5a(d) of the Act.

(2) *Voluntary demonstration of compliance.* An applicant for registration or for reinstatement of registration may choose to make a voluntary demonstration of its capacity to operate in compliance with the core principles as follows:

(i) At least thirty days prior to commencing or recommencing operations, the applicant for registration or for reinstatement of registration must file (during the business hours defined in § 40.1 of this chapter) with the Secretary of the Commission at its Washington, DC, headquarters, either separately or with the application required by § 37.5, a submission that includes:

* * * * *

(iii) If it appears that the applicant has failed to make the requisite showing, the Commission will so notify the applicant at the end of that period. Upon commencement or recommencement of operations by the derivatives transaction execution facility, such a notice may be considered by the Commission in a determination to issue a notice of violation of core principles under section 5c(d) of the Act.

(c) *Existing derivatives transaction execution facilities.*—(1) *In general.* Upon request by the Commission, a registered derivatives transaction execution facility shall file with the Commission such data, documents and other information as the Commission may specify in its request that demonstrates that the registered derivatives transaction execution facility is in compliance with one or more core principles as specified in the request or that is requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(2) *Change of owners.* Upon a change of ownership of an existing registered derivatives transaction execution facility, the new owner shall file with the Secretary of the Commission at its Washington, DC, headquarters, a certification that the derivatives transaction execution facility meets the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively.

* * * * *

PART 38—DESIGNATED CONTRACT MARKETS

5. The authority citation for Part 38 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

6. Section 38.2 is revised to read as follows:

§ 38.2 Exemption.

Agreements, contracts, or transactions traded on a designated contract market under section 6 of the Act, the contract market and the contract market's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 38 and §§ 1.3, 1.12(e), 1.31, 1.37(c)–(d), 1.38, 1.52, 1.59(d), 1.63(c), 1.67, 33.10, part 9, parts 15 through 21,

part 40, part 41 and part 190 of this chapter.

7. Section 38.3 is amended by revising paragraph (a) to read as follows:

§ 38.3 Procedures for designation by application.

(a)(1) *Initial Application.* A board of trade or trading facility shall be deemed to be designated as a contract market sixty days after receipt (during the business hours defined in § 40.1 of this chapter) by the Secretary of the Commission at its Washington, DC, headquarters, of an application for designation unless notified otherwise during that period, or, as determined by Commission order, designated upon conditions, if:

(i) The application demonstrates that the applicant satisfies the criteria for designation of section 5(b) of the Act, the core principles for operation under section 5(d) of the Act and the provisions of this part 38;

(ii) The application is labeled as being submitted pursuant to this part 38;

(iii) The application includes:

(A) A copy of the applicant's rules and any technical manuals, other guides or instructions for users of, or participants in, the market, including minimum financial standards for members or market participants;

(B) A description of the trading system, algorithm, security and access limitation procedures with a timeline for an order from input through settlement, and a copy of any system test procedures, tests conducted, test results and the nature of contingency or disaster recovery plans;

(C) A copy of any documents pertaining to the applicant's legal status and governance structure, including governance fitness information;

(D) A copy of any agreements or contracts entered into or to be entered into by the applicant, including partnership or limited liability company, third-party regulatory service, member or user agreements, that enable or empower the applicant to comply with a designation criterion or core principal; and

(E) To the extent that any of the items in § 38.3(a)(1)(iii)(A)–(D) raise issues that are novel, or for which compliance with a condition for designation is not self-evident, a brief explanation of how that item and the application satisfies the conditions for designation;

(iv) The applicant does not amend or supplement the designation application, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period;

(v) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(vi) The applicant has not instructed the Commission in writing at the time of submission of the application or during the review period to review the application pursuant to procedures under section 6 of the Act.

(2) *Reinstatement of dormant designation.* Before listing or relisting products for trading, a dormant designated contract market as defined in § 40.1 of this chapter must reinstate its designation under the procedures of paragraph (a)(1) of this section; provided however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

* * * * *

8. Section 38.4(a)(2) is revised to read as follows:

§ 38.4 Procedures for listing products and implementing contract market rules.

(a) Request for Commission approval of rules and products. (1) * * *

(2) Notwithstanding the forty-five day review period for voluntary approval under §§ 40.3(b) and 40.5(b) of this chapter, the operating rules and the terms and conditions of products submitted for voluntary Commission approval under § 40.3 or § 40.5 of this chapter that have been submitted at the same time as an application for contract market designation or an application under § 38.3(a)(2) to reinstate the designation of a dormant contract market as defined in § 40.1 of this chapter, or while one of the foregoing is pending, will be deemed approved by the Commission no earlier than the facility is deemed to be designated or reinstated.

* * * * *

9. Section 38.5 is amended by adding a new paragraph (c) to read as follows:

§ 38.5 Information relating to contract market compliance.

* * * * *

(c) Upon a change of ownership of an existing designated contract market, the new owner shall file with the Secretary of the Commission at its Washington, DC, headquarters, a certification that the designated contract market meets all of the requirements of sections 5(b) and 5(d) of the Act and the provisions of this part 38.

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

10. The authority citation for part 39 is revised to read as follows:

Authority: 7 U.S.C. 7b as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

11. Section 39.4 is amended by revising the section heading, by redesignating the text in paragraph (c) as paragraph (c)(2) and by adding a new paragraph (c)(1) to read as follows:

§ 39.4 Procedures for implementing derivatives clearing organization rules and clearing new products.

* * * * *

(c) *Acceptance of new products for clearing.* (1) A dormant derivatives clearing organization within the meaning of § 40.1 of this chapter may not accept for clearing a new product until its registration as a derivatives clearing organization is reinstated under the procedures of § 39.3 of this part; provided however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

* * * * *

PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORANIZATIONS

12. The authority citation for part 40 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

13. Section 40.1 is amended by revising the definitions of *dormant contract, rule,* and paragraph (6) of *terms and conditions,* by republishing the introductory text of *terms and conditions* and by adding in alphabetical order definitions of *business hours, dormant contract market, dormant derivatives clearing organization* and *dormant derivatives transaction execution facility,* to read as follows:

§ 40.1 Definitions.

* * * * *

Business hours means the hours between 8:15 a.m. and 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, DC all days except Saturdays, Sundays and legal public holidays.

Dormant contract or *dormant product* means any commodity futures or option contract or other agreement, contract,

transaction or instrument in which no trading has occurred in any future or option expiration for a period of six complete calendar months; *provided, however,* no contract or instrument shall be considered to be dormant until the end of thirty-six complete calendar months following initial exchange certification or Commission approval.

Dormant contract market means any designated contract market on which no trading has occurred for a period of six complete calendar months; *provided, however,* no contract market shall be considered to be dormant until the end of 36 complete calendar months following the day that the order of designation was issued or that the contract market was deemed to be designated.

Dormant derivatives clearing organization means any derivatives clearing organization that has not accepted for clearing any agreement, contract or transaction that is required or permitted to be cleared by a derivatives clearing organization under sections 5b(a) and 5b(b) of the Act, respectively, for a period of six complete calendar months; *provided, however,* no derivatives clearing organization shall be considered to be dormant until the end of 36 complete calendar months following the day that the order of registration was issued or that the derivatives clearing organization was deemed to be registered.

Dormant derivatives transaction execution facility means any derivatives transaction execution facility on which no trading has occurred for a period of six complete calendar months; *provided, however,* no derivatives transaction execution facility shall be considered to be dormant until the end of 36 complete calendar months following the day that the order of registration was issued or that the derivatives transaction execution facility was deemed to be registered.

* * * * *

Rule means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, term and condition, trading protocol, agreement or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, derivatives transaction execution facility or derivatives clearing organization or by the governing board thereof or any committee thereof, except those provisions relating to the setting of levels of margin for commodities other than those subject to the provisions of section 2(a)(1)(C)(v) of the Act and security futures as defined in section 1a(31) of the Act.

Terms and conditions means any definition of the trading unit or the specific commodity underlying a contract for the future delivery of a commodity or commodity option contract, specification of settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the contract. Terms and conditions include provisions relating to the following:

* * * * *

(6) Delivery standards and procedures, including fees related to delivery or the delivery process, alternatives to delivery and applicable penalties or sanctions for failure to perform;

* * * * *

14. Section 40.3 is amended by revising paragraph (a)(4) and adding paragraph (a)(5) to read as follows:

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) * * *

(4) The submission identifies with particularity information in the submission, except for the product's terms and conditions which are made publicly available at the time of submission, that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(5) The submission includes the fee required under appendix B to this part.

* * * * *

15. Section 40.4 is amended by revising paragraphs (b)(5) and (b)(6) and by adding paragraphs (b)(7) and (b)(8) to read as follows:

§ 40.4 Amendments to terms or conditions of enumerated agricultural contracts.

* * * * *

(b) * * *

(5) Changes required to comply with a binding order of a court of competent jurisdiction, or of a rule, regulation or order of the Commission or of another Federal regulatory authority;

(6) Corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such nonsubstantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;

(7) Fees or fee changes of less than $1.00; and

(8) Any other rule, the text of which has been submitted to the Secretary of the Commission at least ten days prior to its implementation at its Washington, DC, headquarters and that has been labeled ''Non-material Agricultural Rule Change,'' and with respect to which the Commission has not notified the contract market during that period that the rule appears to require or does require prior approval under this section.

16. Section 40.5 is amended by revising paragraphs (a)(1)(v) and (a)(1)(vi) and by adding paragraph (a)(1)(vii) to read as follows:

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) * * *

(1) * * *

(v) Note and briefly describe any substantive opposing views expressed with respect to the proposed rule that were not incorporated into the proposed rule prior to its submission to the Commission;

(vi) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret in order to approve the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the amendment to the Commission's rule or interpretation; and

(vii) Identify with particularity information in the submission (except for a product's terms and conditions, which are made publicly available at the time of submission) that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification.

* * * * *

17. Section 40.6 is amended by removing the words ''§ 40.1(d)'' in paragraph (a)(2) and, in their place, adding the words ''§ 40.1'', and by revising paragraphs (c)(2)(iii), (c)(2)(iv), (c)(3)(ii)(B), (c)(3)(ii)(C) and (c)(3)(ii)(D), and adding paragraph (c)(2)(v) and (c)(3)(ii)(E) to read as follows:

§ 40.6 Self-certification of rules by designated contract markets and registered derivatives clearing organizations.

* * * * *

(c) * * *

(2) * * *

(iii) *Index products.* Routine changes in the composition, computation, or method of selection of component entities of an index (other than a stock index) referenced and defined in the product's terms, that do not affect the pricing basis of the index, which are

made by an independent third party whose business relates to the collection or dissemination of price information and that was not formed solely for the purpose of compiling an index for use in connection with a futures or option product;

(iv) *Option contract terms.* Changes to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis, or

(v) *Fees.* Fees or fee changes that are $1.00 or more and are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution.

(3) * * *

(ii) * * *

(B) *Administrative procedures.* The organization and administrative procedures of a contract market or a derivatives clearing organization's governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements, Board of Directors or Committee composition requirements or procedures, use or disclosure of material non-public information gained through the performance of official duties, or requirements relating to conflicts of interest;

(C) *Administration.* The routine, daily administration, direction and control of employees, requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds; declaration of holidays, and changes to facilities housing the market, trading floor or trading area;

(D) *Standards of decorum.* Standards of decorum or attire or similar provisions relating to admission to the floor, badges, or visitors, but not the establishment of penalties for violations of such rules; and

(E) *Fees.* Fees or fee changes that are less than $1.00 or that relate to matters such as dues, badges, telecommunication services, booth space, real time quotations, historical information, publications, software licenses or other matters that are administrative in nature.

18. Section 40.7(b)(1) is revised to read as follows:

§ 40.7 Delegations.

* * * * *

(b) * * *

(1) Relate to, but do not substantially change, the quantity, quality, or other delivery specifications, procedures, or obligations for delivery, cash settlement, or exercise under an agreement, contract or transaction approved for trading by the Commission; daily settlement prices; clearing position limits; requirements or procedures for governance of a registered entity; procedures for transfer trades; trading hours; minimum price fluctuations; and maximum price limit and trading suspension provisions;

* * * * *

19. Part 40 is amended by adding a new § 40.8 to read as follows:

§ 40.8 Availability of public information.

Any information required to be made publicly available by a registered entity under sections 5(d)(7), 5a(d)(4) and 5b(c)(2)(L) of the Act, respectively, will be treated as public information by the Commission at the time an order of designation or registration is issued by the Commission, a registered entity is deemed to be designated or registered, a rule or rule amendment of the registered entity is approved or deemed to be approved by the Commission or can first be made effective the day following its certification by the registered entity.

20. Appendix C to part 40 is amended by revising paragraphs (5)(ii) through (vii) to read as follows:

Appendix C—Information That a Foreign Board of Trade Should Submit When Seeking No-Action Relief To Offer and Sell, to Persons Located in the United States, a Futures Contract on a Broad-based Securities Index Traded on That Foreign Board of Trade

* * * * *

(5) * * *

(ii) The total capitalization, number of stocks (including the number of unaffiliated issuers if different from the number of stocks), and weighting of the stocks by capitalization and, if applicable, by price in the index as well as the combined weighting of the five highest-weighted stocks in the index;

(iii) Procedures and criteria for selection of individual securities for inclusion in, or removal from, the index, how often the index is regularly reviewed, and any procedures for changes in the index between regularly scheduled reviews;

(iv) Method of calculation of the cash-settlement price and the timing of its public release;

(v) Average daily volume of trading by calendar month, measured by share turnover and dollar value, in each of the underlying securities for a six-month period of time and, separately, the dollar value of the average daily trading volume of the securities comprising the lowest weighted 25% of the index for the past six calendar months, calculated pursuant to Sec. 41.11;

(vi) If applicable, average daily futures trading volume; and

(vii) A statement that the index is not a narrow-based security index as defined in section 1a(25) of the Act.

Issued in Washington, DC, this 1st day of October, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–25476 Filed 10–8–02; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 163 and 178

[T.D. 02–59]

RIN 1515–AC78

Duty-Free Treatment for Certain Beverages Made With Caribbean Rum

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with minor revisions, the interim rule amending the Customs Regulations that was published in the **Federal Register** on February 9, 2001, as T.D. 01–17. The interim rule implemented a change to the Caribbean Basin Economic Recovery Act, also known as the Caribbean Basin Initiative (CBI), that enabled certain beverages to obtain duty-free entry under specified conditions when the beverages were processed in the territory of Canada from rum that was the growth, product or manufacture either of a CBI beneficiary country or of the U.S. Virgin Islands. This final rule adopts the certification and supporting documentation requirements set forth in the interim rule that were necessary to establish compliance with the statutory law, thereby ensuring that the rum beverages were properly entitled to duty-free entry under the CBI.

EFFECTIVE DATE: Final rule effective on October 9, 2002. This final rule is applicable to products that are entered or withdrawn from warehouse for consumption on or after October 4, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Wallio, Office of Field Operations, (202–927–9704).

SUPPLEMENTARY INFORMATION:

Background

The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701–2707) (CBERA) establishes an economic recovery program for nations of the Caribbean and Central America. Under

the CBERA, also referred to as the Caribbean Basin Initiative (CBI), the President is authorized to proclaim duty-free treatment for all eligible articles of a beneficiary country (19 U.S.C. 2701).

A beneficiary country under the CBI refers to any country listed in 19 U.S.C. 2702(b) with respect to which there is in effect a proclamation by the President designating the country as a beneficiary country for purposes of the CBI (19 U.S.C. 2702(a)(1)(A)). A rule of origin specifies under what conditions an article will be considered to be a product of a beneficiary country—in brief, the article must be wholly the growth, product or manufacture of a beneficiary country, or must be a new or different article of commerce that has been grown, produced, or manufactured in the beneficiary country (19 U.S.C. 2703(a)).

Sections 10.191 through 10.198b of the Customs Regulations (19 CFR 10.191–10.198b) currently implement the duty-free aspects of the CBI.

In pertinent part, in order to be entitled to duty-free treatment under the CBI, an article otherwise eligible for such treatment must be imported directly from a beneficiary country into the customs territory of the United States (19 U.S.C. 2703(a)(1)(A); 19 CFR 10.193).

Before passage of the United States-Caribbean Basin Trade Partnership Act (Title II of Pub. L. 106–200, 114 Stat. 275, enacted on May 18, 2000) (CBTPA), in the case of rum produced in a beneficiary country and then imported into Canada for processing into a rum beverage, the beverage would not have been eligible for duty-free treatment under the CBI because it was not imported directly from a beneficiary country into the United States. At the same time, the beverage would also have been ineligible for duty-free treatment under the North American Free Trade Agreement Implementation Act (19 U.S.C. 3301 *et seq.*) (NAFTA) because the processing it undergoes in Canada would not be sufficient to qualify it as a NAFTA originating good (19 U.S.C. 3332; General Note 12, Harmonized Tariff Schedule of the United States (HTSUS); 19 CFR 181.131; and the appendix to 19 CFR part 181).

Beverages Made in Canada With Caribbean Rum; Amendment of CBERA by United States-Caribbean Basin Trade Partnership Act

Section 212 of the CBTPA added a new paragraph (a)(6) to section 213(a) of the CBERA (19 U.S.C. 2703(a)(6)), in order to provide for duty-free entry under specified conditions for certain beverages that are produced in the territory of Canada from rum that is the growth, product, or manufacture either of a beneficiary country under the CBI or of the U.S. Virgin Islands.

Specifically, under 19 U.S.C. 2703(a)(6), a beverage that is imported directly into the customs territory of the United States from the territory of Canada and that is classifiable under subheading 2208.90 or 2208.40, Harmonized Tariff Schedule of the United States (HTSUS), is entitled to duty-free entry under the CBERA if such beverage is produced in the territory of Canada from rum, provided that the rum: (1) Is the growth, product, or manufacture of a beneficiary country or of the U.S. Virgin Islands; (2) is imported directly into the territory of Canada from a beneficiary country or from the U.S. Virgin Islands; and (3) accounts for at least 90 percent by volume of the alcoholic content of the beverage.

Accordingly, by a document published in the **Federal Register** (66 FR 9643) on February 9, 2001, as T.D. 01–17, Customs issued an interim rule setting forth a new § 10.199 in order to implement the provision allowing for duty-free admission for certain beverages produced in the territory of Canada from Caribbean rum. Section 10.199 prescribed the certification and supporting documentary requirements and recordkeeping responsibilities that must be observed in order to afford duty-free admission for those beverages that properly qualify for such treatment, and to otherwise ensure compliance with the requirements of the statutory law.

In addition, the Interim (a)(1)(A) List set forth as an Appendix to part 163, Customs Regulations (19 CFR part 163, Appendix), that lists the records required for the entry of merchandise, was revised to add a reference to the requirement in § 10.199 that an importer possess those documents that are necessary for the duty-free entry of the beverages, including the declaration of the Canadian processor and related supporting information. Also, part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, was revised to include an appropriate reference to the documentary requirements in § 10.199.

Discussion of Comment

One comment was received in response to the interim rule. The commenter requested clarification as to the effective date for according duty-free treatment to those imported beverages that were made with Caribbean rum under 19 U.S.C. 2703(a)(6). The interim rule stated that it would be applicable to products entered or withdrawn from warehouse for consumption on or after February 9, 2001. However, the commenter asserted that Presidential Proclamation No. 7351 specified an effective date of October 2, 2000.

Customs Response

Presidential Proclamation No. 7351 of October 2, 2000 (65 FR 59329) dealt with the implementation of the amendments made to the CBERA by the CBTPA. While effective on the date signed (October 2, 2000), the Proclamation also made clear that modifications to the HTSUS were necessary to implement any preferential tariff treatment afforded by the amendments; and that these modifications were set forth in an Annex to the Proclamation that would be effective on the date announced by the United States Trade Representative (USTR) in a notice to be published in the **Federal Register**. This Annex included HTSUS subheading 9817.22.05, which was the provision necessary to implement the statutory amendment authorizing duty-free treatment for the rum beverages (19 U.S.C. 2703(a)(6)).

The notice setting forth the Annex was published in the **Federal Register** on October 4, 2000, and, in pertinent part, the notice stated that it was effective with respect to goods entered, or withdrawn from warehouse, for consumption on or after this date of publication (65 FR 59329, at 59332–59333).

Therefore, as already indicated above under the **EFFECTIVE DATE** caption, this final rule document will apply to goods entered, or withdrawn from warehouse, for consumption on or after October 4, 2000. It is observed in this regard, however, that because the interim rule in this matter was not published in the **Federal Register** until February 9, 2001, Customs, prior to this time, did not accept duty-free entries for rum beverages subject to 19 U.S.C. 2703(a)(6).

Consequently, for entries of eligible rum beverages that were made on or after October 4, 2000, and prior to February 9, 2001, importers or their agents may make use of either the Supplemental Information Letter or Post Entry Amendment procedure prior to liquidation of the entry, or they may file a timely protest under 19 U.S.C. 1514, to obtain duty-free treatment for these qualifying beverages. Such claims must be made at the port where the original entry was filed.

Relevant HTSUS Subheadings Not Applicable to Liqueurs

It is noted that the beverages entitled to duty-free treatment under 19 U.S.C. 2703(a)(6) are specifically described as spirituous beverages and liqueurs classifiable under HTSUS subheading 2208.40 or 2208.90. However, in further consideration of the interim rule, Customs noted that neither of these HTSUS subheadings in fact applies to liqueurs. Rather, liqueurs are provided for in HTSUS subheading 2208.70 which is not included within section 2703(a)(6). Thus, liqueurs are not entitled to duty-free treatment under this statutory enactment. For this reason, Customs is deleting any reference to liqueurs set forth in interim § 10.199 in this final rule. For the sake of editorial clarity and convenience, § 10.199, as revised, is republished below in its entirety, together with a related revision to the (a)(1)(A) List in the Appendix to part 163.

Conclusion

After careful consideration of the comment received and further review of the matter, Customs has concluded that the interim rule amending parts 10, 163 and 178, Customs Regulations (19 CFR parts 10, 163 and 178) that was published in the **Federal Register** (66 FR 9643) on February 9, 2001, as T.D. 01–17, should be adopted as a final rule with the modification discussed above.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to the provisions of 5 U.S.C. 553(b)(B), public notice is inapplicable to this final rule because it was determined that good cause existed for dispensing with prior public notice and comment procedures. To this end, the final rule affords a preferential tariff benefit to the importing public; it reflects, and provides a necessary and reasonable means for enforcing, statutory requirements that are already in effect; and it closely parallels existing regulatory provisions that implement similar trade preference programs. Also, for these same reasons, there is no need for a delayed effective date under 5 U.S.C. 553(d). Because this document is not subject to the requirements of 5 U.S.C. 553, as noted, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Nor does this document meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information involved in this final rule document has already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Number 1515–0194 (Documentation requirements for articles entered under various special tariff treatment provisions). This collection includes a claim for duty-free entry of eligible articles under the Caribbean Basin Initiative. This rule does not present any substantive changes to the existing approved information collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Exports, Foreign relations, Imports, International traffic, Preference programs, Reporting and recordkeeping requirements, Shipments, Trade agreements (Caribbean Basin Initiative, Generalized System of Preferences, U.S.-Canada Free Trade Agreement, etc.).

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the interim rule amending 9 CFR parts 10, 163, and 178 which was published at 66 FR 9643, February 9, 2001, is adopted as a final rule with the following changes:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general and the relevant specific sectional authority for part 10 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Sections 10.191 through 10.199 also issued under 19 U.S.C. 2701 *et seq.*;

* * * * *

2. Section 10.199 is revised to read as follows:

§ 10. 199 Duty-free entry for certain beverages produced in Canada from Caribbean rum.

(a) *General.* A spirituous beverage that is imported directly from the territory of Canada and that is classifiable under subheading 2208.40 or 2208.90, Harmonized Tariff Schedule of the United States (HTSUS), will be entitled, upon entry or withdrawal from warehouse for consumption, to duty-free treatment under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)), also known as the Caribbean Basin Initiative (CBI), if the spirituous beverage has been produced in the territory of Canada from rum, provided that the rum:

(1) Is the growth, product, or manufacture either of a beneficiary country or of the U.S. Virgin Islands;

(2) Was imported directly into the territory of Canada from a beneficiary country or from the U.S. Virgin Islands; and

(3) Accounts for at least 90 percent of the alcoholic content by volume of the spirituous beverage.

(b) *Claim for exemption from duty under CBI.* A claim for an exemption from duty for a spirituous beverage under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)) may be made by entering such beverage under subheading 9817.22.05, HTSUS, on the entry summary document or its electronic equivalent. In order to claim the exemption, the importer must have the records described in paragraphs (d), (e), (f) and (g) of this section so that, upon Customs request, the importer can establish that:

(1) The rum used to produce the beverage is the growth, product or manufacture either of a beneficiary country or of the U.S. Virgin Islands;

(2) The rum was shipped directly from a beneficiary country or from the U.S. Virgin Islands to Canada;

(3) The beverage was produced in Canada;

(4) The rum accounts for at least 90% of the alcohol content of the beverage; and

(5) The beverage was shipped directly from Canada to the United States.

(c) *Imported directly.* For a spirituous beverage imported from Canada to qualify for duty-free entry under the CBI, the spirituous beverage must be imported directly into the customs territory of the United States from

Canada; and the rum used in its production must have been imported directly into the territory of Canada either from a beneficiary country or from the U.S. Virgin Islands.

(1) ''Imported directly'' into the customs territory of the United States from Canada means:

(i) Direct shipment from the territory of Canada to the U.S. without passing through the territory of any other country; or

(ii) If the shipment is from the territory of Canada to the U.S. through the territory of any other country, the spirituous beverages do not enter into the commerce of any other country while en route to the U.S.; or

(iii) If the shipment is from the territory of Canada to the U.S. through the territory of another country, and the invoices and other documents do not show the U.S. as the final destination, the spirituous beverages in the shipment are imported directly only if they:

(A) Remained under the control of the customs authority of the intermediate country;

(B) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(C) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the products in good condition.

(2) ''Imported directly'' from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada means:

(i) Direct shipment from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada without passing through the territory of any non-beneficiary country; or

(ii) If the shipment is from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada through the territory of any non-beneficiary country, the rum does not enter into the commerce of any non-beneficiary country while en route to Canada; or

(iii) If the shipment is from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada through the territory of any non-beneficiary country, the rum in the shipment is imported directly into the territory of Canada only if it:

(A) Remained under the control of the customs authority of the intermediate country;

(B) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail; and

(C) Was not subjected to operations in the intermediate country other than loading and unloading, and other activities necessary to preserve the product in good condition.

(d) *Evidence of direct shipment*—(1) *Spirituous beverages imported from Canada.* The importer must be prepared to provide to the port director, if requested, documentary evidence that the spirituous beverages were imported directly from the territory of Canada, as described in paragraph (c)(1) of this section. This evidence may include documents such as a bill of lading, invoice, air waybill, freight waybill, or cargo manifest. Any evidence of the direct shipment of these spirituous beverages from Canada into the U.S. may be subject to such verification as deemed necessary by the port director.

(2) *Rum imported into Canada from beneficiary country or U.S. Virgin Islands.* The importer must be prepared to provide to the port director, if requested, evidence that the rum used in producing the spirituous beverages was imported directly into the territory of Canada from a beneficiary country or from the U.S. Virgin Islands, as described in paragraph (c)(2) of this section. This evidence may include documents such as a Canadian customs entry, Canadian customs invoice, Canadian customs manifest, cargo manifest, bill of lading, landing certificate, airway bill, or freight waybill. Any evidence of the direct shipment of the rum from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada for use there in producing the spirituous beverages may be subject to such verification as deemed necessary by the port director.

(e) *Origin of rum used in production of the spirituous beverage*—(1) *Origin criteria.* In order for a spirituous beverage covered by this section to be entitled to duty-free entry under the CBI, the rum used in producing the spirituous beverage in the territory of Canada must be wholly the growth, product, or manufacture either of a beneficiary country under the CBI or of the U.S. Virgin Islands, or must constitute a new or different article of commerce that was produced or manufactured in a beneficiary country or in the U.S. Virgin Islands. Such rum will not be considered to have been grown, produced, or manufactured in a beneficiary country or in the U.S. Virgin Islands by virtue of having merely undergone blending, combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the product.

(2) *Evidence of origin of rum*—(i) *Declaration.* The importer must be prepared to submit directly to the port director, if requested, a declaration prepared and signed by the person who produced or manufactured the rum, affirming that the rum is the growth, product or manufacture of a beneficiary country or of the U.S. Virgin Islands. While no particular form is prescribed for the declaration, it must include all pertinent information concerning the processing operations by which the rum was produced or manufactured, the address of the producer or manufacturer, the title of the party signing the declaration, and the date it is signed.

(ii) *Records supporting declaration.* The supporting records, including those production records, that are necessary for the preparation of the declaration must also be available for submission to the port director if requested. The declaration and any supporting evidence as to the origin of the rum may be subject to such verification as deemed necessary by the port director.

(f) *Canadian processor declaration; supporting documentation.* (1) *Canadian processor declaration.* The importer must be prepared to submit directly to the port director, if requested, a declaration prepared by the person who produced the spirituous beverage(s) in Canada, setting forth all pertinent information concerning the production of the beverages. The declaration will be in substantially the following form:

I, _____ declare that the spirituous beverages here specified are the products that were produced by me (us), as described below, with the use of rum that was received by me (us); that the rum used in producing the beverages was received by me (us) on

_____ (date), from _____ (name and address of owner or exporter in the beneficiary country or in the U.S. Virgin Islands, as applicable); and that such rum accounts for at least 90 percent of the alcoholic content by volume, as shown below, of each spirituous beverage so produced.

Marks and numbers	Description of products and of processing	Alcoholic content of products; alcoholic content (%) attributable to rum [1]
.....	.....	.....
.....	.....	.....

Marks and numbers	Description of products and of processing	Alcoholic content of products; alcoholic content (%) attributable to rum [1]
.....	.....	.....

[1] The production records must establish, for each lot of beverage produced, the quantity of rum the growth, product or manufacture of a CBI beneficiary country or of the U.S. Virgin Islands under 19 U.S.C. 2703(a)(6) that is used in producing the finished beverage; the alcoholic content by volume of the finished beverage; and the alcoholic content by volume of the finished beverage, expressed as a percentage, that is attributable to the qualifying rum. If rum from two or more qualifying sources (*e.g.,* rum the growth, product or manufacture of a CBI beneficiary country or of the U.S. Virgin Islands and other rum the growth, product or manufacture of another CBI country) are used in processing the beverage, the alcoholic content requirement may be met by aggregating the alcoholic content of the finished beverage that is attributable to rum from each of the qualifying sources used in processing the finished beverage, as reflected in the production records.

Date _____
Address _____
Signature _____
Title _____

(2) *Availability of supporting documents.* The information, including any supporting documents and records, necessary for the preparation of the declaration, as described in paragraph (f)(1) of this section, must be available for submission to the port director, if requested. The declaration and any supporting evidence may be subject to such verification as deemed necessary by the port director. The specific documentary evidence necessary to support the declaration consists of those documents and records which satisfactorily establish:

(i) The receipt of the rum by the Canadian processor, including the date of receipt and the name and address of the party from whom the rum was received (the owner or exporter in the beneficiary country or the U.S. Virgin Islands); and

(ii) For each lot of beverage produced and included in the declaration, the specific identification of the production lot(s) involved; the quantity of qualifying rum that is used in producing the finished beverage, including a description of the processing and of the finished products; the alcoholic content by volume of the finished beverage; and the alcoholic content by volume of the finished beverage, expressed as a percentage, that is attributable to the qualifying rum.

(g) *Importer system for review of necessary recordkeeping.* The importer will establish and implement a system of internal controls which demonstrate that reasonable care was exercised in its claim for duty-free treatment under the CBI. These controls should include tests to assure the accuracy and availability of records that establish:

(1) The origin of the rum;

(2) The direct shipment of the rum from a beneficiary country or from the U.S. Virgin Islands to Canada;

(3) The alcohol content of the finished beverage imported from Canada; and

(4) The direct shipment of the finished beverage from Canada to the United States.

(h) *Submission of documents to Customs.* The importer must be prepared to submit directly to the port director, if requested, those documents and/or supporting records as described in paragraphs (d), (e) and (f) of this section, for a period of 5 years from the date of entry of the related spirituous beverages under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)), as provided in § 163.4(a) of this chapter. If requested, the importer must submit such documents and/or supporting records to the port director within 60 calendar days of the date of the request or such additional period as the port director may allow for good cause shown.

PART 163—RECORDKEEPING

1. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. The Appendix to part 163 is amended by revising the listing for § 10.199 under section IV to read as follows:

Appendix to Part 163—Interim (a)(1)(a) List

* * * * *

IV. * * *

§ 10.199 Documents, etc. required for duty-free entry of spirituous beverages produced in Canada from CBI rum, declaration of Canadian processor (plus supporting information).

* * * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: October 3, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–25654 Filed 10–8–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 4160]

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Department of State.

ACTION: Interim final rule; request for comments.

SUMMARY: This rule amends the Schedule of Fees for Consular Services. Specifically, it raises from $65 to $100 the fee charged for the processing of an application for a nonimmigrant visa (MRV) or a combined nonimmigrant visa and border crossing card (BCC). The Department of State is raising the fee as an emergency measure to ensure that sufficient resources are available to meet the costs of processing nonimmigrant visas, the demand for which has dropped at the same time that the processing of nonimmigrant visa applications has become more labor intensive because of the increased security screening of visa applicants in the aftermath of the September 11, 2001 attacks on New York and Washington and in Pennsylvania. This rule further corrects the item listed as the ''border crossing card'' for minors under age 15 by deleting reference to a 5-year period of validity.

DATES: *Effective date:* This interim rule is effective on November 1, 2002.

Comment period: The Department of State will accept written comments from interested persons up to November 8, 2002.

ADDRESSES: Written comments may be submitted to the Office of the Executive Director, Bureau of Consular Affairs, U.S. Department of State, Suite H1004, 2401 E Street NW., Washington, DC 20520, or by e-mail to *fees@state.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Abeyta, Office of the Executive Director, Bureau of Consular Affairs, Department of State; phone: 202–663–2505, telefax: 202–663–2499; e-mail: *fees@state.gov*.

SUPPLEMENTARY INFORMATION:

Background

What Is the Authority for This Action?

The majority of the Department of State's consular fees are established pursuant to the general user charges statute, 31 U.S.C. 9701 (which directs that certain government services be self-sustaining to the extent possible), and/or U.S.C. 4219, which as implemented through Executive Order 10718 of June

27, 1957, authorizes the Secretary of State to establish fees to be charged for official services provided by U.S. embassies and consulates. In addition, a number of statutes address specific fees. A cost-based, nonimmigrant visa processing fee for the machine readable visa (MRV) and for a combined border crossing and nonimmigrant visa card (BCC) (22 CFR 41.32) is authorized by section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103–236 (April 30, 1994), as amended. In addition, aliens under 15 are in certain circumstances entitled to a combined MRV/BCC for a statutorily established fee of $13, which is below the full cost of service, pursuant to section 410 of title III of the Commerce, Justice, State Appropriations Act enacted as part of the Omnibus FY 1999 Appropriations Act, Public Law 105–277 (Oct. 21, 1998). Various statutes permit the Department to retain some of the consular fees it collects, including the MRV and MRV/BCC fees. Section 103 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173 (May 14, 2002), amended section 140(a) of Public Law 103–235 (which authorizes the MRV fee) to permit the Department to retain all MRV fees until they are expended.

Consistent with OMB Circular A–25 guidelines, the Department conducted a cost-of-service study from September 1999 to October 2001 to update the Schedule of Fees for Consular Services. The results of that study were the foundation of the current Schedule, which was published as a final rule on May 16, 2002, at Volume 67, No. 95 FR 34831. The Schedule went into effect on June 1, 2002.

Why Is the Department Raising the MRV and BCC Application Processing Fee to $100 at This Time?

The $65 MRV/BCC fee that went into effect on June 1, 2002 was based on worldwide nonimmigrant visa operations' total costs distributed over an anticipated applicant level of approximately 10.5 million per year. It is now clear, however, that the estimate of the number of nonimmigrant visa applicants was too high. Visa demand worldwide has dropped by approximately 19.6% overall for the current fiscal year, which has been affected by international economic conditions and the events of September 11, 2001. The trend is continuing downward: nonimmigrant visa demand was down 26% during the normally peak season of June 1 to August 31. In August 2002, visa demand was down 32.9%. There has been no corresponding decline in the Department's costs of administering nonimmigrant visa services; such costs have remained the same in part because the processing of each application has become more time consuming and labor intensive as a result of enhanced security screening requirements for applicants instituted since September 11, 2001. Thus, the Department is facing a critical revenue shortfall because its nonimmigrant visa application processing costs can no longer be recovered by MRV revenues generated by the MRV fee when set at $65. Taking the 2001 Cost of Service Study's figures as a baseline, but now distributing the costs of nonimmigrant visa application processing services over a smaller number of applicants, based on the smaller number of applicants that the Department has seen in the current fiscal year, the Department has determined that an MRV fee of $100 will be required to recover the full cost of processing nonimmigrant visa applications during the anticipated period of the current Schedule of Fees. Given the uncertainty with respect to when the applicant volume will recover, it is reasonable and appropriate to raise the fee now. Failing to do so could jeopardize the Department's ability to continue critical programs, including enhanced border security measures recently undertaken.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as an interim rule, with a provision for post-promulgation comments, based on the ''good cause'' exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The rule will not take effect, however, until November 1, 2002. Publishing the rule in this way, with a post-promulgation opportunity for comment, will allow the Department to make the rule effective at the earliest reasonable opportunity. Allowing a full 30-day comment period followed by a publication of the final rule with a further 30 days before its effective date is not practicable or in the public interest. That process would delay imposition of the new fee notwithstanding the critical need for the Department to recover its costs and to have sufficient resources to conduct activities that are dependent on MRV fee revenues, including the enhanced security screening of visa applicants and other measures being taken in the aftermath of the September 11, 2001 terrorist attacks on the United States. By setting the new fee through an interim final rule, the Department will have sufficient time to make necessary provisions to implement the new fee as early in Fiscal Year 2003 as is feasible. Comments received before the end of the comment period will be addressed in a subsequent final rule.

Regulatory Flexibility Act

The Department of State, 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.

Unfunded Mandates 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 $1 million or more in any 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 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 import markets.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This regulation 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 require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements. It will affect OMB collection number 1405—by increasing the public cost burden.

List of Subjects in 22 CFR Part 22

Consular services, Fees, Passports and visas.

Accordingly, 22 CFR part 22 is amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602 (c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; Pub. L. 105–277, 112 Stat. 2681 *et seq.*; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. Section 22.1 is amended by revising item No. 21(a), (b), and (c), to read as follows:

§ 22.1 Schedule of fees.

Item No.	Fee
* * * * * * *	
21. Nonimmigrant visa application and border crossing card processing fees (per person):	
(a) Nonimmigrant visa [21–MRV Processing]	$100
(b) Border crossing card—10 year (age 15 and over) [22–BCC 10 Year]	100
(c) Border crossing card—(under age 15). For Mexican citizen if parent has or is applying for a border crossing card (23–BCC Child)	13
* * * * * * *	

Dated: September 27, 2002.

Grant S. Green, Jr.,

Under Secretary of State for Management, Department of State.

[FR Doc. 02–25692 Filed 10–4–02; 2:59 pm]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Privacy Act, Implementation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury gives notice of a final rule to exempt an Internal Revenue Service system of records entitled ''Employee Complaint and Allegation Referral Records—Treasury/IRS 00.007'' from certain provisions of the Privacy Act.

EFFECTIVE DATE: October 9, 2002.

FOR FURTHER INFORMATION CONTACT: Jim D'Elia, Commissioner's Complaint Processing and Analysis Group, N:ADC:C , 1111 Constitution Avenue, NW., Washington, DC 20224, Phone 202–622–5212.

SUPPLEMENTARY INFORMATION: The Department of the Treasury published a notice of a proposed rule exempting a system of records from certain provisions of the Privacy Act of 1974, as amended. The Internal Revenue Service (IRS) published the system notice in its entirety at 67 FR 36963–36964 (May 28, 2002), and the proposed rule at 67 FR 40253–40254 (June 12, 2002).

Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, as amended, if the system is investigatory material compiled for law enforcement purposes. The ''Employee Complaint and Allegation Referral Records—Treasury/IRS 00.007'', contains investigatory material compiled for law enforcement purposes.

The proposed rule requested that public comments be sent to the Director, Commissioner's Processing and Analysis Group, Internal Revenue Service, 1111 Constitution Ave., N:ADC:C, NW., Washington, DC 20224, no later than July 12, 2002.

The IRS did not receive comments on the proposed rule. Accordingly, the Department of the Treasury is hereby giving notice that the system of records entitled ''Employee Complaint and Allegation Referral Records—Treasury/IRS 00.007'', is exempt from certain provisions of the Privacy Act.

The provisions of the Privacy Act from which the system of records is exempt pursuant to 5 U.S.C. 552a(k)(2) are as follows: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H) and (e)(4)(I), and (f).

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

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

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this final rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, Subpart C of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 paragraph (g)(1)(viii) is amended by adding the following text to the table in numerical order.

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(g) * * *

(1) * * *

(viii) * * *

System No.	Name of system
*	* * * * * *
IRS 00.007	Employee Complaint and Allegation Referral Records.
*	* * * * * *

Dated: September 17, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 02–25691 Filed 10–8–02; 8:45 am]

BILLING CODE 4830–11–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK38

Enrollment—Provision of Hospital and Outpatient Care to Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: VA's medical regulations captioned ''Enrollment—Provision of Hospital and Outpatient Care to Veterans'' implement a national enrollment system to manage the delivery of inpatient hospital care and outpatient medical care. Prior to October 1, 2002, veterans were eligible to be enrolled based on seven priority categories. In this final rule we add veterans awarded the Purple Heart to priority category 3 to implement new statutory requirements. We also delete the copayment provisions from priority category 4 to clarify statutory requirements. In addition, we divide priority category 7 into two new priority categories (7 and 8) to implement new statutory requirements, using the subpriorities for former category 7 for these new categories. Further, we state principles for placing veterans in enrollment categories to help ensure clarity and fairness in making priority category determinations. Finally, we change the VA officials who can make enrollment decisions and provide an additional address for sending a request for voluntary disenrollment.

DATES: Effective Date: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Amy Hertz, Office of Policy and Planning (105D), at (202) 273–8934 or Roscoe Butler, Chief Policy & Operations, Health Administration Service (10C3), at (202) 273–8302. These individuals are in the Veterans Health Administration of the Department of Veterans Affairs, and are located at 810 Vermont Avenue, NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 23, 2002 (67 FR 48078), the Department of Veterans Affairs proposed to amend its enrollment regulations that manage the delivery of inpatient hospital care and outpatient medical care. We requested comments for a 30-day period that ended August 22, 2002, to allow for a final rule to be established in time to allow the VA Secretary to have as many options as possible concerning the provision of health care services to veterans in fiscal year 2003. We received no comments. Based on the rationale set forth in the proposed rule, we are adopting the proposed rule as a final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: September 18, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.36 is amended by:

A. Removing ''Chief Network Officer'' wherever it appears and adding, in its place, ''Deputy Under Secretary for Health for Operations and Management

or Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center''.

B. Revising paragraphs (a)(2), (b)(4), and (b)(7).

C. In paragraph (b)(3), removing ''prisoners of war;'' and adding, in its place, ''prisoners of war; veterans awarded the Purple Heart;''

D. Adding a new paragraph (b)(8).

E. Revising paragraph (d)(1); removing ''Note to Paragraph (d)(1)''; and redesignating paragraphs (d)(3) through (d)(5) as paragraphs (d)(4) through (d)(6), respectively.

F. Adding a new paragraph (d)(3).

G. Revising newly redesignated paragraphs (d)(5) introductory text; and (d)(5)(i).

H. In newly redesignated paragraph (d)(5)(iii), removing ''priority category 5;'' and adding, in its place, ''priority category 5 or priority category 7;''.

I. In paragraph (f), removing ''[insert actual photocopy of VA Form 10–10EZ]''.

J. Revising the authority at the end of the section.

The revisions and additions read as follows:

§ 17.36 Enrollment—provision of hospital and outpatient care to veterans.

(a) * * *

(2) Except as provided in paragraph (a)(3) of this section, a veteran enrolled under this section and who, if required by law to do so, has agreed to make any applicable copayment is eligible for VA hospital and outpatient care as provided in the ''medical benefits package'' set forth in § 17.38.

* * * * *

(b) * * *

(4) Veterans who receive increased pension based on their need for regular aid and attendance or by reason of being permanently housebound and other veterans who are determined to be catastrophically disabled by the Chief of Staff (or equivalent clinical official) at the VA facility where they were examined.

* * * * *

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g) if their income for the previous year constitutes ''low income'' under the geographical income limits established by the U.S. Department of Housing and Urban Development for the fiscal year that ended on September 30 of the previous calendar year. For purposes of this paragraph, VA will determine the income of veterans (to include the income of their spouses and dependents) using the rules in §§ 3.271, 3.272, 3.273, and 3.276. After determining the veterans' income and the number of persons in the veterans' family (including only the spouse and dependent children), VA will compare their income with the current applicable ''low-income'' income limit for the public housing and section 8 programs in their area that the U.S. Department of Housing and Urban Development publishes pursuant to 42 U.S.C. 1437a(b)(2). If the veteran's income is below the applicable ''low-income'' income limits for the area in which the veteran resides, the veteran will be considered to have ''low income'' for purposes of this paragraph. To avoid a hardship to a veteran, VA may use the projected income for the current year of the veteran, spouse, and dependent children if the projected income is below the ''low income'' income limit referenced above. This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans; and

(ii) All other priority category 7 veterans.

(8) Veterans not included in priority category 4 or 7, who are eligible for care only if they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans; and

(ii) All other priority category 8 veterans.

* * * * *

(d) *Enrollment and disenrollment process*—(1) *Application for enrollment.* A veteran may apply to be enrolled in the VA healthcare system at any time. A veteran who wishes to be enrolled must apply by submitting a VA Form 10–10EZ to a VA medical facility. Veterans applying based on inclusion in priority categories 1, 2, 3, 6, and 8 do not need to complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 4 because of their need for regular aid and attendance or by being permanently housebound need not complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 4 because they are catastrophically disabled need not complete section II, but must complete the rest of the form, if: they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g); they are a veteran of the Mexican border period or of World War I or a veteran with a 0 percent service-connected disability who is nevertheless compensated; their catastrophic disability is a disorder associated with exposure to a toxic substance or radiation, or with service in the Southwest Asia theater of operations during the Gulf War as provided in 38 U.S.C. 1710(e); or their catastrophic disability is an illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided in 38 U.S.C. 1710(e). All other veterans applying based on inclusion in priority category 4 because they are catastrophically disabled must complete the entire form. Veterans applying based on inclusion in priority category 5 must complete the entire form. Veterans applying based on inclusion in priority category 7 must complete the entire form except for section IIE. VA form 10–10EZ is set forth in paragraph (f) of this section and is available from VA medical facilities.

* * * * *

(3) *Placement in enrollment categories.*

(i) Veterans will be placed in priority categories whether or not veterans in that category are eligible to be enrolled.

(ii) A veteran will be placed in the highest priority category or categories for which the veteran qualifies.

(iii) A veteran may be placed in only one priority category, except that a veteran placed in priority category 6 based on a specified disorder or illness will also be placed in priority category 7 or priority category 8, as applicable, if the veteran has previously agreed to pay the applicable copayment, for all matters not covered by priority category 6.

(iv) A veteran who had been enrolled based on inclusion in priority category 5 and became no longer eligible for inclusion in priority category 5 due to failure to submit to VA a current VA Form 10–10EZ will be changed automatically to enrollment based on inclusion in priority category 6 or 8 (or more than one of these categories if the previous principle applies), as applicable, and be considered continuously enrolled. To meet the criteria for priority category 5, a veteran must be eligible for priority category 5 based on the information submitted to VA in a current VA Form 10–10EZ. To be current, after VA has sent a form 10–10EZ to the veteran at the veteran's last known address, the veteran must return the completed form (including signature) to the address on the return envelope within 60 days from the date VA sent the form to the veteran.

(v) Veterans will be disenrolled, and reenrolled, in the order of the priority categories listed with veterans in priority category 1 being the last to be disenrolled and the first to be reenrolled. Similarly, within priority categories 7 and 8, veterans will be disenrolled, and reenrolled, in the order of the priority subcategories listed with veterans in subcategory (i) being the last to be disenrolled and first to be reenrolled.

* * * * *

(5) *Disenrollment.* A veteran enrolled in the VA health care system under paragraph (d)(2) or (d)(4) of this section will be disenrolled only if:

(i) The veteran submits to a VA medical center or the VA Health Eligibility Center, 1644 Tullie Circle, Atlanta, Georgia 30329, a signed document stating that the veteran no longer wishes to be enrolled; or

* * * * *

(Authority: 38 U.S.C 101, 501, 1521, 1701, 1705, 1710, 1721, 1722).

[FR Doc. 02–25491 Filed 10–8–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AF00

Schedule for Rating Disabilities; The Skin

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: In a document published in the **Federal Register** on July 31, 2002, (67 FR 49590), we amended that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses the skin. The document contains an error in the Supplementary Information portion of the preamble. That error consists of an incorrect restatement of regulatory text. This document corrects that error.

DATES: *Effective Date:* This correction is effective July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Policy and Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: In rule FR Doc. 02–19331, published on July 31, 2002 (67 FR 49590), on page 49595, in column 1, the first paragraph, the phrase ''a 30-percent evaluation calls for recurrent debilitating episodes at least four times during the past 12-month period despite ongoing immunosuppressive therapy'' is corrected to read ''a 30-percent evaluation calls for recurrent debilitating episodes at least four times during the past 12-month period, and requiring intermittent systemic immunosuppressive therapy.''

Approved: October 1, 2002.

Roland Halstead,

Acting Director, Office of Regulatory Law.

[FR Doc. 02–25492 Filed 10–8–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 154–1154a; FRL–7392–6]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving revisions to the Iowa State Implementation Plan (SIP). The SIP revisions, regarding the state's construction permitting rules as they pertain to industrial anaerobic lagoons and anaerobic lagoons for animal feeding operations in Iowa, will help ensure Federal enforceability of the state's air program.

DATES: This direct final rule will be effective December 9, 2002, unless EPA receives adverse comments by November 8, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Lynn M. Slugantz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lynn M. Slugantz at (913) 551–7883.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is an SIP?
What is the Federal approval process for an SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this action?
Have the requirements for approval of an SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of

Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Action?

The Iowa Department of Natural Resources (IDNR) has requested that EPA approve changes to Iowa Administrative Code, Chapter 22, ''Controlling Pollution,'' as a revision to the Iowa SIP. The changes were adopted by the Environmental Protection Commission on March 15, 1999, and became effective on May 12, 1999. Our approval of these revisions is consistent with our past approval of Iowa construction permitting regulations for these types of lagoons. While the revisions to IAC chapter 22 reference IAC chapter 65, the state of Iowa did not request EPA approval of the chapter 65 requirements since it includes requirements (for example odor controls) not pertaining to the requirements of section 110 of the Clean Air Act.

The following is a description of the changes to Chapter 22 of the Iowa Administrative Code which are the subject of this approval action:

1. *Application for a Construction Permit*—Chapter 22, subrule 22.1(3), was amended to specify that the owner or operator of any new or modified industrial anaerobic lagoon or a new or modified anaerobic lagoon for an animal feeding operation other than a small operation, as defined elsewhere in the State's regulations, shall apply for a construction permit.

2. *Required Application Information for Animal Feeding Operation*—Chapter 22, subrule 22.1(3), paragraph ''c'', subparagraph (3), was amended to refer to Iowa rule 567–65.15(455B) for a description of information to be provided in the construction permit application.

3. *Conditions for State Issuance of a Construction Permit for Anaerobic Lagoons*—Chapter 22, subrule 22.3(2), was amended to refer to criteria in subrule 23.5(2) and Iowa rule 567–65.15(455B) to be used in determining when to issue a construction permit for industrial anaerobic lagoon and for animal feeding operations using an anaerobic lagoon, respectively.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are approving amendments to Iowa Administrative Code, Chapter 22, subrules 22.1(3), 22.1(3)''c''(3) and 22.3(2). We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Administrative Requirements

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule

cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 3, 2002.

William W. Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Q—Iowa

2. In § 52.820 the table in paragraph (c) is amended under Chapter 22—Controlling Pollution by:

a. Revising the entry for ''567–22.1''.

b. Revising the entry for ''567–22.3''..

The revisions read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Comments
Iowa Department of Natural Resources, Environmental Protection Commission [567]				
*	*	*	*	*
Chapter 22—Controlling Pollution				
567–22.1	Permits Required for New or Existing Stationary Sources.	3/14/01	October 9, 2002 67 FR 62889	
*	*	*	*	*
567–22.3	Issuing Permits	3/14/01	October 9, 2002 67 FR 62889	Subrule 22.3(6) has not been approved as part of the SIP.
*	*	*	*	*

* * * * *

[FR Doc. 02–25590 Filed 10–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT–001–0038, UT–001–0039, UT–001–0040; FRL–7262–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Vehicle Inspection and Maintenance Programs; Salt Lake County and General Requirements and Applicability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 21, 2002, EPA published a notice of proposed rulemaking (NPR) that proposed approval of revisions to Utah's state air quality implementation plan (SIP). The revisions update Utah's vehicle inspection and maintenance (I/M) programs. On August 14, 2001 and on August 15, 2001, the Governor of Utah submitted revisions to the SIP affecting the State's motor vehicle I/M programs. The August 14, 2001, submittal revised Utah's Rule R307–110–33, which incorporates by reference Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County to allow Salt Lake County to take 100% credit for their test and repair vehicle I/M network, rather than the previously required EPA default of a 50% emissions reduction credit. The August 15, 2001, submittal revises Utah's Rule R307–110–31, which incorporates by reference Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability to require mandatory implementation of the inspection of vehicle On-Board Diagnostic (OBD) systems starting January 1, 2002. In this action, EPA is approving the revisions to Utah's Rule R307–110–33 and Rule R307–110–31.

EFFECTIVE DATE: November 8, 2002.

ADDRESSES: Richard R. Long, Director, Air and Radiation Program, Mail code 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202 and copies of the Incorporation by Reference material are available at the United States Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kimes, EPA, Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''our,'' or ''us'' is used, we mean EPA.

Throughout this document wherever ''R307–110–33'' is used alone it is

assumed to mean ''R307–110–33, which incorporates by reference Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County'' and wherever ''R307–110–31'' is used alone it is assumed to mean ''R307–110–31, which incorporates by reference Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.''

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B. R307–110–31, Which Incorporates by Reference Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability
III. Evaluation of the State's Submittals
A. R307–110–33, Which Incorporates by Reference Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County
B. R307–110–31, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability
IV. Public Comment
V. Final Rulemaking Action
VI. Consideration of Clean Air Act Section 110(l)
VII. Administrative Requirements

I. Summary of EPA's Final Action

We are approving revisions to the SIP that were submitted by the Governor of Utah on August 14, 2001 and August 15, 2001. The August 14, 2001, submittal updates Utah's Rule R307–110–33. Specifically, this revision allows Salt Lake County to receive full credit (100%) for its test and repair vehicle Inspection and Maintenance (I/M) network. Salt Lake County has demonstrated that its test and repair I/M network is as effective as a test only I/M network and is eligible to take full emission reduction credit rather than the previously required EPA default of a 50% emissions reduction credit. The revised rule R307–110–33 being approved in this action supersedes and replaces the existing State rule.

The August 15, 2001, submittal updates Utah's Rule R307–110–31. This revision required the mandatory implementation of the inspection of vehicle On-Board Diagnostic (OBD) systems starting January 1, 2002 in all areas implementing an I/M program. Therefore, this requirement is applicable for Davis County, Salt Lake County, Utah County, and Weber County. As a convenience to vehicle owners, Davis, Utah, and Weber Counties are already implementing this program. Salt Lake County began implementing the program on January 1, 2002. The revised rule R307–110–33 being approved in this action supersedes and replaces the existing R307–110–33 rule.

II. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the Clean Air Act (CAA) addresses our actions on submissions of revisions to a State Implementation Plan (SIP). The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted by the State, after reasonable notice and public hearing, and prior to the revision being submitted by a state to us.

A. R307–110–33, Which Incorporates by Reference Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County

The Utah Air Quality Board (UAQB) held a public hearing on June 21, 2001, to include in the Salt Lake County SIP element a demonstration that Salt Lake County's test and repair I/M network is as effective as a test only I/M network, and allow the County to claim 100% credit instead of 50% credit in emissions reduction. The UAQB adopted the revisions to R307–110–33, on August 1, 2001. This SIP revision became State effective on August 2, 2001, and was submitted by the Governor of Utah to us on August 14, 2001.

B. R307–110–31, Which Incorporates by Reference Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability

The UAQB held a public hearing on June 21, 2001, to consider amendments to postpone the Federally required inspection of the OBD systems on newer vehicles, because the Federal implementation date had been postponed until January 1, 2002 (66 FR 18156). The UAQB adopted the revisions to R307–110–31 on August 1, 2001. This SIP revision became State effective on August 2, 2001, and was submitted by the Governor of Utah to us on August 15, 2001.

We have evaluated the Governor's submittals and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. As required by section 110(k)(1)(B) of the CAA, we reviewed these SIP revision materials for conformance with the completeness criteria in 40 CFR part 51, appendix V and determined that the Governor's submittals were administratively and technically complete. Our completeness determination was sent on October 18, 2001, through a letter from Jack W. McGraw, Acting Regional Administrator, to Governor Michael O. Leavitt.

III. Evaluation of the State's Submittal

We have thoroughly reviewed the Utah rules that are the subject of this rulemaking and have found the revisions to meet all applicable requirements. A detailed evaluation of the rule revisions submitted by the State can be found in the notice of proposed rulemaking (NPR) for these rules found at 57 FR 9425, March 1, 2001. The NPR provided a detailed evaluation of how the State submittal meets the CAA requirements and the entire evaluation is not repeated here. The evaluation below is a limited summary of the evaluation found in the NPR.

A. R307–110–33, Which Incorporates by Reference Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County

In this action, we are approving revisions to Utah's Rule R307–110–33, as adopted by the UAQB on August 1, 2001, and State effective on August 2, 2001. The Salt Lake County vehicle I/M program is in place to reduce vehicle emissions so that the Federal carbon monoxide National Ambient Air Quality Standard (NAAQS) and the Federal 1-hour ozone NAAQS are not exceeded. The changes in Rule R307–110–33 involve a demonstration that Salt Lake County's test and repair I/M network is as effective as a test only I/M network.

Section 182(b)(4) of the CAA requires that Salt Lake County implement an I/M program at least as effective as EPA's Basic Performance Standard as specificied in 40 CFR 51.352. Our July 24, 2000, rulemaking (see 65 FR 45526) deleted our prior requirement of an automatic 50% emission credit discount for decentralized test and repair I/M programs if it can be demonstrated that the test and repair I/M network is as effective as a test only I/M network.

We are approving Utah's SIP revision to Rule R307–110–33, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County. Salt Lake County's test and repair network was demonstrated to be as effective as a test-only network.

B. R307–110–31, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability

In this action, we are also approving SIP revisions to Utah's Rule R307–110–

31, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as adopted by the Utah Air Quality Board on August 1, 2001, and State effective on August 2, 2001.

The Governor had previously submitted a revision to Rule R307–110–31 on February 22, 1999, that we did not take action on. The February 22, 1999 submittal committed the State of Utah to implement testing of vehicle OBD systems by January 1, 2001, as was required by the 40 CFR part 51 subpart S Inspection/Maintenance Program Requirements. On April 5, 2001, we extended the Federal date for mandatory implementation of the inspection of vehicle OBD systems, in 40 CFR part 51 Subpart S, to January 1, 2002 (*see* 66 FR 18156). The Governor's August 15, 2001 submittal meets the requirements of our April 5, 2001 rulemaking (*see* 66 FR 18156) and supersedes and replaces the previous SIP revision to Rule R307–110–31 submitted by the Governor on February 22, 1999. The Governor's August 15, 2001, SIP revision simply incorporates the Federal OBD rule change.

IV. Public Comment

No public comment was received in response to the EPA's proposed rulemaking on these Utah SIP revisions.

V. Final Rulemaking Action

In this Final Rulemaking Action, we are approving revisions to the SIP affecting the State's motor vehicle I/M programs submitted by the Governor of Utah. The approved revisions include the August 14, 2001, submittal revising Utah's Rule R307–110–33, which incorporates by reference Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County and the August 15, 2001, submittal revising Utah's Rule R307–110–31 which incorporates by reference, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability to require mandatory implementation of the inspection of vehicle On-Board Diagnostic (OBD) systems starting January 1, 2002. The final rule is effective November 8, 2002.

VI. Consideration of Clean Air Act Section 110(l)

Section 110(l) of the Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable progress towards attainment of a National Ambient Air Quality Standard (NAAQS) or any other applicable requirements of the Act. This SIP revision is consistent with Federal requirements and does not interfere with any applicable requirements of the Act. Therefore, we conclude that our approval of Utah's Rule R307–110–33 and R307–110–31 meets the requirements of section 110(l) of the Act.

VII. Administrative Requirements

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 8, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

PART 52—[AMENDED]

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

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

Subpart TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(48)and (c)(49) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(48) On August 14, 2001, the Governor of Utah submitted a revision to Utah's SIP to update UACR R307–110–33, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County. The changes involve a demonstration that Salt Lake County's test and repair I/M network is as effective as a test only I/M network.

(i) Incorporation by reference.

(A) UACR R307–110–33, which incorporates by reference Utah SIP, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County and appendices 1.a, 1.b, and 1.c, adopted by the UAQB August 1, 2001 and State effective on August 2, 2001.

(49) On August 15, 2001, the Governor of Utah submitted a revision to Utah's SIP to update UACR R307–110–31, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability. This revision required the mandatory implementation of the inspection of vehicle On-Board Diagnostic (OBD) systems starting January 1, 2002 in all areas implementing an I/M program.

(i) Incorporation by reference.

(A) UACR R–307–110–31 which incorporates by reference Utah SIP, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability adopted by the UAQB on August 1, 2001 and State effective on August 2, 2001.

[FR Doc. 02–25588 Filed 10–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MA–01–7203a; FRL –7387–5a]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Massachusetts; Plan for Controlling MWC Emissions From Existing Large MWC Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the Sections 111(d)/129 State Plan originally submitted by the Massachusetts Department of Environmental Protection (MA DEP) on January 11, 1999, and revised on November 16, 2001. This State Plan is for implementing and enforcing provisions at least as protective as the federal Emission Guidelines (EGs) applicable to existing Municipal Waste Combustors (MWCs) units with capacity to combust more than 250 tons/day of municipal solid waste (MSW).

EFFECTIVE DATE: This final rule will become effective on November 8, 2002.

ADDRESSES: Documents which EPA has incorporated by reference for previous rulemaking are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, Room B102, 1301 Constitution Avenue NW., Washington, DC 20460. You may examine copies of materials the MA DEP submitted to EPA relative to this action during normal business hours at the following locations:

Environmental Protection Agency-New England, Region 1, Air Permits Program, Office of Ecosystem Protection, Suite 1100, One Congress Street, Boston, Massachusetts 02114–2023.

Massachusetts Department of Environmental Protection, Bureau of Waste Prevention, Division of Business Compliance, One Washington Street, Boston, Massachusetts 02108, (617) 556–1120.

The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

FOR FURTHER INFORMATION CONTACT: John Courcier at (617) 918–1659, or by e-mail at *courcier.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking Today?

EPA is approving the above referenced State Plan with revisions. EPA finds the State Plan to be at least as protective as EPA's Emission Guidelines. *See* 40 CFR part 60, subpart Cb.

II. Why Did EPA Withdraw Its Original Approval?

This rulemaking was originally published as a direct final notice in the July 14, 1999 **Federal Register**. *See* 64 FR 37923 for additional information. Subsequent to this notice, EPA received numerous adverse and supportive comments. Because of the adverse comments, EPA withdrew the direct final notice on September 1, 1999. *See* 64 FR 47680. EPA has responded to these adverse comments under III below.

III. How Has EPA Addressed the Adverse Comments on Its Original Direct Final Approval?

As mentioned under section II above, EPA published its direct final and proposed approval of the State's MWC Plan, including the MWC rule, on July 14, 1999. The plan was to become effective on September 13, 1999, unless EPA received adverse comment by August 13, 1999. Subsequently, we did receive timely comments objecting to the State's Plan and EPA's approval of it. Following the September 1, 1999 withdrawal of EPA's proposed direct final approval, EPA received additional adverse comments as well as supportive comments. The adverse comments received include the following:

- The MA DEP's mercury limit is arbitrary and has not been demonstrated to be consistently achievable.
- There are no test methods that have been validated at the 28 μg/dscm level.
- MA DEP did not provide the public with adequate notice and opportunity to comment, in that MA DEP modified the mercury standard to be more stringent after the close of the public comment period, and did not provide further opportunity for comment.

The full text of written comments and EPA's responses can be found in the docket located at EPA's Boston office.

EPA will briefly address the adverse comments below:

EPA does not find the mercury limit to be arbitrary. Units equipped with fabric filters and carbon injection have been shown to be capable of meeting the limit. Although some MWC units equipped with electrostatic precipitators (ESPs) have not been shown to be able to achieve the limit consistently, MA DEP can reasonably determine that well-controlled units should be able to meet the 28 μg/dscm level. MA DEP has addressed the issue of mercury spikes based on MSW content by allowing facilities to average four quarterly test results to achieve the standard. In addition, the Plan allows ESP-controlled sources unable to meet the standard within the first year to apply for a limited waiver for periods of up to five years, to provide time to install and test additional control measures.

The more stringent numerical limit, and the elimination of the 85% reduction option, are not contrary to Clean Air Act requirements. Section 129(b)(2) of the Act requires a State to submit a plan that is ''at least as protective'' as EPA's EGs. By proposing a more stringent mercury standard, MA DEP has provided a standard that is at least as protective as the federal mercury standard. The provisions of sections 111(d) and 129 do not prevent a State from submitting emission limits that are more stringent than the federal EGs. Even if the State's limit has not been consistently achieved by all ESP-controlled units in the past, the State may require such units to achieve a level of control that has been shown to be achievable by other municipal waste combustors.

One commenter indicated that there are no approved test methods available for measuring mercury at and below the 28 μg/dscm level. This commenter believes EPA can not approve a limit for which there is no validated test method. It is correct that Method 29 (the approved EPA test method for measuring mercury) has not been validated at a large MWC at the MA DEP's mercury level. However, Method 29 has been validated at both smaller MWCs and at power plants at the low levels being discussed here. Therefore, EPA has no reason to believe that Method 29 is not an appropriate test method to use in this situation.

As required by 40 CFR 60.23(c), the State conducted public hearings and received comments on the State Plan. One of the comments to EPA is that the State should have conducted a further public process before adopting a standard that differed from the standard it had proposed in the notice of public hearing. In particular, the commenter claimed that the State was required to provide further opportunity for comment before adopting a mercury standard that differed from the proposal in eliminating the compliance option of 85% reduction by weight. EPA believes that the State has met EPA's requirement that it provide a public hearing on the State Plan prior to adoption. With respect to the adequacy of the public hearing process under Massachusetts law, the Massachusetts Attorney General's Office has stated that the procedures were adequate under the Massachusetts Administrative Procedure Act. Accordingly, EPA is satisfied that the State has demonstrated that it provided an adequate public hearing process, and that it has adequate legal authority to enforce the standard, in accordance with 40 CFR 60.26(a).

IV. Why Is EPA Approving the State's Plan at This Time?

EPA's approval of MA DEP's State Plan is based on our findings that:

(1) MA DEP provided adequate public notice of, and held public hearings for the proposed rule-making, and Massachusetts may carry out and enforce its provisions which are at least as protective as the EGs for large MWCs, and

(2) MA DEP demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

V. When Does the State Plan Become Effective and What Becomes of the Federal Plan?

This final rule is effective on November 8, 2002, without further notice. The Federal Plan is an interim action. On the effective date of this action, the Federal Plan will no longer apply to MWC units covered by the State Plan.

VI. By What Date Must MWCs in Massachusetts Achieve Compliance?

All existing large MWC units in the Commonwealth of Massachusetts must now be in compliance with these requirements. The final compliance date was December 19, 2000.

VII. Administrative Requirements

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

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

In reviewing section 111(d) State Plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS),

EPA has no authority to disapprove a State Plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State Plan submission, to use VCS in place of a State Plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* § 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal .

Dated: September 27, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Part 62 is amended by adding a new § 62.5340 and a new undesignated center heading to Subpart W to read as follows:

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.5340 Identification of Plan.

(a) *Identification of Plan.* Massachusetts Plan for the Control of Designated Pollutants from Existing Plants (Section 111(d) Plan).

(b) The plan was officially submitted as follows:

(1) Control of metals, acid gases, organic compounds and nitrogen oxide emissions from existing municipal waste combustors, originally submitted on January 11, 1999 and amended on November 16, 2001. The Plan does not include: the site assignment provisions of 310 CMR 7.08(2)(a); the definition of ''materials separation plan'' at 310 CMR 7.08(2)(c); and the materials separation plan provisions at 310 CMR 7.08(2)(f)(7).

(2) [Reserved]

(c) *Designated facilities.* The plan applies to existing sources in the following categories of sources:

(1) Municipal waste combustors.

(2) [Reserved]

3. Part 62 is amended by adding a new § 62.5425 and a new undesignated center heading to subpart W to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With the Capacity to Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.5425 Identification of sources.

(a) The plan applies to the following existing municipal waste combustor facilities:

(1) Fall River Municipal Incinerator in Fall River.

(2) Covanta Haverhill, Inc., in Haverhill.

(3) American Ref-Fuel of SEMASS, L.P. in Rochester.

(4) Wheelabrator Millbury Inc., in Millbury.

(5) Wheelabrator Saugus, J.V., in Saugus.

(6) Wheelabrator North Andover Inc., in North Andover.

(b) [Reserved]

[FR Doc. 02–25685 Filed 10–8–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AD25

Disaster Assistance; Federal Assistance to Individuals and Households

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule; correction.

SUMMARY: We, FEMA, published an interim final rule on September 30, 2002, 67 FR 61446, concerning Federal disaster assistance to individuals and households. There were a number of errors that were misleading and need clarification. This document corrects those errors.

EFFECTIVE DATE: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Hirsch; Response and Recovery Directorate; (202) 646–4099, or (e-mail) at *Michael.Hirsch@fema.gov.*

SUPPLEMENTARY INFORMATION: On September 30, 2002 we published an interim final rule on, 67 FR 61446, concerning Federal disaster assistance to individuals and households. There were a number of inadvertent errors in that rule, and this document corrects those errors.

In the interim final rule (FR Doc. 02–24773), published September 30, 2002, 67 FR 61446, make the following corrections:

1. On page 61448, in the second line of the third column, correct the reference ''206.110'' to read ''206.101''.

PART 206—[CORRECTED]

2. On page 61452, in the first column, correct amendatory instruction ''2.'' to read as follows:

2. Subpart D is amended by revising the heading and adding §§ 206.110 through 206.120 to read as follows:

§ 206.115 [Corrected]

3. On page 61455, in the sixth line from the bottom of the third column, correct the reference ''206.111(a)'' to read ''206.120(a)''.

§ 206.117 [Corrected]

4. On page 61456 in the 31st line from the top of the second column, correct ''(i) Direct Assistance'' to read ''(ii) Direct Assistance''.

5. On page 61456 on the 18th line from the bottom of the third column, correct ''206.119(e)'' to read ''206.110(e)''.

§ 206.120 [Corrected]

6. On page 61459 on the 37th line from the top of the third column, correct ''(vii) Processing for retention of records'' to read ''(viii) Process for retention of records''.

Dated: October 3, 2002.

John R. D'Araujo, Jr.,

Assistant Director, Response and Recovery Directorate.

[FR Doc. 02–25681 Filed 10–8–02; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final Rule; correction.

SUMMARY: The final rule adopting fees beginning on page 60596 in the **Federal Register** of Thursday, September 26, 2002, contains errors that need correction.

DATES: This correction is effective October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Chief Counsel, NHTSA (202–366–5238).

SUPPLEMENTARY INFORMATION: NHTSA published a final rule on September 26, 2002 (67 FR 60596) adopting fees for Fiscal Year (FY) 2003, and until further notice, as authorized by 49 U.S.C. 30141, relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards. This correction corrects that document.

1. On page 60599 in the first column, under Amendatory Instruction 2 to section 594.6, paragraph D is corrected to read as follows: ''D. Revising the last sentence of paragraph (h).''

2. On page 60599 in the first column, under Amendatory Instruction 2 to section 594.6, the following paragraph is added: ''F. Revising paragraph (d).''

3. On page 60599 in the second column, after paragraph (b), add paragraph (d) to read as follows:

* * * * *

(d) That portion of the initial annual fee attributable to the remaining activities of administering the registration program on and after October 1, 2002, is set forth in paragraph (i) of this section. This portion shall be refundable if the application is denied, or withdrawn before final action upon it.

* * * * *

Dated: October 4, 2002.

Jeffrey N. Runge,

Administrator.

[FR Doc. 02–25726 Filed 10–8–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG92

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for *Thlaspi californicum* (Kneeland Prairie Penny-cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Thlaspi californicum* (Kneeland Prairie penny-cress). The critical habitat consists of one unit whose boundaries encompass a total area of approximately 30 hectares (74 acres) in Humboldt County, California. Section 7 of the Act requires Federal agencies to ensure that any actions they fund, authorize, or carry out do not result in the destruction or adverse modification of critical habitat. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on the size and configuration of the critical habitat unit.

DATES: This rule is effective November 8, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule are available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Office, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521.

FOR FURTHER INFORMATION CONTACT: Bruce Halstead, Project Leader, Arcata Fish and Wildlife Office, at the above address (telephone 707/822–7201; facsimile 707/822–8411).

SUPPLEMENTARY INFORMATION:

Background

Thlaspi californicum (Kneeland Prairie penny-cress) is a perennial member of the mustard family (Brassicaceae). The species grows from 9.5 to 12.5 centimeters (3.7 to 4.9 inches) tall with a basal cluster of green to purplish, sparsely toothed leaves. Leaves borne along the stem are sessile (without a stalk) with entire to toothed margins. The white flowers have strongly ascending flower stalks. *Thlaspi californicum* flowers from April to June. The fruit is a sharply pointed silicle (a short fruit typically no more than two to three times longer than wide), and is elliptic to obovate, without wings, and with an ascending stalk.

Serano Watson (1882) first described *Thlaspi californicum* based on a collection made by Volney Rattan from among rocks at Kneeland Prairie at 760 meters (m) (2,500 feet (ft)) elevation. Jepson (1925) later referred to it as *T. alpestre* var. *californicum.* Munz (1959) referred to the taxon as *T. glaucum* var. *hesperium;* however, he segregated it as *T. californicum* in his supplement (Munz 1968). Holmgren (1971) assigned the name *Thlaspi montanum* var. *californicum.* Finally, the taxon was returned to *T. californicum* in the current *Jepson Manual* (Hickman 1993, Rollins 1993).

Thlaspi californicum is endemic to serpentine soils in Kneeland Prairie, located in the outer north coast range of Humboldt County, California. Serpentine soils are derived from ultramafic rocks (rocks with unusually large amounts of magnesium and iron). The entire known distribution of *T. californicum* occurs on Ashfield Ridge at elevations ranging from 792 to 841 m (2,600 to 2,760 ft).

Plant communities in Kneeland Prairie include the following: California annual and introduced perennial grasslands; seasonal and perennial wetlands; and mixed oak/Douglas-fir *(Pseudotsuga menziesii)* woodlands (SHN 1997). Boulder outcrops in Kneeland Prairie form scattered knobs that protrude out of the grasslands. The majority of these outcrops are volcanic rock types such as greenstone pillow basalt, basalt, tuff, or agglomerates (State of California 1975). Along Ashfield Ridge and nearby side ridges, many of the outcrops are serpentine (State of California 1975). The serpentine outcrops exhibit a distinctive flora compared to the surrounding grassland (SHN 2001). In addition to *Thlaspi californicum,* serpentine outcrops on Ashfield Ridge support the following two special interest plants, both considered as rare by the California

Native Plant Society: *Fritillaria purdyi* (Purdy's fritillary) and *Astragalus rattanii* ssp. *rattanii* (Rattan's milk-vetch) (SHN 1997).

Little is known about the reproductive biology of *Thlaspi californicum.* Some members of the genus, such as *T. montanum,* are known to outbreed, while others, such as *T. alpestre,* primarily self-pollinate (Holmgren 1971). Due to its very close taxonomic relationship to *T. montanum, T. californicum* is almost certainly an outbreeder. Generalist bees and flies are the assumed principal pollinators (SHN 2001).

The only known occurrence of *Thlaspi californicum* includes five relatively distinct groups of plants all located within 300 m (980 ft) of each other on three small patches of serpentine. The species occupies an area which is fragmented by the Kneeland Airport and Mountain View Road. We do not know if genetic interchange occurs between plants in these separate groups; therefore, the five areas will be referred to as individual colonies. The location was described as consisting of three colonies in 1990 (Imper 1990, SHN 2001); a fourth colony was discovered in 1999 (SHN 2001), and one additional colony in 2001 (SHN 2001).

In 1997, the largest colony contained an estimated 10,840 plants (SHN 1997); this estimate was later corrected to 9,919 plants (SHN 2001). The sizes of the other two colonies known in 1997 were 140 and 40 plants (SHN 1997); therefore, the total revised estimate in 1997 was 10,099 plants. In 2001, the total number of *Thlaspi californicum* plants was estimated at approximately 5,293 (SHN 2001), with 5,142 plants at the largest colony, and 90 plants, 30 plants, 16 plants, and 15 plants at the four smaller colonies. In 2002, the total number of plants was estimated at approximately 8,954, with 8,851 plants at the largest colony, and 114 plants, 41 plants, 25 plants, and 23 plants at the four smaller colonies (Imper 2002). These data suggest a large annual turnover in the population and downplay the significance of the population decline noted between 1997 and 2001.

Historically, several land use activities probably altered the distribution and abundance of *Thlaspi californicum* colonies. These activities included construction of the county road in the 1800s (currently Mountain View Road), the Kneeland Airport in 1964, and the California Department of Forestry & Fire Protection (CDFFP) helitack base in 1980. Prior to 1964, suitable habitat for *T. californicum* on Ashfield Ridge consisted of two serpentine patches (1.9 hectares (ha) (4.7 acres (ac)) and 0.6 ha (1.4 ac)) and scattered smaller patches of 0.01 ha (0.02 ac) to 0.2 ha (0.6 ac) in size. The two larger serpentine outcrops formed a semi-continuous ridgetop exposure covering more than 2.4 ha (6 ac), extending in an east-west direction along the top of the ridge in the area now occupied by the airstrip, county road, and helitack base (SHN 2001).

Construction of the county road, airstrip, and helitack base bisected and fragmented the two largest patches of suitable habitat into four relatively isolated patches and also reduced the total available habitat by approximately 50 percent. No data are available on the distribution or number of individuals prior to this habitat alteration. However, these colonies probably occupied a larger area or formed one large colony prior to these construction activities, based on anecdotal evidence. The impacts on population or community processes from this habitat loss and possible population reduction are unknown. In general, smaller serpentine outcrops support a higher number of alien species (Harrison 1999). Smaller outcrops may also be more vulnerable to recreational impacts, trampling, and modification of the unique serpentine soil chemistry as a result of enrichment from the surrounding meadow system (SHN 2001). Patch size influences fruit and flower production in *Calystegia collina* (serpentine morning glory) (Wolf and Harrison 2001). Small outcrops had fewer patches of *Calystegia collina,* patches with relatively low densities of flowers, and they attracted fewer insect visitors. These factors, in addition to a reduction and/or fragmentation of the site, increase the likelihood of extinction.

In 2001, all known colonies occupied an estimated 0.3 ha (0.8 ac), divided among five colonies as follows: 0.29 ha (0.72 ac); 0.02 ha (0.05 ac); 0.008 ha (0.02 ac); 0.004 ha (0.01 ac); and 0.002 ha (0.005 ac). The five known colonies occur on three separate serpentine outcrops, but they currently occupy only about 29 percent of the suitable habitat on these three outcrops (total area 1.1 ha (2.8 ac)). In addition to the three occupied outcrops, fourteen unoccupied serpentine outcrops occur on Ashfield Ridge, ranging in size from 0.01 ha (0.02 ac) to 0.2 ha (0.6 ac) (combined area of 0.9 ha (2.2 ac)). The distances between the outcrops range from 10 m to 85 m (33 ft to 279 ft). These patches are located within 400 m (1,312 ft) of the largest *Thlaspi californicum* colony. Serpentine soils contiguous with and in the vicinity of the colonies are most likely to support *T. californicum* in the future.

Historic records for *Thlaspi californicum* refer to Kneeland Prairie and Ashfield Ridge as site locations (Watson 1882, Holmgren 1971). Over 99 percent of the serpentine soils in Kneeland Prairie occur on Ashfield Ridge. Two additional small serpentine outcrops are located on a ridge approximately 4.8 kilometers (km) (3 miles (mi)) southwest of Ashfield Ridge (State of California 1975). No historic records exist to show that *T. californicum* occupied these two outcrops. Similarly, no current records exist to indicate that they are occupied.

The next nearest known serpentine outcrops to Kneeland Prairie occur approximately 6.4 km (4 mi) southeast of Ashfield Ridge at Iaqua Buttes. The serpentine outcrops at Iaqua Buttes support the more widespread *Thlaspi montanum* var. *montanum.* No evidence of *T. californicum* or intergradation between *T. californicum* and *T. montanum* var. *montanum* was observed during surveys at the Iaqua Buttes site in 2001 (SHN 2001). *T. montanum* var. *montanum* also occurs on serpentine soils in the vicinity of Horse Mountain approximately 24 km (15 mi) northeast of Ashfield Ridge (SHN 2001). In 2001, serpentine outcrops on the western edge of the Six Rivers National Forest were surveyed for *T. californicum.* No populations of this species were located during these field visits (Jennings 2001). Service personnel surveyed the largest known serpentine exposure west of U.S. Highway 101 and south of Myers Flat (vicinity of Cedar Flat) in 2002; this survey also produced negative results. No evidence exists to show that the historic range of *T. californicum* ever extended beyond Kneeland Prairie (SHN 2001).

Previous Federal Action

Federal Government actions for *Thlaspi californicum* began when we published an updated notice of review (NOR) for plants on December 15, 1980 (45 FR 82480). This notice included *T. californicum* (referred to as *T. montanum* var. *californicum*) as a category 2 candidate. Category 2 candidates were those taxa for which data in our possession indicated listing might be appropriate, but for which additional biological information was needed to support a proposed rule. On November 28, 1983, we published a supplement to the 1980 NOR (48 FR 53640) as well as the subsequent revision on September 27, 1985 (50 FR 39526) which included *T. m.* var. *californicum* as a category 2 candidate.

We published revised NORs on February 21, 1990 (55 FR 6184) and September 30, 1993 (58 FR 511440). In both notices, we included *Thlaspi montanum* var. *californicum* as a category 1 candidate. Category 1 candidates are taxa for which we have on file sufficient information on biological vulnerability and threats to support preparation of listing proposals, but issuance of the proposed rules are precluded by other pending listing proposals of higher priority. In our February 28, 1996, **Federal Register** Notice of Review of Plant and Animal Taxa that are Candidates for Listing as Endangered or Threatened Species (CNOR) (61 FR 7595), we discontinued designation of multiple categories of candidates. Only taxa meeting the definition of former category 1 are now considered candidates for listing. *T. montanum* var. *californicum* was included as a candidate species in the February 28, 1996, notice. Our September 19, 1997, CNOR (62 FR 49397) included *T. californicum* as a candidate for listing.

On February 12, 1998 (63 FR 7112), we published a proposal to list *Thlaspi californicum* as endangered. Our October 25, 1999, CNOR (64 FR 57533) included *T. californicum* as a taxon proposed for listing as endangered. The final rule listing *T. californicum* as an endangered species was published on February 9, 2000 (65 FR 6332).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. At the time *Thlaspi californicum* was proposed, we determined that designation of critical habitat for *T. californicum* was not prudent because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

A series of court decisions for a variety of species overturned our determinations that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cri. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we reexamined the question of whether designation of critical habitat for *Thlaspi californicum* was prudent. At the time *T. californicum* was listed, we found that designation of critical habitat was prudent.

On June 17, 1999, our failure to issue final rules for listing *Thlaspi californicum* and nine other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the 10 species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Babbitt* (Case No. C99–2992 (N.D.Cal.)). On May 19, 2000, the U.S. District Court for the Northern District of California issued an order setting the timetable for the promulgation of the critical habitat designations. We agreed to complete the proposed critical habitat designations for the 10 species by September 30, 2001. However, in mid-September 2001, plaintiffs agreed to a brief extension of this due date until October 19, 2001.

On October 24, 2001, we published a proposed rule to designate critical habitat for *Thlaspi californicum* (66 FR 53756). The proposed critical habitat consisted of one unit whose boundaries encompassed a total area of approximately 30 ha (74 ac) in Humboldt County, California. The public comment period was open for 60 days until December 24, 2001. We did not receive any requests for public hearings during the comment period, and we did not hold any public hearings. On May 7, 2002, we published a notice announcing reopening of the public comment period and availability of the draft economic analysis for the proposed critical habitat designation for *T. californicum* (67 FR 30643). The comment period was open for an additional 30 days until June 6, 2002. In mid-May 2002, the plaintiffs agreed to extend the completion date of the final rule until September 30, 2002.

Summary of Comments and Recommendations

In the proposed rule published on October 24, 2001 (66 FR 53756), we requested that all interested parties submit comments that might contribute to the development of the final rule. The first comment period closed on December 24, 2001 (66 FR 53756). Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. An announcement was posted on the Service website October 24, 2001, and an article was published in the Times-Standard newspaper on October 29, 2001, inviting general public comment. We reopened the comment period on May 7 to June 6, 2002, to allow for comments on the draft economic analysis of the proposed critical habitat (67 FR 30643).

We received a total of seven written comments during the two comment periods, including three from designated peer reviewers. Of the four comments from private individuals, three opposed and one was neutral on the proposed action. We reviewed all comments received for substantive issues and new information regarding critical habitat and *Thlaspi californicum.* Public comments are grouped into two general issues relating specifically to (1) procedural and regulatory issues and (2) biological issues. Comments have been incorporated directly into the final rule or addressed in the following summary.

Issue 1: Procedural and Regulatory Issues

(1) *Comment:* Two commenters requested that all or a portion of their lands be removed from the critical habitat designation.

Service Response: Section 4(b)(2) of the Act states ''The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat.'' Absent a finding by us that the economic or other relevant impacts of a critical habitat designation would outweigh the benefits of designation, the Act does not provide for the exclusion from critical habitat of private lands essential to the conservation of listed species. The boundaries of the critical habitat unit were delineated with a 100-m grid. We attempted to exclude areas from the boundary that did not contain primary constituent elements; however, we did not map the unit in sufficient detail to exclude all such areas. The lands owned by one of the commenters (commenter A) is such an area. This land, less than 2.5 ha (1 ac), is located in the northwest corner of the unit boundary and does not contain any primary constituent elements. Therefore, by definition this

commenter's land is not critical habitat. The other commenter's (commenter B) land does contain primary constituent elements. We believe that this parcel of land contains components essential to the conservation of *Thlaspi californicum* because it includes one of the fourteen unoccupied serpentine outcrops on Ashfield Ridge. We believe that the designation of these lands (commenter B) in this final rule as critical habitat outweigh the benefits of their exclusion from being designated as critical habitat. The possible removal of these lands from the designation is also addressed in the Exclusions Under Section 4(b)(2) section of this rule.

(2) *Comment:* One commenter was concerned about the impacts of the designation on private landowners and wanted to know if private landowners would be compensated for the loss of use of their lands because of protective measures. Another noted generally that the Constitution does not give plants rights over citizens.

Service Response: Designation of critical habitat, by itself, does not require private landowners to undertake any management activities or otherwise restrict the use of private lands. Critical habitat applies only to actions carried out, funded, or permitted by the Federal Government. The Act provides that Federal actions may not destroy or adversely modify critical habitat. Critical habitat designation will not affect any uses of private land unless actions on the land are carried out, funded, or require authorization from the Federal Government. If a Federal nexus does exist for a particular activity on private lands, the activity may still proceed unless the Service concludes that the action would destroy or adversely modify critical habitat. In that event, the Act provides for the development of reasonable and prudent alternatives to the proposed activity that meet its intended purposes and would avoid the destruction or adverse modification of critical habitat. Given the nature of activities currently occurring on the designated private lands and likely to occur in the future as described below, the likelihood of a future federal nexus is remote and the likelihood of any future section 7 consultation under the Act resulting in compensable restrictions on private land uses is even more unlikely.

Issue 2: Biological Concerns

(1) *Comment:* One commenter questioned the information provided on population numbers and whether *Thlaspi californicum* is growing in other places.

Service Response: The current population sampling design involves a complete count of plants in the four small colonies and uses a statistical-based sampling protocol to estimate the number of plants in the largest colony. In 2001 and 2002, surveys were conducted in an attempt to locate new populations of *Thlaspi californicum.* These surveys occurred in the following locations: (1) Iaqua Buttes which is the nearest known serpentine outcrop to Kneeland Prairie; (2) suitable habitat located on the Six Rivers National Forest within 16 km (10 mi) north and south of the Kneeland Prairie site; and (3) the largest known serpentine exposure west of U.S. Highway 101 and south of Myers Flat. No new *T. californicum* sites were located during any of these surveys. As stated by one of the peer reviewers, the data show that this plant is restricted to one location on Ashfield Ridge.

(2) *Comment:* One peer reviewer suggested that the potential impacts of herbivory should be addressed.

Service Response: Cattle grazing has occurred in Kneeland Prairie for at least a century. The current level of grazing appears relatively low. Unique serpentine soils in Kneeland Prairie support low total plant cover (typically less than 40 percent) and do not support many of the desirable forage species available in the prairie. Impacts of cattle grazing are not quantified, but available evidence suggests they are minimal at the current low stocking level. Recent data suggest that herbivory by rabbits or other small mammals may be significant in some colonies, but no quantitative data have yet been collected on the magnitude of this impact.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from five knowledgeable individuals with expertise in botany. Three of the five peer reviewers provided comments that are summarized in the previous section and incorporated in the final rule; all three reviewers supported the proposal. None of the reviewers provided new information about the biology or distribution of *Thlaspi californicum* or about additional areas considered essential to its conservation.

One peer reviewer stated that the methods and criteria used in the proposed rule are "* * * sound in light of current conservation biology theory and the information known about the taxonomy and ecology of the species". The reviewer also stated that the "* * * inclusion of unoccupied habitat * * * on the serpentine outcrops and adjunct prairie is needed to ensure ecological functions of the species" and "the definition of primary constituent elements * * * is comprehensive and well planned."

A second peer reviewer stated that the "proposed actions, were, even without complete data, reasonable and based on solid scientific assumptions." The reviewer recommended a monitoring strategy that includes establishment of permanent plots and marking individuals. In 2002, we established permanent grids and mapped individual plants in order to monitor life history and species composition.

The third peer reviewer suggested that herbivory on the known population and the survey of potential habitat on Six Rivers National Forest lands should be discussed. Discussions of these issues were added to the final rule. The reviewer also stated that the "* * * inclusion of unoccupied habitat and primary constituent elements * * *" was supported by the literature.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Areas outside the geographic area currently occupied by the species shall be designated as critical habitat only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

Conservation is defined in section 3(3) of the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary. Regulations under 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

Habitat included in a critical habitat designation must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat

areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

When we designate critical habitat at the time of listing, as required under section 4 of the Act, or under short court-ordered deadlines, we may not have the information necessary to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

We will designate only currently known essential areas. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If information available at the time of designation does not show an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. We will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best scientific and commercial data demonstrate that the unoccupied areas are essential for the conservation needs of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments, unpublished materials, and expert opinion or personal knowledge.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best available scientific information in determining which areas were essential for the conservation of *Thlaspi californicum.* This information included data from the following sources: 1993 United States Geological Survey (USGS) 1:24,000 scale, 3.75′, infrared, color digital, orthophotographic, quarter quadrangle images; geologic map of the Van Duzen River Basin (State of California 1975); 1962 panchromatic, 1:12,000 scale, aerial photograph HCN–2 22–17; ownership parcels from the Humboldt County Planning Department, updated as of August 2000; recent biological surveys and reports; and discussions with botanical experts. We also conducted or contracted for site visits, either cursory or more extensive, at locations on private lands where access was obtained, on State lands managed by CDFFP, and on public lands managed by Six Rivers National Forest and the Bureau of Land Management, including Iaqua Buttes and Board Camp Mountain.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for germination, or seed dispersal; and habitats protected from disturbance or which are representative of the historic geographical and ecological distributions of a species.

The long-term probability of conservation of *Thlaspi californicum* is dependent upon a number of factors, including protection of serpentine sites containing existing colonies; protection of adequate serpentine sites on Ashfield Ridge to allow for recolonization or expansion; preservation of the connectivity between serpentine sites to allow gene flow between the colonies through pollinator activity and seed dispersal mechanisms; and protection and maintenance of proximal areas for the survival of pollinators and seed dispersal agents. In addition, the small, fragmented distribution of this species makes it especially vulnerable to edge effects from adjacent activities, such as the spread of non-native species; nearby uses of herbicides and pesticides; livestock grazing; and erosion due to natural or diverted flow patterns.

Based on our knowledge of this species to date, the primary constituent elements of critical habitat for *Thlaspi californicum* consist of, but are not limited to:

(1) Thin rocky soils that have developed on exposures of serpentine substrates (SHN 2001);

(2) Plant communities that support a relatively sparse assemblage of serpentine indicator or facultative-serpentine indicator species, including various native forbs and grasses but not trees or shrubs, such that competition for space and water (both above and below ground), and light is reduced, compared to the surrounding habitats (SHN 2001). Known associated species include: *Festuca rubra* (red fescue), *Koeleria macrantha* (junegrass), *Elymus glaucus* (blue wildrye), *Eriophyllum lanatum* (woolly sunflower), *Lomatium macrocarpum* (large-fruited lomatium), and *Viola hallii* (Hall's violet) (SHN 2001);

(3) Serpentine substrates that contain 15 percent or greater (by surface area) of exposed gravels, cobbles, or larger rock fragments, which may contribute to alteration of factors of microclimate, including surface drainage and moisture availability, exposure to wind and sun, and temperature (SHN 2001); and

(4) Prairie grasslands and oak woodlands located within 30 m (100 ft) of the serpentine outcrop area on Ashfield Ridge. Protection of these habitats is essential to the conservation of the *Thlaspi californicum* in that it will provide connectivity among the serpentine sites, help to maintain the hydrologic and edaphic integrity of the serpentine sites, and support populations of pollinators and seed dispersal organisms.

Criteria Used To Identify Critical Habitat

In our delineation of the critical habitat unit, we selected areas to provide for the conservation of *Thlaspi californicum* at the only location it is known to occur. Adult individuals of the species currently only grow on approximately 0.3 ha (0.8 ac) of land on Ashfield Ridge in Kneeland Prairie. However, the area essential for the conservation of the species is not

restricted solely to the area where the plant is physically visible. It must include an area large enough to maintain the ecological functions upon which the species depends (*e.g.*, the hydrologic and edaphic conditions).

We first mapped all known *Thlaspi californicum* occurrences. Due to the historic loss and fragmentation of the largest patches of suitable habitat, we also mapped all suitable habitat in proximity to the known occurrences. Maintaining the number and distribution of serpentine outcrops on Ashfield Ridge will help to ensure the long-term viability of *T. californicum*, as high-quality habitat patches in close proximity to a source population have the highest likelihood of future occupancy (Murphy *et al.* 1990). Protection of these outcrops will provide a range of habitat conditions, for example, moisture availability, temperature, and wind exposure, which will optimize the opportunities for recolonization or expansion and reduce the likelihood of extinction due to stochastic events. They will also protect undetected *T. californicum* colonies and seed banks.

We also mapped grasslands and oak woodlands surrounding the serpentine outcrops. These areas provide connectivity between all serpentine outcrops; maintain the hydrologic and edaphic integrity of the serpentine sites; and support biological agents of pollination and seed dispersal necessary for the conservation of the species. Inclusion of the grasslands and oak woodlands will also minimize impacts to serpentine outcrops resulting from external peripheral influences, such as erosion, grazing, or the spread of exotic species.

At this time, we are not designating as critical habitat any serpentine outcrops within Kneeland Prairie, other than the outcrops on Ashfield Ridge. A draft recovery plan is in preparation, which does not call for establishment of *Thlaspi californicum* beyond Ashfield Ridge. However, since *T. californicum* has an extremely restricted range, establishment at new locations may be determined necessary to provide insurance against stochastic events. In that case, critical habitat may be reevaluated based on recommendations in the final recovery plan.

We considered ownership status in delineating areas as critical habitat. *Thlaspi californicum* is known only to occur on State, county, and private lands. We are not aware of any Tribal lands in or near our designated critical habitat unit for *T. californicum.*

We used a geographic information system (GIS) to facilitate identification of critical habitat areas. We used information from recent biological surveys and reports; discussions with botanical experts; and locations of serpentine soils to create GIS data layers. Serpentine soil sites were derived from a geologic map, infrared color digital orthophotos, and global positioning system data collected in the field during 2000 and 2001. These data layers were created on a base of 1:24,000 scale USGS 3.75', infrared, color digital, orthophotographic, quarter quadrangle images. We used these data layers to map the primary constituent elements. We defined boundaries of the designated critical habitat unit by overlaying this map with a 100–m Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) grid and removing all NAD27 grid cells that did not contain the primary constituent elements.

In selecting the critical habitat area, we attempted to avoid developed areas and other lands unlikely to contribute to the conservation of *Thlaspi californicum.* However, we did not map the critical habitat unit in sufficient detail to exclude all such areas. Existing features and structures within the critical habitat unit boundary, such as buildings, roads, and other paved areas will not contain one or more of the primary constituent elements and, hence, are not considered critical habitat. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

Special Management Considerations or Protections

As noted in the Critical Habitat section, ''special management considerations or protection'' is a term that originates in the definition of critical habitat. We believe the critical habitat area may require special management considerations or protection because *Thlaspi californicum* occupies an extremely localized range. Potential threats to the habitat of *T. californicum* include: expansion of Kneeland Airport and CDFFP helitack base; road realignment; fires caused by airplane or vehicular accidents; contaminant spills; erosion; application of herbicides and pesticides; livestock grazing; and introduction and spread of exotic species.

Additional special management is not required if adequate management or protection is already in place. Adequate special management considerations or protection are provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. Currently, no plans meeting these criteria have been developed for *Thlaspi californicum.*

Critical Habitat Designation

The critical habitat area described below includes all the primary constituent elements discussed above, and constitutes our best assessment at this time of the areas needed for the species' conservation. Critical habitat is designated for *Thlaspi californicum* at the only location it is known to occur.

We are designating one unit of critical habitat, comprising 30 ha (74 ac), surrounding Kneeland Airport and roughly bisected by Mountain View Road. The unit includes all 5 known colonies and all other serpentine outcrops in close proximity to the colonies. All of the critical habitat unit for *Thlaspi californicum* is located on Ashfield Ridge in Kneeland Prairie, Humboldt County, California. This ridge separates the Van Duzen and Mad River basins near the community of Kneeland in central Humboldt County.

The unit contains approximately 2 ha (5 ac) of serpentine soils. Approximately 16 percent (0.3 ha (0.8 ac)) of the serpentine soils are known to be occupied. However, undetected colonies may exist on the serpentine soils within the unit. The approximate area, by land ownership, of this unit is shown in Table 1. Approximately 5 percent (2 ha (4 ac)) of this area consists of State lands, while County lands comprise approximately 11 percent (3 ha (8 ac)), and private lands comprise approximately 84 percent (25 ha (62 ac)). No Federal lands are within the critical habitat unit. This species is not known to occur or to have occurred historically on Federal lands.

TABLE 1.—APPROXIMATE AREAS AND PERCENT OF CRITICAL HABITAT OF *Thlaspi californicum* IN HECTARES (HA) (ACRES (AC)) IN HUMBOLDT COUNTY, CALIFORNIA, BY LAND OWNERSHIP. ESTIMATES REFLECT THE TOTAL AREA WITHIN CRITICAL HABITAT UNIT BOUNDARIES.

Ownership	Hectares	Acres	Percent
State	2	4	5
Private	25	62	84
County	3	8	11
Federal	0	0	0
TOTAL	30	74	100

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat were designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (50 CFR 402.10 (d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not jeopardize the species or destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide ''reasonable and prudent alternatives'' to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

If *Thlaspi californicum* is discovered on Federal lands, those activities on Federal lands that may affect *T. californicum* or its critical habitat would require a section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Housing Administration, Federal Aviation Administration (FAA), or Federal Emergency Management Agency), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, as well as actions on non-Federal lands that are not federally funded, authorized, or permitted will not require section 7 of the Act consultations.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Thlaspi californicum* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Ground disturbance of serpentine outcrops and grassland and oak woodland areas, including but not limited to grading, ripping, tilling, and paving;

(2) Alteration of serpentine outcrops, including but not limited to removal of boulders, mining, and quarrying;

(3) Removing, destroying, or altering vegetation in the critical habitat unit,

including but not limited to inappropriately managed livestock grazing, clearing, introducing or encouraging the spread of nonnative species, recreational activities, and maintaining an unnatural fire regime either through fire suppression or frequent and poorly timed prescribed fires;

(4) Hydrologic changes or other activities that alter surface drainage patterns resulting in erosion of serpentine outcrops or adjacent areas, including but not limited to water diversion, groundwater pumping, irrigation, and erosion control;

(5) Construction or maintenance activities that destroy or degrade critical habitat, including but not limited to road building, building construction, airport expansion, drilling, and culvert maintenance or installation;

(6) Application or runoff of pesticides, herbicides, fertilizers, or other chemical or biological agents; and

(7) Emergency response and clean-up of fuel or other contaminant spills.

To properly understand the effects of critical habitat designation, we must first compare the requirements pursuant to section 7 of the Act for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 of the Act prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on the survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by *Thlaspi californicum* is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. Designation of critical habitat in areas not occupied by *T. californicum* may result in an additional regulatory burden when a Federal nexus exists. However, we believe, and the economic analysis discussed below illustrates, that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat.

Designation of critical habitat could affect the following agencies and/or actions: Development on private, State, or county lands requiring permits or funding from Federal agencies, such as the U.S. Army Corps of Engineers, the Department of Housing and Urban Development, the FAA, or the Federal Highway Administration; construction of communication sites licensed by the Federal Communications Commission; and authorization of Federal grants or loans. These actions would be subject to the section 7 process. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a permit to take according to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, contact the Project Leader, Arcata Fish and Wildlife Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Region 1, Division of Endangered Species, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6131, facsimile 503/231–6243).

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from the critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in extinction of the species. As discussed in this final rule and our economic analysis for this rulemaking, we have determined that no significant adverse economic effects will result from this critical habitat designation. We believe the areas included in this designation are essential for the conservation of *Thlaspi californicum* because they protect the existing colonies, all suitable serpentine sites on Ashfield Ridge, connectivity between the serpentine sites, and the ecological functions upon which the species depends. We believe that the designation of the lands in this final rule as critical habitat outweigh the benefits of their exclusion from being designated as critical habitat. Consequently, none of the proposed lands have been excluded from the designation based on economic impacts or other relevant factors pursuant to section 4(b)(2).

Relationship to Habitat Conservation Plans

No habitat conservation plans (HCPs) currently exist that include *Thlaspi californicum* as a covered species. However, the designated lands are covered lands in the Pacific Lumber Company's HCP. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although ''take'' of listed plants is not prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species.

In most instances, we believe that the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs covering *Thlaspi californicum* are developed within the boundaries of the designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *T. californicum.* The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *T. californicum.* Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. Following the publication of the proposed critical habitat designation, a draft economic analysis was prepared by Economic & Planning Systems, Inc. for the Service. The draft analysis was made available for review on May 7, 2002 (67 FR 30643). The public comment on the draft analysis was open until June 6, 2002, however, we did not receive any comments.

Our economic analysis evaluated the potential future effects associated with the listing of *Thlaspi californicum* as an endangered species, as well as potential effects of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a ''without section 7'' baseline and compares it to a ''with section 7'' scenario. The ''without section 7'' baseline represents the level of protection currently afforded to the species under the Act, absent section 7 protective measures, and includes protections afforded by other Federal, State, and local laws such as the California Environmental Quality Act. The ''with section 7'' scenario identifies land-use activities likely to involve a Federal nexus that may affect the species or its designated critical habitat, which accordingly may trigger future consultations under section 7 of the Act.

Upon identifying section 7 impacts, the analysis proceeds to consider the subset of impacts that can be attributed exclusively to the critical habitat designation. The upper-bound estimate includes both jeopardy and critical habitat impacts. The subset of section 7 impacts likely to be affected solely by the designation of critical habitat represents the lower-bound estimate of the analysis. The categories of potential costs considered in the analysis included costs associated with: (1) Identifying the effect of the designation on a particular parcel or land use activity (*e.g.*, technical assistance, section 7 consultations); and (2) modification to projects, activities, or land uses resulting from the section 7 consultations.

The only reasonably foreseeable activity that will require consultation is the County's proposed Kneeland Airport improvement project. The analysis estimates economic costs for two possible outcomes from this consultation. Both estimates conclude that the costs are attributable co-extensively to the listing of *Thlaspi californicum* due to the species limited distribution and suitable habitat. We are not aware of any future activities on State or private lands included in the designation would involve a Federal nexus.

Based on our economic analysis, we concluded that the designation of critical habitat would result in little additional regulatory burden or associated significant additional costs above and beyond those attributable to the listing of *Thlaspi californicum* due to the limited extent of the designation and the limited amount of reasonably foreseeable activity with a Federal nexus in the area.

The economic analysis concludes that the only existing or reasonably foreseeable activity that will require consultation is the proposed Kneeland Airport improvement project. The most likely outcome of the consultation would be approval of the proposal as presented or a recommendation to implement minor project modifications. The precise nature of any recommended project modifications is difficult to predict in advance of the actual consultation, however, the economic analysis estimates that the type of minor modification that may be associated with a consultation may cost around $113,000. The analysis also estimated the potential cost to the economy under the extreme assumption that the improvement project was found to jeopardize the species or adversely modify critical habitat and that the Service is unable to identify any reasonable and prudent alternatives that would allow the project to proceed in another form. Cost associated with this scenario are estimated to range between $169,000 and $4.2 million depending on how the County's chooses to address the airport maintenance or whether or not they construct a replacement airport.

Because of *T. californicum*'s extremely limited distribution and small amount of available suitable habitat, it is assumed that the Kneeland Airport improvement project would be subject to consultation on potential impacts to the species, regardless of critical habitat designation. Therefore, these potential costs are attributable co-extensively to the listing of the *Thlaspi californicum.* The designation of critical habitat is not expected to result in any significant additional regulatory protection.

A copy of the final economic analysis and supporting documents are included in our administrative record and may be obtained by contacting the Arcata Fish and Wildlife Office (see **ADDRESSES** section). Copies of the final economic analysis also are available on the Internet at *http://pacific.fws.gov/news/.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), as OMB determined that this rule may raise novel legal or policy issues. The Service prepared an economic analysis of this action. The Service used this analysis to meet the requirement of section 4(b)(2) of the Endangered Species Act to determine the economic consequences of designating the specific areas as critical habitat. The draft EA was made available for public comment, and we considered comments on it during the preparation of this rule.

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. A ''substantial number'' of small entities is more than 20 percent of those small entities affected by the regulation, out of the total universe of small entities in the industry or, if appropriate, industry segment. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to prepare 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. For the reasons stated in the proposed rule, in addition to the reasons stated below, we certify that critical habitat designation for *Thlaspi californicum* will not have a significant effect on a substantial number of small entities.

According to the Small Business Administration, small entities include

small organizations, such as independent nonprofit organizations, and small government jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). 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, the Service considered the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, the Service considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, etc.). The Service applied the ''substantial number'' test individually to each industry to determine if certification is appropriate. The area designated as critical habitat is small, less than 30 ha (74 ac), and we have identified fewer than a half-dozen landowners. The small scale of the designation ensures that the ''substantial number of small entities'' threshold of the Regulatory Flexibility Act will not be met. The five primary landowners include the following: Humboldt County, which owns Kneeland Airport and Mountain View Road; State of California, which owns the Kneeland helictack base; Pacific Lumber Company, and two private landowners.

The economic analysis identified the Kneeland Airport improvement project as the activity most likely to be affected by this rulemaking. The analysis estimated that a future section 7 consultation could cost all involved parties a total of $20,300 and that likely mitigation could cost about $113,000. Kneeland Airport is owned by Humboldt County, which has a population of approximately 126,000. Because SBREFA defines a ''small government jurisdiction'' as ''governments of cities, counties * * * with a population of less than fifty thousand.'' (U.S.C. 601), Humboldt County was not considered a small entity for purposes of this analysis, even though the analysis did consider the potential effects of the airport improvement project. Similarly, the other private landowners are not considered small businesses under the scope of SBREFA.

The economic analysis did, however, consider whether the activities of these landowners have any Federal involvement because designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. No Federal lands occur within the designated critical habitat unit. Land use within the majority of the unit, outside of the existing developed areas, consists of livestock grazing and unforested lands surrounding timber lands. None of these activities is likely to trigger a future section 7 consultation. The likelihood of future development in these areas is low, with the exception of the future airport expansion under consideration. If the proposed airport expansion proceeds, the Federal Aviation Administration will likely be required to consult with the Service under section 7 of the Act on activities that agency funds, permits, or implements that may affect *Thlaspi californicum.* With this critical habitat designation, the Federal Aviation Administration will also be required to consult with the Service if its activities may affect designated critical habitat. However, the Service believes this will result in minimal additional regulatory burden on the agency and its applicant or because consultation would already be required due to the presence of the listed species. Consultation to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process and trigger only minimal additional regulatory impacts beyond the duty to avoid jeopardizing the species because of this species limited distribution and available habitat.

Should the airport expansion or another federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents. The area designated as critical habitat is small, less than 30 ha (74 ac), and we have identified fewer than a half-dozen landowners. The scale of the designation ensures that the ''substantial number of small entities'' threshold of the Regulatory Flexibility Act will not be met.

Designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, the Service is unaware of any ongoing Federal activities that affect this species, and since *Thlaspi californicum* was listed (2000), the Service has not conducted any formal or informal consultations involving this species.

Therefore, we certify that the designation of critical habitat for *Thlaspi californicum* will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

As discussed above, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act (SBREFA). This final designation of critical habitat: (a) does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) 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. As discussed in the draft economic analysis, no small entities as defined by SBREFA will potentially be affected by the designation of critical habitat.

Proposed and final rules designating critical habitat for listed species are issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises are not affected by this action and will not be affected by the final rule designating critical habitat for this species. Therefore, we anticipate that this final rule will not place significant additional burdens on any entity.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 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. The primary land uses within designated critical habitat include small county airport facilities, CDFFP helitack base, grazing, and unforested lands surrounding timber lands. Significant energy production, supply, and distribution facilities are not included within designated critical habitat. Therefore, this action does not represent a significant action affecting energy production, supply, and distribution facilities; and no Statement of Energy Effects is required. Because of this species restricted range and the limited amount of suitable habitat, any consultation required pursuant to section 7 of the Act by a Federal agency undertaking an action in this area would likely be triggered by the listing of the species and not solely by this designation of critical habitat.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

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

(a) This rule, as designated, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that they must ensure that any programs involving Federal funds, permits or other authorized activities will not adversely affect the critical habitat. In our economic analysis, we found the direct and indirect costs associated with critical habitat designation to be small in relation to any small governments potentially affected.

(b) This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating 30 ha (74 ac) of lands in Humboldt County, California, as critical habitat for *Thlaspi californicum.* The takings implications assessment concludes that this final designation of critical habitat does not pose significant takings implications for lands within or affected by the designation of critical habitat for *T. californicum.* A copy of this assessment is available by contacting the Arcata Fish and Wildlife Office (*see* **ADDRESSES** section).

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policies, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in California. We will continue to coordinate any future changes in the designation of critical habitat for *Thlaspi californicum* with the appropriate State agencies. Since *T. californicum* only occurs distributed over an extremely limited area, the designation of critical habitat imposes few, if any, additional restrictions to those currently in place and therefore has little incremental impact on State and local governments and their activities. The designation may provide some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While this does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning rather than having to wait for case-by-case section 7 consultations to occur.

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 Order. We designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Thlaspi californicum.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new or revised information collections for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collections associated with Act permits are covered by an existing OMB approval, and are assigned clearance No. 1018–0094, with an expiration date of July 31, 2004. The Service 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 Service has determined that it does not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 (NEPA) in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. The Service published a notice outlining its reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This final designation does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act'' June 5, 1997), with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Thlaspi californicum* because they do not support the species, nor do they provide essential habitat. Therefore, critical habitat for *T. californicum* has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Arcata Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Robin Hamlin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h) revise the entry for *Thlaspi californicum* under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		
Thlaspi californicum	Kneeland Prairie penny-cress.	U.S.A. (CA)	Brassicaceae — Mustard	E	684	17.96(a)	NA
*	*	*	*	*	*	*	

3. Amend § 17.96(a) by adding an entry for *Thlaspi californicum* in alphabetical order under Brassicaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

* * * * *

Family Brassicaceae: *Thlaspi californicum* (Kneeland Prairie penny-cress)

(1) A critical habitat unit is depicted for Humboldt County, California, on the map below.

(2) The primary constituent elements of critical habitat for *Thlaspi californicum* are the habitat components that provide:

(i) Thin rocky soils that have developed on exposures of serpentine substrates;

(ii) Plant communities that support a relatively sparse assemblage of serpentine indicator, or facultative-serpentine indicator, species, including various native forbs and grasses, but not trees or shrubs, such that competition for space and water (both above and below ground) and light is reduced, compared to the surrounding habitats. Known associated species include the following: *Festuca rubra* (red fescue), *Koeleria macrantha* (junegrass), *Elymus glaucus* (blue wildrye), *Eriophyllum lanatum* (woolly sunflower), *Lomatium macrocarpum* (large-fruited lomatium), and *Viola hallii* (Hall's violet);

(iii) Serpentine substrates that contain 15 percent or greater (by surface area) of exposed gravels, cobbles, or larger rock fragments, which may contribute to alteration of factors of microclimate, including surface drainage and moisture availability, exposure to wind and sun, and temperature; and

(iv) Prairie grasslands and oak woodlands located within 30 m (100 ft) of the serpentine outcrop area on Ashfield Ridge. Protection of these habitats is essential to the conservation of *Thlaspi californicum* in that it will provide connectivity among the serpentine sites, help to maintain the hydrologic and edaphic integrity of the serpentine sites, and support populations of pollinators and seed dispersal organisms.

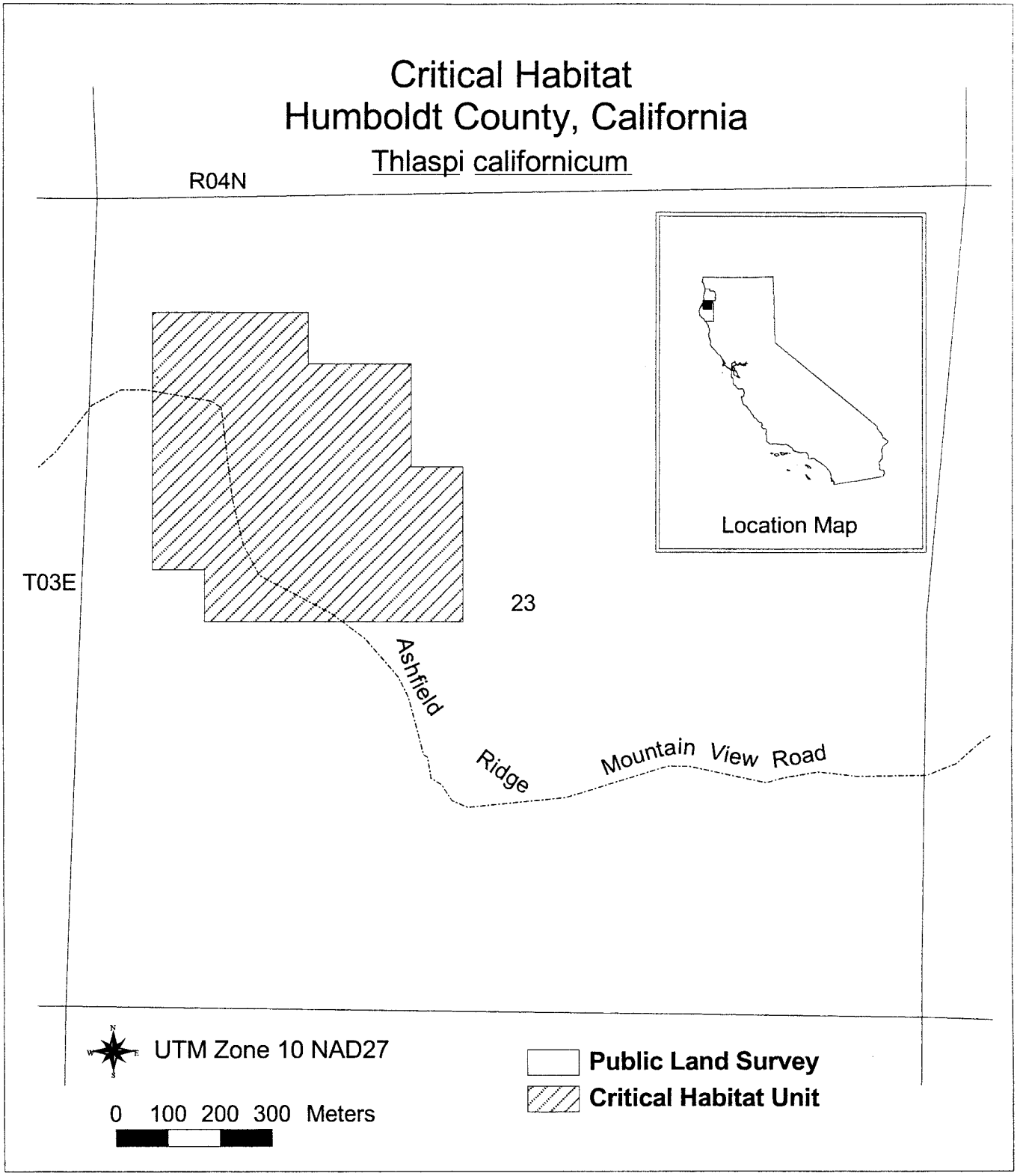
(3) Existing features and structures within the boundaries of mapped critical habitat units, such as buildings, roads, airports, and other paved areas will not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Critical habitat unit. Humboldt County, California.

(i) From USGS. 1:24,000 scale Iaqua Buttes quadrangle, land bounded by the following UTM Zone 10 NAD27 coordinate pairs (East, North): 421800, 4507300; 422100, 4507800; 422100, 4507300; 422200, 4507600; 421700, 4507400; 421800, 4507500; 421600, 4507500; 421800, 4507900; 421800, 4507800; 421900, 4507900

(ii) Map follows:

BILLING CODE 4310–55–P


Critical Habitat
Humboldt County, California
Thlaspi californicum
R04N
T03E
23
Ashfield Ridge
Mountain View Road
Location Map
UTM Zone 10 NAD27
0 100 200 300 Meters
Public Land Survey
Critical Habitat Unit

* * * * *

Dated: September 30, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–25371 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 092602F]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the D season allowance of the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 5, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or *mary.furuness@noaa.gov*.

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

Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Administrator, Alaska Region, NMFS (Regional Administrator), provided that the sum of the revised seasonal allowances does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20(a)(5)(ii)(C)). For 2002, 30 percent of the annual TAC for the Central and Western Regulatory Areas is 15,187 metric tons (mt). For 2002, the Regional Administrator has determined that within each area for which a seasonal allowance is established, any overage or underage of harvest from the previous season(s) shall be subtracted from or added to the seasonal allowance of the following season provided that the resulting sum of seasonal allowances in the Central and Western Regulatory Areas does not exceed 15,187 mt in any single season. The D season allowance of the pollock TAC in Statistical Area 610 of the GOA is 5,949 mt as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002). The C season allowance in Statistical Area 610 was under harvested by 110 mt, therefore the Regional Administrator, in accordance with § 679.20(a)(5)(ii)(C), is increasing the D season pollock TAC in Statistical Area 610 by 110 mt to 6,059 mt.

In accordance with § 679.20(d)(1)(i), the Regional Administrator, has determined that the D season allowance of the pollock TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,009 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

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

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

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

Dated: October 4, 2002.

Virginia M. Fay,

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

[FR Doc. 02–25709 Filed 10–4–02; 3:21 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 196
Wednesday, October 9, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number 010622161–2029–02]

RIN 0607–AA34

Automated Export System Mandatory Filing for Items on the Commerce Control List (CCL) and the United States Munitions List (USML) That Currently Require a Shipper's Export Declaration (SED)

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice for proposed rulemaking and request for comments.

SUMMARY: The U.S. Census Bureau (Census Bureau) is amending the Foreign Trade Statistics Regulations (FTSR) to incorporate requirements for the mandatory Automated Export System (AES)/AESDirect filing for items identified on the Department of Commerce's Commerce Control List (CCL) and the Department of State's United States Munitions List (USML). The AES is the electronic method to file the Shipper's Export Declaration (SED) and the ocean manifest information directly with the U.S. Customs Service (Customs). AESDirect is the Census Bureau's free Internet-based system for filing SED information with the Customs' AES. Further references to AES covers both AES and AESDirect. You are only required to file information via AES for those items that require a SED. This rule will, among other things, provide provisions for AES mandatory filing in the FTSR.

DATES: Submit written comments on or before December 9, 2002.

ADDRESSES: Please direct all written comments on this proposed rule to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, D.C. 20233–6700, (301) 763–2255, by fax (301) 457–2645, or by e-mail: *c.harvey.monk.jr@census.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2001, the Census Bureau published a program notice in the **Federal Register** (66 FR 39006) announcing that we would be issuing rules, and allowing the public to comment, on this subject.

The Census Bureau is responsible for collecting, compiling, and publishing trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), Chapter 9, Section 301. The paper SED and the AES are the primary media used for collecting such trade data, and the information contained therein is used by the Census Bureau for statistical purposes only. This information is exempt from public disclosure under the provisions of Title 13, U.S.C., Chapter 9, Section 301(g). The SED and AES records also are used for export control purposes under Title 50, U.S.C., and Title 22, U.S.C., to detect and prevent the export of certain critical technology and commodities to unauthorized destinations or end users.

Under the current rules and regulations, export information is compiled from both paper and electronic transactions filed by the export community with Customs and the Census Bureau. The AES is an electronic method by which the U.S. principal party in interest or the authorized agent can transmit the required export information. For purposes of completing the SED or AES record, the U.S. principal party in interest (USPPI) is the person in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. The authorized agent is the person in the United States who is authorized by power of attorney or written authorization by the USPPI or the foreign principal party in interest to prepare and file the SED or AES record. A paper SED or the electronic equivalent AES record is required, with certain exceptions, for exports of merchandise valued at more than $2,500 from the United States, Puerto Rico, and the United States Virgin Islands to foreign countries or exports between U.S. Virgin Islands and Puerto Rico and the United States. The SED or AES record also is required for all exports under a Bureau of Industry and Security (BIS) or Department of State (State Department) export license or State Department license exemption, regardless of value, unless exempted from the requirement for an SED or AES record by the State Department (*see* 15 CFR, part 30, § 30.55(h)(2) and 22 CFR parts 120–130).

For export data filed via a paper SED, the USPPI or freight forwarder must present the SED to the exporting carrier when the cargo is tended to the carrier. The vessel, air or rail carrier must present the manifest and supporting documentation to the Customs Port Director at the port of export within four days after departure if a bond is posted with Customs. However, this rule does not apply to SEDs or AES shipments subject to BIS or State Department licenses or State Department license exemptions. If the information is filed in the AES, an exemption legend is included on the vessel, air, or rail manifest, or other commercial loading document indicating that no SED is attached, with a transaction identification number or unique identifier to identify the electronic AES record. If no manifest is required or the manifest is electronically filed, the paper SEDs or the electronically filed AES exemption legends are presented directly to Customs.

Electronic filing strengthens the U.S. Government's ability to control the export of critical goods and technologies and weapons of mass destruction to prohibited and unauthorized end-users and affords the government the ability to significantly improve the quality, timeliness, and coverage of export statistics. Currently, fifty (50) percent of the paper SEDs submitted contain one or more errors in export reporting, accounting for a significant percentage of unreported exports. Reporting on the AES has demonstrated that, compared to paper filing, the error rate is reduced substantially and coverage is improved. Currently, the error rate for export transactions filed through the AES is approximately six (6) percent. At this time, the electronic AES filing of the required export information under Title 13, U.S.C., Section 301, is strictly voluntary for the export of any item.

On November 29, 1999, the President signed H.R. 3194, the Consolidated

Appropriations Act of 1999, into law (Pub. L. 106–113). Section 1252(a) of this law, amends Title 13, U.S.C., Chapter 9, section 301 to add subsection ''(h)'' authorizing the Secretary of Commerce to require by regulation, mandatory reporting requirements for filing export information through the AES for items identified on the CCL and USML that require the SED. The effective date of this amendment is 270 days after the Secretary of Commerce, the Secretary of the Treasury, and the Director of the National Institute of Standards and Technology jointly provide a certification to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the U.S. House of Representatives that a secure AES mainframe computer system of Customs and the Internet-based AESDirect system of the Census Bureau is capable of handling the expected volume of information required to be filed, plus the anticipated volume from voluntary use of the AES has been successfully implemented and tested and is fully functional with respect to reporting all items on the USML, including quantities and destinations. The required certification report was submitted to Congress on June 2001. The certification report described the security measures in place to develop, implement, and maintain each system; summarized the information system assessment reports prepared by the General Services Administration (GSA), Office of Information Security, and Customs; and provided the Census Bureau's response to those security assessment reports listing the specific actions taken by both agencies to ensure the security and functionality of the system. In addition, the AES has received a security accreditation from Customs, and the AESDirect system has received a security accreditation from the Census Bureau. On July 26, 2001, the Census Bureau published a program notice in the **Federal Register** (66 FR 39006) announcing that the AES certification report was submitted to Congress.

As authorized by Section 1252(b) of Pub. L. 106–113, the Census Bureau proposes to amend the FTSR to specify the mandatory provisions for electronically filing SEDs as well as the time and place requirements for filing. In addition, the Census Bureau proposes to amend the FTSR to specify: (1) The requirements for the filing of SEDs through the electronic AES and the provisions and responsibilities of parties exporting items identified on the CCL and USML via the AES; (2) the provision by the Department of Commerce for the establishment of on-line assistance services to be available for those individuals who must use the AES; (3) the provision by the Department of Commerce for ensuring that an individual required to use the AES is able to print out from the AES a validated record of the individual's submission, including the date of submission and a transaction number or unique identifier, where appropriate, for the export transaction; and (4) a requirement that the Department of Commerce print out and maintain on file a paper copy or other acceptable back-up record of the individual's submission at a location selected by the Secretary of Commerce. This rule defines the regulatory revisions that would be made to implement this legislation. The Census Bureau also proposes to amend the FTSR to specify how electronic export information is identified on the manifest by mode of transportation and define the carrier's responsibilities. In addition to proposing regulations on the provisions for the mandatory filing via the AES, this Notice of Proposed Rulemaking proposes to amend §§ 30.63 (14)–(21) to collect additional data through the AES to meet the State Department's requirements. Finally, this notice proposes to add to the paper SED the requirement to enter the freight forwarder's Employer Identification Number (EIN) when required. This requirement applies to filers who are not required to file through AES and who choose to file a paper SED, rather than filing voluntarily through AES.

One additional revision the Census Bureau proposes for the FTSR is the removal of AES Filing Option 3. Option 3 allows the filer to provide partial pre-departure information and complete information five (5) working days from the date of exportation. The Census Bureau identified four (4) specific reasons for making Option 3 inactive. Option 3 has shown to be underutilized by the AES filers. Option 3 filers have frequently shown noncompliance with timely filing for both the pre-departure and post departure filings and, therefore, the data collected are often incomplete and inaccurate because of missing post departure filings. Lastly, Option 3 has shown to be a burden by requiring filers to transmit twice for one shipment. Of the 734,916 total average AES shipment transactions collected per month, Option 3 filings average only 28,739 or 3.9 percent. Additionally, of the 5,000 plus AES filers, only 53 filers are using Option 3 and of those, only 7 use Option 3 exclusively.

The mandatory compliance date for these regulatory requirements would be 90 days after issuance of any final rule.

Program Requirements

In order to comply with the requirements of Pub. L. 106–113, the Census Bureau proposes amending the appropriate sections of the FTSR to specify the requirements for the AES mandatory filing and the revision to the paper SED. For purposes of this rule, all references to filing mandatory AES shipments do not apply to the paper SED.

The Census Bureau proposes revising the following sections of the FTSR: (a) Section 30.1 to specify the general requirements for filing items identified on the CCL and USML, that require the SED, via the AES; (b) Section 30.7 to add instructions for filing the address of the USPPI, the freight forwarder's EIN on the paper SED, the transportation reference number, instructions for filing the gross shipping weight for air, vessel, truck and rail modes of transportation via paper and the AES and delete references to ''marks and numbers''; (c) Section 30.12 to specify the instructions regarding the time and place for presenting SED information; (d) Section 30.21 to specify the departing carrier's responsibility for filing export and manifest data via paper and the AES; (e) Section 30.22 to specify the responsibilities of the departing carrier to deliver to the Customs Port Director at the time of exportation, the required documentation for electronically filed items; (f) Section 30.23 to amend the requirements for the pipeline carrier when the item is identified on the CCL or USML; (g) Section 30.60 is amended to specify participation requirements in the AES; (h) Section 30.61 to specify the electronic filing options required for mandatory filing and to delete references to Option 3; (i) Section 30.62 is amended to update the specifications for certification, qualification and standards for AES and AESDirect; (j) Section 30.63 to revise the requirements for entering a USPPI's profile in AES and to add data elements required in the AES to validate State Department's Office of Defense Trade Controls (ODTC) licensed or license-exempt shipments and to delete references to Option 3; (k) Section 30.65 to specify the requirements for annotating the proper exemption legends when exports are filed through the AES; (l) Section 30.66 to specify requirements as stated in Section 1252(b)(2) of Pub. L. 106–113, which pertains to record keeping and documentation requirements; (m) revise Appendix A to amend the instructions for the Letter of Intent; (n)

revise Appendix B to delete references to Option 3 filing and to reserve it for future use; and (o) revise Appendix C, Part II—Export Information Codes and Part III—License Codes, Bureau of Industry and Security Codes and Department of State Codes to specify additional license codes required and reference as to where to locate the International Traffic in Arms Regulations (ITAR) license exemption citations. Revise Part IV—In-Bond Code to delete codes that pertain only to import shipments. The collection of additional data items listed in Appendix C has been approved by the Office of Management and Budget (OMB).

The State Department and the Department of Treasury concur with the provisions contained in this notice of proposed rulemaking.

Rulemaking Requirements

Administrative Procedure Act

This proposed rule is exempt from all requirements of Section 553 of the Administrative Procedure Act, because it deals with a foreign affairs function of the United States (5 U.S.C. 553(a)(1)). However, this rule is being published as a proposed rule with an opportunity for public comment, because of the importance of the issues raised by this rulemaking.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant impact on a substantial number of small entities. This action requires that exporters file export information through the AES for items identified on the CCL and USML that currently require the SED. Currently, 85 percent of all export transactions are voluntarily filed electronically and the remaining 15 percent are filed on paper SEDs.

Based on year 2000 data, the Census Bureau estimates there were 128,000 exporters who were considered small entities under the Small Business Act—because they had less than 500 employees—and that filed one or more export shipments. Of these 128,000 exporters, 90 percent used a forwarding agent to file export documentation, the SED, on their behalf. Although, it is not possible to determine how many of the 128,000 small businesses exported merchandise identified on the CCL or the USML and that are currently required to file an SED, the Census Bureau anticipates that the new requirement would not significantly affect the small businesses who must now file through AES. It is unlikely that the regulations that require mandatory use of AES to file export information would affect a substantial number of small entities because 90 percent of all exporters who are considered small entities already use a forwarding agent to file export documentation.

In addition, those small exporters that do not currently use a forwarding agent to file export documentation will not be significantly impacted by this regulation. We can safely assume that small businesses involved in exporting items on the CCL and USML are electronically sophisticated, and would have access to a computer and the Internet. The Census Bureau has provided a free Internet-based system, AESDirect, especially for small businesses to submit their export information electronically. The implementation of AESDirect was the primary criteria required in order for Section 1252 of Pub. L. 106–113 to become effective. Therefore, it is not necessary for small businesses to purchase software for this task. Small businesses currently filing paper and who will now be required to file electronically will be able to continue to use their current forwarding agent who will be required to file the export information electronically on their behalf or the exporters can use AESDirect and file directly for themselves.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. It has been determined that this rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act

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 U.S.C., Chapter 35, OMB approved on April 26, 2002, with control number 0607–0512, the collection of all information associated with the AES and SED under this rule. We estimate that each electronic SED will take approximately 3 minutes to complete; we estimate that each paper SED will take approximately 11 minutes to complete.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Exports, Reporting and record keeping requirements.

For the reasons set out in the preamble, it is proposed that Part 30 be amended as follows:

PART 30—FOREIGN TRADE STATISTICS

1. Revise the authority citation for part 30 to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., 1004); and Department of Commerce Organization Order No. 35–2A, July 22, 1987, as amended.

PART 30—[AMENDED]

2. In Part 30, revise all references to the ''Bureau of Export Administration'' to read the ''Bureau of Industry and Security'' and revise all reference to ''BXA'' to read ''BIS.''

3. Revise the heading of Subpart A to read as follows:

Subpart A—General Requirements—U.S. Principal Party In Interest

4. Amend § 30.1 to revise all references to ''exporters or their authorized agents'' to read ''U.S. principal party in interest or the authorized agent,'' in paragraph (a), revise paragraph (b) and paragraph (c) to read as follows:

§ 30.1 General statement of requirement for Shipper's Export Declarations.

* * * * *

(b) Export information that is required to be filed for items identified on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) (15 CFR Supplement No. 1 to Part 774) or the U.S. Munitions List (USML) of the International Traffic in Arms Regulations (ITAR) (22 CFR, part 121) is to be filed electronically through AES. This requirement to file information via AES applies to those items that require a Shipper's Export Declaration. Exemptions from these requirements and exceptions to some of the provisions of these regulations for particular types of transactions are found in subparts C and D of this part.

(c) In lieu of filing paper SEDs as provided elsewhere in this Section, the U.S. principal party in interest or the authorized agent is required to file shippers' export information, when required, electronically through the AES for the export of items identified on the CCL of the EAR (15 CFR Supp. No. 1 to part 774) or the USML of the ITAR (22 CFR, part 121) as provided for in

subpart E of this part, Electronic Filing Requirement-Shipper's Export Information. Information for items identified on the USML, including those exported under an export license exemption, must be filed electronically prior to export, unless exempted from the SED filing requirement by the State Department. For State Department USML shipments, refer to the International Traffic in Arms Regulations (22 CFR, parts 120–130) for State Department requirements concerning the AES exemption legend and filing time requirements. The U.S. principal party in interest or the authorized agent filing SEDs for the export of items not on the CCL or the USML have the option of filing this information electronically as provided for in subpart E of this part.

5. Amend § 30.7 as follows:

a. Add paragraph (d)(3).

b. Revise the first sentence of paragraph (e).

c. Remove and reserve paragraph (k).

d. Revise paragraphs (j) and (o).

e. Add a sentence after the second sentence in paragraph (l).

The additions and revisions read as follows:

§ 30.7 Information required on Shipper's Export Declaration.

* * * * *

(d) * * *

(3) *Address (number, street, city, state, Zip Code) of the USPPI.* In all export transactions, the USPPI shall report the address location from which the merchandise actually starts its journey to the port of export. For example, a Shipper's Export Declaration covering merchandise laden aboard a truck at a warehouse in Georgia for transport to Florida for loading onto a vessel for export to a foreign country shall show the address of the warehouse in Georgia. If the USPPI does not have a facility (processing plant, warehouse or distribution center, retail outlet, etc.) at the location from which the goods began their export journey, report the USPPI address from which the export was directed. For shipments of multiple origins reported on a single SED, report the address from which the greatest value begins its export journey or, if such information is not known at the time of export, the address from which the export is directed.

(e) *Forwarding or other agent.* The name, address, and Employer Identification Number (EIN) or Social Security Number (SSN) of the duly authorized forwarding or other agent (if any) of a principal party in interest must be recorded where required on the SED or AES record. * * *

(j) *Transportation Reference Number.* Enter the Transportation Reference Number as follows:

(1) *Vessel Shipments.* Report the booking number for all sea shipments. The booking number is the reservation number assigned by the carrier to hold space on the vessel for cargo being exported.

(2) *Air Shipments.* Report the master air waybill number for all air shipments. The air waybill number is the reservation number assigned by the carrier to hold space on the airplane for cargo being exported.

(3) *Rail Shipments.* Report the bill of lading (BOL) number for all rail shipments. The BOL number is the reservation number assigned by the carrier to hold space on the rail car for cargo being exported.

(4) *Truck Shipments.* Report the Freight or Pro Bill number for all truck shipments. The Freight or Pro Bill number is the number assigned by the carrier to hold space on the truck for cargo being exported. The Freight or Pro Bill number correlates to a bill of lading number, air waybill number or Trip number for multi-modal shipments.

(k) [Reserved]

(l) * * * Include marks, numbers or other identification shown on packages and the number and kinds of packages (*i.e.*, boxes, barrels, baskets, bales, etc.). * * *

(o) *Gross (shipping) weight.* Enter the gross shipping weight in kilograms on the SED or the AES record, including the weight of containers, for air, vessel, truck, and rail methods of transportation. However, for containerized cargo in lift vans, cargo vans, or similar substantial outer containers, the weight of such containers should not be included in the gross weight of the commodities. If the gross shipping weight information is not available for individual Schedule B items because commodities covered by more than one Schedule B number are contained in the same shipping container, approximate shipping weights should be used for each Schedule B item in the container. The total estimated weights must equal the actual shipping weight of the entire container or containers and contents.

* * * * *

6. Revise § 30.12 to read as follows:

§ 30.12 Time and place for presenting the SED or Exemption Legends.

The following conditions govern the time and place to present paper SEDs or the AES transaction identification number that identifies the electronic record. It is the duty of the principal party in interest or the authorized agent to deliver the required number of copies of the SED or the exemption legends when the cargo is tendered to the exporting carrier. Information on items identified on the Commerce Control List (CCL) of the EAR (15 CFR Supp. No. 1 to part 774) or the U.S. Munitions List (USML) of the International Traffic in Arms Regulations (ITAR) (22 CFR, Part 121) that require an SED, must be filed through the AES. Information for items identified on the USML, including those exported under an export license exemption, must be filed electronically prior to export, unless exempted from the SED filing requirements by the State Department. For State Department USML shipments, refer to the ITAR (22 CFR, Parts 120–130) for more specific requirements concerning the AES exemption legend and filing time requirements. Failure of the U.S. principal party in interest or the authorized agent of either the U.S. principal party in interest or foreign principal party in interest to comply with these requirements constitutes a violation of the provisions of these regulations, and renders such principal party or the authorized agent subject to the penalties provided for in § 30.95 of this part.

(a) *Postal Exports.* SEDs for exports of items being sent by mail, as required in § 30.1 of this part, shall be presented to the postmaster with the packages at the time of mailing.

(b) *Pipeline Exports.* SEDs for exports being sent by pipeline are not required to be presented prior to exportation; however, they are required to be filed within four (4) working days after the end of each calendar month. These SEDs must be filed with the Customs Port Director having jurisdiction for the pipeline, and the filer must deliver the SED in the number of copies specified in § 30.5 of this part to cover exports to each consignee during the calendar month.

(c) *Exports by other methods of transportation.* For exports sent other than by mail or pipeline, the required number of copies of SEDs as prescribed in § 30.5 of this part shall be delivered to the exporting carrier when the cargo is tendered to the exporting carrier.

(d) *Exports Filed Via AES.* For exports filed through the AES, it is the duty of the U.S. principal party in interest or the authorized agent to deliver to the exporting carrier, the AES exemption legends as provided for in § 30.65 of this part or 22 CFR (parts 120–130) of the ITAR when the cargo is tendered to the exporting carrier.

Subpart B—General Requirements—Exporting Carriers

7. Revise § 30.21 to read as follows:

§ 30.21 Requirements for the filing of manifests.

Carriers transporting merchandise via vessel, aircraft, or rail are required to file an outbound manifest (along with the required SEDs, supporting documentation and/or the exemption statement) to the Customs Port Director at the port of exportation. Outbound vessel manifests may be filed via paper or electronically through the vessel transportation module, a component of the AES, as provided in U.S. Customs Service Regulations, 19 CFR 4.63 and 4.76. SEDs may be filed via paper or electronically via the AES.

(a) *Paper SED—paper manifest.* If filing paper SEDs and paper manifest, attach the copies of the SEDs to the manifest. For each item of cargo, the Transportation Reference Number on the SED covering the item must be shown on the manifest.

(b) *Paper SED—electronic manifest.* If filing paper SEDs and the electronic outbound vessel manifest, carriers are responsible for submitting paper SEDs directly to the Customs Port Director.

(c) *Electronic SED—paper manifest.* If filing the electronic SED and paper outbound manifest, carriers must annotate the outbound manifest with the appropriate AES exemption legends as provided in § 30.65 of this part.

(d) *Electronic SED and manifest.* If filing the SED information and outbound vessel manifest electronically through the AES, the carrier must adhere to the instructions specified in U.S. Customs Regulations, 19 CFR, 4.76 and § 30.60 of this Part and transmit the appropriate exemption legend as provided in § 30.65 of this part.

(e) *When an SED is not required.* If an item does not require a SED, the proper exemption legend must be annotated on the outbound manifest or other appropriate commercial documents as provided in § 30.50 of this Part.

(f) *Exports to Puerto Rico.* When filing paper manifests for shipments from the United States to Puerto Rico, the manifest shall be filed with the Customs Port Director where the merchandise is unladen in Puerto Rico.

(1) *Vessels.* Vessels transporting merchandise as specified in § 30.20 of this part (except vessels exempted by paragraph (e)(4) of this section) shall file a complete Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A. In addition, vessel carriers are required to perform the following:

(i) *Bunker fuel.* Vessel manifest (including vessels carrying bunker fuel to be laden aboard vessels on the high seas) clearing for foreign countries shall show quantities and values of bunker fuel taken aboard at that port for fueling use of the vessel, apart from such quantities as may have been laden on vessels as cargo.

(ii) *Coal and Fuel Oil.* The quantity of coal shall be reported in metric tons (2240 pounds), and the quantity of fuel oil shall be reported in barrels of 158.98 liters (42 gallons). Fuel oil shall be described in such manner as to identify diesel oil as distinguished from other types of fuel oil.

(2) *Aircraft.* Aircraft transporting merchandise as specified in § 30.20 of this part, shall file a complete manifest on Customs Form 7509, as required in U.S. Customs Regulations, 19 CFR 122.72 through 122.76. All the cargo so laden shall be listed and shall show, for each item, the air waybill number or marks and numbers on packages, the number of packages, and the description of the goods.

(3) *Rail carriers.* Rail carriers transporting merchandise as specified in § 30.20 of this Part shall file a car manifest. Such manifest shall be filed with the Customs Port Director at the port of exportation, giving the marks and numbers, the name of the shipper or consignor, description of goods and the destination thereof. The manifest may be a waybill, or copy thereof, or a copy of the manifest prepared for foreign customers.

(4) *Carriers not required to file manifests.* Carriers other than vessels, aircraft, and rail carriers, or vessels under 5 net tons engaged in trade with a foreign country other than by sea are not required to file manifests. Vessels specifically exempted from entry by section 441 of the Tariff Act of 1930 are exempt from filing manifests. Carriers exempted from filing manifests are required, upon request, to present to the Customs Port Director regulatory SED exemption legends or AES exemption legends. Failure of the carrier to do so constitutes a violation of the provisions of these regulations, and renders such carrier subject to the penalties provided for in § 30.95 of this part.

8. Amend § 30.22 by adding a sentence to the end of paragraph (a), adding a sentence after the first sentence in paragraph (b), and adding paragraph (f) to read as follows:

§ 30.22 Requirements for the filing of Shipper's Export Declarations or AES Exemption Legends by departing carriers.

(a) * * * When the export information for a shipment is filed via the AES, the carrier is responsible for presenting the proper AES exemption legend as provided in § 30.65 of this part and the ITAR (22 CFR part 121) for U.S. Munitions List (USML) shipments.

(b) * * * If the export information is filed electronically via the AES, the carrier is responsible for providing the Customs Port Director at the port of exportation with the proper AES exemption legend as provided in § 30.65 of this part and the ITAR (22 CFR, part 121) for U.S. Munitions List (USML) shipments.

* * * * *

(f) Information on items identified on the Commerce Control List of the EAR (15 CFR Supp. No. 1 to part 774) or the U.S. Munitions List of the ITAR (22 CFR part 121) that require an SED, must be filed through AES. The exporting carrier must not accept paper SEDs or cargo that does not have the appropriate AES filing exemption legend as set forth in § 30.65 of this part and the ITAR (22 CFR part 121) for U.S. Munitions List (USML) shipments. Acceptance of paper SEDs or cargo without the appropriate exemption legend constitutes a violation of the provisions of these regulations, and renders such carrier subject to the penalties provided for in § 30.95 of this part.

* * * * *

9. Amend § 30.23 by adding a sentence to the end of the paragraph to read as follows:

§ 30.23 Requirements for the filing of Shipper's Export Declarations by pipeline carriers.

* * * If the merchandise transported by pipeline is identified on the Commerce Control List of the EAR (15 CFR Supplement No.1 to part 774) or the U.S. Munitions List of the ITAR (22 CFR, part 121), and requires an SED, the data regarding the shipment must be filed electronically through the AES.

Subpart E—Electronic Filing Requirements—Shipper's Export Information

10. Amend 30.60 to revise paragraph (a) to read as follows:

§ 30.60 General requirements for filing export and manifest data electronically using the Automated Export System.

* * * * *

(a) *Participation.* Filing using the AES is mandatory for those items identified on the Commerce Control List (CCL) of the EAR (15 CFR Supplement No. 1 to part 774) or the U.S. Munitions List (USML) of the ITAR (22 CFR, part 121). You are only required to file information via AES for those items that require a Shipper's Export Declaration. All other participation in the AES in voluntary. Information for items

identified on the CCL or the USML filed via AES must be filed by the U.S. principal party in interest or the authorized agent. A Data Entry Center, service center, or port authority may transmit an AES record for CCL or USML items, completed by the U.S. principal party in interest or the authorized agent, without obtaining a power of attorney or written authorization. A Data Entry Center, service center, or port authority must have a power of attorney or written authorization from the U.S. principal party in interest or foreign principal party in interest if it completes any export information in AES for CCL or USML shipments. Companies may also buy a software package designed by an AES certified software vendor. Certified trade participants (filing agents) can transmit to and receive data from the AES pertaining to merchandise being exported from the United States. Participants in the AES process, who may apply for AES certification, includeU.S. principal parties in interest or the authorized agents, carriers, non-vessel operating common carriers (NVOCC), consolidators, port authorities, software vendors, or service centers. Once becoming certified, an AES filer (filing agent) must agree to stay in complete compliance with all export rules and regulations.

* * * * *

11. Amend § 30.61 to revise the introductory text, remove paragraph (b), and redesignate paragraph (c) as paragraph (b) to read as follows:

§ 30.61 Electronic filing options.

As an alternative to filing paper Shipper's Export Declaration forms (Option 1), two electronic filing options (Option 2 and 4) for transmitting shipper's export information are available to U.S. principal parties or the authorized filing agent. The electronic filing Option 4 takes into account that complete information concerning export shipments is not always available prior to exportation. Information on the export of items identified on the Commerce Control List of the EAR (15 CFR Supplement No. 1 to part 774) or the U.S. Munitions List of the ITAR (22 CFR, part 121) that require an SED can be filed using Options 2 or 4. Option 4 may only be used when the appropriate licensing agency has granted the U.S. principal party in interest or the authorized agent authorization to use this option. The available AES electronic filing options are as follows:

* * * * *

12. Revise § 30.62 to read as follows:

§ 30.62 AES/AESDirect Certification, qualification, and standards.

Certification for AES filing will apply to the U.S. principal party in interest, authorized forwarding agent, carrier, non-vessel operating common carriers (NVOCC), consolidator, port authority, software vendor, or service center transmitting export information electronically using the AES.

(a) *AES Certification Process.* Applicants interested in AES filing must submit a Letter of Intent to the Census Bureau in accordance with the provisions contained in § 30.60. Customs and the Census Bureau will assign client representatives to work with the applicant to prepare them for AES certification. The AES applicant must perform an initial two-part communication test to ascertain whether the applicant's system is capable of both transmitting data to, and receiving data from, the AES. The applicant must demonstrate specific system application capabilities. The capability to correctly handle these system applications is the prerequisite to certification for participation in the AES. The applicant must successfully transmit the AES certification test. The Customs' and Census Bureau's client representatives provide assistance during certification testing. These representatives make the sole determination as to whether or not the applicant qualifies for certification. Upon successful completion of certification testing, the applicant's status is moved from testing mode to operational mode. Upon certification, the filer will be required to maintain an acceptable level of performance in AES filings. The certified AES filer may be required to repeat the certification testing process at any time to ensure that operational standards for quality and volume of data are maintained. The Census Bureau will provide the certified AES filer with a certification letter after the applicant has been approved for operational status. The certification letter will include:

(1) The date that filers may begin transmitting ''live'' data electronically using AES;

(2) Reporting instructions; and

(3) Examples of the required AES exemption legends.

(b) AES*Direct Certification process.* Applicants interested in AES*Direct* filing must complete the online AES*Direct* registration form. After submitting the registration, an AES*Direct* filing account is created for the filing company. The applicant will receive separate e-mails providing an AES*Direct* user name, temporary administrator code, and temporary password. The filer uses the temporary administrator code to create a permanent administrator code that allows the user to create a permanent password. The user name and new permanent password will allow the filer to complete a certification quiz. Upon passing the quiz, notification by e-mail will be sent when an account is fully activated for filing via AES*Direct*. Print the page congratulating the filer on passing the quiz for retention purposes. The activation notice will specify which AES filing status the account has been authorized.

(c) *Filing agent certification.* Once an authorized filing agent has successfully completed the certification process, the U.S. principal party in interest using that agent does not need further AES certification. The certified filing agent must have a properly executed power of attorney, a written authorization from the U.S. principal party in interest or foreign principal party in interest, or a SED signed by the U.S. principal party in interest to transmit their data electronically using the AES. The U.S. principal party in interest or authorized agent that utilizes a service center or port authority must complete certification testing, unless the service center or port authority has a formal power of attorney or written authorization from the U.S. principal party in interest to file the export information on behalf of the U.S. principal party in interest.

(d) *AES filing standards.* The certified AES filer's data will be monitored and reviewed for quality, timeliness, and coverage. The Census Bureau will notify the AES filer if the filer fails to maintain an acceptable level of quality, timeliness, and coverage in the transmission of export data or fail to maintain compliance with Census Bureau regulations contained in this Section. The Census Bureau, if necessary, will take appropriate action to correct the specific situation(s). In the case of AES*Direct*, when submitting a registration form to AES*Direct*, the registering company is certifying that they will be in compliance with all applicable laws and regulations. This includes complying with the following security requirements:

(1) AES*Direct* user names and passwords are to be neither written down nor disclosed to any unauthorized user or any persons outside of the registered company. Filers must change passwords for security purposes when prompted to do so.

(2) Registered companies are responsible for those persons having a user name and password. If an employee with access to the user name

and password leaves the company or otherwise is no longer an authorized user, the company must change the password and user name in the system and must do so immediately in order to ensure the integrity and confidentiality of Title 13 data.

(3) Antivirus software must be installed and set to run automatically on all computers that access AES*Direct*. All AES*Direct* registered companies will maintain subscriptions with their antivirus software vendor to keep antivirus lists current. Registered companies are responsible for performing full scans of these systems on a regular basis and eliminating any virus contamination. If the registered company's computer system is infected with a virus, the company should refrain from using AES*Direct* until it is virus free. Failure to comply with these requirements will result in immediate loss of privilege to use AES*Direct* until the registered company can establish to the satisfaction of the Census Bureau's Foreign Trade Division Computer Security Officer that the company's computer systems accessing AES*Direct* is virus free.

13. Amend § 30.63 by revising paragraph (a)(1), (b)(11), (b)(13), and (c), and by adding paragraphs (b)(14) through (b)(21) to read as follows:

§ 30.63 Information required to be reported electronically through AES (data elements).

(a) * * *

(1) *U.S. Principal Party in Interest (USPPI)/USPPI identification'(i) Name and address of the USPPI.* For details on the reporting responsibilities of USPPIs, see § 30.4 and § 30.7 (d)(1), (2), (3), and (e).

(ii) *USPPI's profile.* The USPPI's Employer Identification Number (EIN) or Social Security Number (SSN) and the USPPI name, address, contact, and telephone number must be reported with every shipment. If neither EIN or SSN is available for the USPPI, as in the case of a foreign entity being shown as the USPPI as defined in § 30.7(d), the border crossing number, passport number, or any other number assigned by Customs is required to be reported. (See § 30.7(d)(2) for a detailed description of the EIN.)

(b) * * *

(11) *Transportation Reference Number.* Report the Transportation Reference Number as follows:

(i) *Vessel Shipments.* Report the booking number for all sea shipments. The booking number is the reservation number assigned by the carrier to hold space on the vessel for cargo being exported.

(ii) *Air Shipments.* Report the master air way bill number for all air shipments. The air waybill number is the reservation number assigned by the carrier to hold space on the airplane for cargo being exported.

(iii) *Rail Shipments.* Report the bill of lading (BOL) number for all rail shipments. The BOL number is the reservation number assigned by the carrier to hold space on the rail car for cargo being exported.

(iv) *Truck Shipments.* Report the Freight or Pro Bill number for all truck shipments. The Freight or Pro Bill number is the number assigned by the carrier to hold space on the truck for cargo being exported. The Freight or Pro Bill number correlates to a bill of lading number, air waybill number or Trip number for multi-modal shipments.

* * * * *

(13) *Filing option indicator.* Report the 1-character filing option that indicates Option 2 or 4 filing.

(14) *Office of Defense Trade Controls (ODTC) Registration Number.* The number assigned by ODTC to persons who are required to register per Part 122 of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130), that has an authorization from ODTC (license or exemption) to export the article.

(15) *ODTC Significant Military Equipment (SME) Indicator.* A term used to designate articles on the United States Munitions List for which special export controls are warranted because of their capacity for substantial military utility or capability. See section 120.7 of the International Traffic in Arms Regulations (ITAR) 22 CFR parts 120–130, for a definition of SME and Section 121.1 for items designated as SME articles.

(16) *ODTC Eligible Party Certification Indicator.* Certification by the U.S. exporter that the exporter is an eligible party to participate in defense trade. See ITAR 22 CFR, § 120.1(c). This certification is required only when an exemption is claimed.

(17) *ODTC USML Category Code.* The United States Munitions List category of the article being exported (22 CFR part 121).

(18) *ODTC Unit of Measure (ULM).* This unit of measure is the ULM covering the article being shipped as described on the export authorization or declared under an ITAR exemption.

(19) *ODTC Quantity.* This quantity is for the article being shipped. The quantity is the total number of units that corresponds to the ODTC Unit of Measure Code.

(20) *ODTC Exemption Number.* The exemption number is the specific citation from the Code of Federal Regulations (22 CFR parts 120—130) that exempts the shipment from the requirements for a license or other written authorization from ODTC.

(21) *ODTC Export License Line Number.* The line number of the State Department export license that corresponds to the article being exported.

(c) *Seal Number.* Optional. Report the security seal number of the seal placed on the equipment.

14. Revise § 30.65 to read as follows:

§ 30.65 Annotating the proper exemption legends for shipments transmitted electronically.

(a) Items identified on the U.S. Munitions List (USML), must meet the predeparture reporting requirements identified in the ITAR (22 CFR Parts 120–130) for the State Department requirements concerning AES exemption legends and time and place of filing.

(b) For shipments other than USML, the U.S. principal party in interest or the authorized agent is responsible for annotating the proper exemption legend on the bill of lading, air waybill, or other commercial loading document for presentation to the carrier prior to export. The carrier is responsible for providing the proper exemption legend to the Customs Port Director at the port of exportation as stated in § 30.21 of this Part. The exemption legend will identify that the shipment information has been accepted as transmitted and electronically filed using the AES. The exemption legend must appear on the bill of lading, air waybill, or other commercial loading documentation and the manifest and must be clearly visible and include either of the following:

(1) For shipments other than USML, the exemption legend will include the statement, ''NO SED REQUIRED—AES,'' followed by the filer's identification number and a unique shipment reference number referred to as the ''XTN'' or the returned confirmation number provided by AES when the transmission is accepted, referred to as the ''ITN.'' Items on the USML must meet the pre-departure reporting requirements in the ITAR (22 CFR parts 102–130).

(2) For U.S. principal parties in interest who have been approved to participate in Filing Option 4, the exemption statement, ''NO SED REQUIRED—AES4,'' followed by the U.S. principal party's in interest employer identification number followed by the filer's identification number if other than the U.S. principal party in interest files the data.

15. Revise § 30.66 to read as follows:

§ 30.66 Support, documentation and record keeping requirements.

(a) *Support. ASKAES@census.gov* is an online service that allows electronic filers to seek assistance pertaining to AES. AES*Direct* is supported by a help desk available twelve (12) hours a day, seven (7) days a week.

(b) *Documentation.* Filers using the AES*Direct* are able to print out from the AES*Direct* a validated record of the filer's submission. Filers using AES are able to print records containing date of submission and a unique identification number for each AES record submitted. The Census Bureau will maintain an electronic file of data sent through AES to ensure that an individual is able to receive from the system, a validated record of the submission. The U.S. principal party in interest or the authorized agent of the U.S. principal party in interest or foreign principal party in interest may request a copy of the electronic record submitted as provided for in § 30.91 of this part.

(c) *Recordkeeping.* All parties to the export transaction (owners and operators of the exporting carriers and U.S. principal party and/or the authorized agents) must retain documents or records pertaining to the shipment for five (5) years from the date of export. Customs, the Census Bureau, and other participating agencies may require that these documents be produced at any time within the 5-year time period for inspection or copying. These records may be retained in an elected format, including electronic or hard copy as provided in the applicable agency's regulations. Acceptance of the documents by Customs or the Census Bureau does not relieve the U.S. principal party in interest or the authorized agent from providing complete and accurate information after the fact. The Department of State or other regulatory agencies may have additional record keeping requirements for exports.

16. Amend Appendix A as follows:

a. Add an introductory paragraph;

b. Revise items A.5, A.6, and A.10;

c. Remove item A.6(i) and redesignate items A.6(ii) and A.6(iii) as A.6(i) and A.6(ii), respectively;

d. Revise paragraphs B and C;

e. Add paragraph D.

The additions and revisions read as follows:

Appendix A to Part 30-Format For Letter of Intent, Automated Export System (AES)

The first requirement for participation in AES is a Letter of Intent. The Letter of Intent is a written statement of a company's desire to participate in AES. It must set forth a commitment to develop, maintain, and adhere to Customs and Census performance requirements and operations standards. Once the letter of intent is received, a U.S. Customs Client Representative and U.S. Census Bureau Client Representative will be assigned to the company. Census will forward additional information to prepare the company for participation in AES.

A. Letters of Intent should be on company letterhead and must include:

* * * * *

5. Computer Site Location Address, City, State, Postal Code (Where transmissions will be initiated)

6. Type of Business—U.S. Principal Party in Interest, Freight Forwarder/Broker, Carrier, NVOCC, Port Authority, Software Vendor, Service Center, etc. (Indicate all that apply)

(i) Freight Forwarders/Brokers, indicate the number of U.S. principal parties in interest for whom you file export information (SEDs)

(ii) U.S. Principal Parties in Interest, indicate whether you are applying for AES Option 2 or Option 4

* * *

10. Filer Code—EIN, SSN or SCAC (Indicate all that apply)

* * * * *

B. The following self-certification statement, signed by an officer of the company, must be included in your letter of intent: ''We (COMPANY NAME) certify that all statements made and all information provided herein are true and correct. I understand that civil and criminal penalties, including forfeiture and sale, may be imposed for making false or fraudulent statements herein, failing to provide the requested information or for violation of U.S. laws on exportation (13 U.S.C. Sec. 305; 22 U.S.C. Sec. 401; 18 U.S.C. Sec. 1001; 50 U.S.C. App. 2410.''

C. The AES Option 4 privilege allows a U.S. principal party in interest to send no data prior to exportation and complete data within 10 working days after exportation. Participants will be reviewed by several government agencies prior to acceptance into the Option 4 program.

D. Send AES or Option 4 Letter of Intent to : Chief, Foreign Trade Division, U.S. Census Bureau, Washington, DC 20233. Or, the copy can be faxed to : 301–457–1159.

Appendix B To Part 30—Required Pre-Departure Data Elements For Filing Option 3

17. [Removed] Remove and reserve Appendix B.

Dated: October 4, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–25667 Filed 10–8–02; 8:45 am]

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FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 154, 161, 250 and 284

[Docket No. PL02–9–000]

Notice of Public Conference

September 26, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of public conference.

SUMMARY: On February 9, 2000, the Commission issued Order No. 636, amending its regulations in response to growing development of more competitive markets for natural gas and the transportation of natural gas (65 FR 10156, February 25, 2000). The Commission is holding a public conference to engage industry members and the public in a dialogue about policy issues facing the natural gas industry today and the Commission's regulation of the industry of the future.

DATES: *Requests to participate:* October 15, 2002. *Conference date:* October 25, 2002.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth P. Niehaus, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, (202) 502–6398, *kenneth.niehaus@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. The Federal Energy Regulatory Commission (FERC) will hold a conference on October 25, 2002, to engage industry members and the public in a dialogue about policy issues facing the natural gas industry today and the Commission's regulation of the industry for the future. The Commission expects a wide ranging discussion that will help the Commission establish its regulatory goals for an industry that anticipates long term growth to reach 30-Tcf annually. The Commission anticipates exploring issues concerning: (1) Supply and demand; (2) the application of the Commission's open access polices to liquefied natural gas (LNG) import facilities; (3) the Commission's Outer Continental Shelf (OCS) gathering policy; and (4) the flexibility pipelines need to serve historical load as well as new demand. In addition, the Commission will provide an opportunity for market participants and other interested persons to raise issues and make policy recommendations for Commission consideration.

I. Background

2. In 1997, the Commission held a conference to revisit its approach to natural gas regulation in light of significant changes in the structure of the natural gas industry that occurred as a result of Order No. 636.[1] Since that time, the energy industry has continued to experience ongoing structural changes that impact the supply and demand of natural gas. Some of these changes include shifts in the industry from regulated to non-regulated gathering operations. Over the past five years, the Commission has seen an increase in abandonment of these facilities from the regulated companies to non-regulated affiliated and non-affiliated gathering companies. Changes from regulated to non-regulated services raise important issues that the Commission needs to consider in assuring unrestricted access to necessary supplies from the OCS.

3. In Order No. 637,[2] issued in 2000, the Commission revised, among other things, its regulations relating to scheduling procedures, capacity segmentation, and pipeline penalties to improve the competitiveness and efficiency of the interstate pipeline grid and to enhance pipeline transportation services. Changes in historical pipeline operations brought about by Order No. 637 may impact investment in much needed pipeline infrastructure to fulfill future demand for natural gas.

4. The increasing demands placed on pipelines by new electric generation load may impact the flexibility pipelines currently have in meeting the service demands of historical customers. In its Annual Energy Outlook 2002, Energy Information Administration (EIA) forecasts that natural gas for power generation will grow 4.6 percent annually, reaching from 9.65 to 10.36 Tcf in 2020 depending on economic growth (consumption in 2000 was 4.24 Tcf).

5. The economy, mild weather patterns, and major developments in the financial foundation and structure of the energy industry may also have important repercussions on long term markets, supplies, and investment in infrastructure. Reduction in market capitalization of many major energy players, substantial layoffs, the exiting and restructuring of many companies' energy trading business, bankruptcies, the sale of major assets by major energy players, and the cancellation of many future gas-fired generation projects all may potentially affect natural gas markets and the infrastructure it depends upon.

6. Even with the nation's current economic slowdown, however, natural gas demand continues to grow. Overall, EIA projects that the natural gas market will grow from the 22.83 Tcf consumed in 2000 to between 30.02 to 32.63 Tcf in 2015, with projections for 2020 from 32.03 to 34.99 Tcf, depending on economic growth. All the above mentioned events may impact the industry's ability to prepare for and meet the future anticipated demand.

II. Scope of Inquiry

7. The purpose of this conference is to discuss short and long term issues that may impact the Commission's regulation of the natural gas industry. The Commission wants to explore whether the Commission's current regulatory approach in natural gas fosters or impedes supply production and investment in development of the infrastructure needed to meet the anticipated long term growth to 30-Tcf annually. In addition to providing an open forum for communicating with the Commissioners, the Commission wishes to address the following topics.

A. Supply Forecast

8. EIA projects that natural gas consumption could reach 34.99 Tcf annually in 2020. Decreasing gas prices have resulted in a reduction in capital expenditures for development in natural gas production. Evidence indicates that production in traditional supply regions, including onshore gas production in the Permian Basin and offshore in the shallow shelf of the Gulf of Mexico, is in decline. At the same time, Canadian imports have been falling while domestic exports to Mexico have been increasing. Additionally, concerns have been raised relating to potential barriers that may restrict the domestic producing community's ability to meet the projected demand. The Commission wishes to explore natural gas supply issues and their impact on the infrastructure needed to meet forecasted demand.

B. Liquefied Natural Gas

9. In the 1970's the Commission authorized the construction and operation of several LNG import terminals to provide a needed supplemental source of gas supplies to U.S. markets.[3] In response to more recent demands for natural gas, the Commission has approved the reactivation of two of the original LNG import projects and the expansion of an existing LNG terminal.[4] Additionally, there are two pending applications for other LNG expansion projects and one for a new LNG import facility.[5]

10. The Commission recognizes that LNG imports are expected to become a key supply source in the U.S. over the next ten years. We believe it is time to reexamine our existing policy in light of the changes that have occurred in the gas industry since that time. While the Commission recently denied a request to disclaim jurisdiction over the siting, construction, and operation of LNG facilities,[6] it has not reviewed its open access policy as it pertains to LNG import facilities. The Commission wishes to explore regulatory goals that will remove unnecessary barriers to the development of LNG facilities and supply as a major source of natural gas to meet the forecasted future demand.

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[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13,267 (April 16, 1992), FERC Stats. & Regs Preambles January 1991-June 1996 ¶ 30,939 (April 8, 1992), *order on reh'g,* Order No. 636–A, 57 FR 36,128 (August 12, 1992), FERC Stats. & Regs. Preambles, January 1991-June 1996 ¶ 30,950 (August 3, 1992), *order on reh'g,* Order No. 636–B, 57 FR 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (1992), notice of denial of rehearing (January 8, 1993), 62 FERC ¶ 61,007 (1993), *aff'd in part and vacated and remanded in part, UDC* v. *FERC,* 88 F.3d 1105 (D.C. Cir. 1996), *order on remand,* Order No. 636–C, 78 FERC § 61,186 (1997), *order on reh'g,* Order No. 636–D, 83 FERC ¶ 61,210 (1998).

[2] *See* Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs. Regulations Preambles (July 1996-December 2000) ¶ 31,091 (Feb. 9, 2000); *order on rehearing,* Order No. 637–A FERC Stats. & Regs. Regulations Preambles (July 1996-December 2000) ¶ 31,099 (May 19, 2000), *aff'd in part and rev'd and remanded in part, INGAA* v. *FERC,* 285 F.3d 18 (D.C. Cir. 2002).

[3] *See* Columbia LNG Corp., 47 FPC 1624, *order on reh'g,* 48 FPC 723 (1972) (approving the construction and operation of the Cove Point and Elba Island LNG import terminals); Trunkline LNG Co., 58 FPC 726, *order on reh'g,* 58 FPC 2935 (1977) (approving the construction and operation of a Lake Charles LNG import terminal); Distrigas Corp., 58 FPC 2589 (1977) (approving a settlement authorizing operation of LNG import terminal at Everett, Massachusetts).

[4] *See* Southern LNG Inc., 89 FERC ¶ 61,314 (1999), *order on reh'g,* 90 FERC ¶ 61,257 (2000); Cove Point LNG Limited Partnership, 97 FERC ¶ 61,043, *order on reh'g,* 97 FERC ¶ 61,276 (2001); *order denying clarification and reh'g,* 98 FERC ¶ 61,270 (2002); Distrigas of Massachusetts, 94 FERC ¶ 61,008 (2001).

[5] CMS Trunkline LNG Co. (CMS) application filed in Docket No. CP02–60–000. In Docket No. CP02–60–000, the Commission preliminary approved CMS's application to expand its Calcasieu Parish, Louisiana terminal (100 FERC ¶ 61,217), and in Docket No. CP02–379–000 Southern LNG's request authorization for further expansion of its Elba Island facility. On May 30, 2002, Hackberry LNG Terminal, L.L.C. filed an application in Docket No. CP02–374–000, *et al.,* to construct and operate a new LNG import facility.

[6] *See* Dynegy LNG Production Terminal, L.P., 97 FERC ¶ 61,231 (2001).

C. Offshore Gathering Policy

11. In *ExxonMobil Gas Marketing Company* v. *FERC*,[7] the court affirmed the Commission's gathering policy as it pertained to facilities located in the OCS. In Order No. 639,[8] the Commission determined that under the Commission's authority under the Outer Continental Lands Act (OCSLA), gatherers in the OCS must report information regarding service provided through their gathering facilities. The Commission believes that such information is necessary to assure that the gatherers providing service in the OCS do so on an open and nondiscriminatory basis. Subsequently, however, the court determined that the OCSLA did not give the Commission authorization to promulgate such a requirement.[9] The Commission wishes to explore future regulatory policies and goals that would promote the further development of offshore supply sources in the OCS.

D. Flexibility in Pipeline Operations

12. Natural gas is now the fuel of choice for new power generation due to the efficiency of technology, low initial investment costs, relative ease of siting new plants, and lower pollutant emissions. Electric generation load is more variable through a given day than a traditional pipeline customer load.[10] Therefore, electric generation customers require transportation services and facilities that accommodate hourly rather than daily swings in gas consumption and wider fluctuations in consumption volumes.[11] Because of the large amounts of gas used as gas-fired generation plants, and their potential to cause rapid and unanticipated hourly consumption demands, traditional pipeline customers have expressed the concern that the ramping-up of one or more power plants could lead to pressure drops which, in turn, could result in a reduction in both the pressure and rate of gas flowing through the meter station and distribution facilities. The Commission believes it is imperative that the future pipeline infrastructure meets the flexibility and service needs of all of their customers. We wish to explore issues related to serving new demand to meet current and future needs.

E. Open Forum

13. In addition to addressing the above mentioned issues, the Commission also seeks to encourage industry representatives and interested individuals to raise other issues for the Commission to consider in shaping its future regulatory policies concerning the natural gas industry. The Commission envisions that the conference will consist of panels and an open forum that will give all interested individuals an opportunity to raise issues.

III. Participation

14. The conference will be held on October 25, 2002 at FERC, 888 First Street, NE., in Washington, DC in the Commission Meeting Room. The public is invited to attend. Anyone interested in participating should contact Ken Niehaus at 202–502–6398 or at *kenneth.niehaus@ferc.gov* by October 15, 2002. Requests for participate should include information concerning the issue or issues the participant would like to raise. We will issue further details on the conference including the agenda and a list of participants, as plans evolve.

15. The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700 or 800–336–6646. Transcripts will be placed in the public record ten days after the Commission receives the transcripts. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live or over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection website at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25120 Filed 10–8–02; 8:45 am]

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[7] 297 F.3d 1071 (2002).

[8] Regulations under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf, 65 FR 20,354 (Apr. 17, 2000), FERC Stats. & Regs. ¶ 31,514 (2002), *order on reh'g and clarification*, Order No. 639–A, 65 FR 47,294 (Aug. 2, 2000), FERC Stats. & Regs. ¶ 31,103 (2000).

[9] *See* Chevron U.S.A., Inc. v. *FERC*, No. 02–5056 (D.C. Cir.).

[10] Impact of Power Generation Gas Demand on Natural Gas Local Distribution Companies, American Gas Association, prepared by: Energy and Environmental Analysis, Inc. There are baseload generators, intermediate load generators, and peaking plants. Used together, these plants maintain electric power levels throughout the electric transmission grid sufficient to meet customer demand. Generally, baseload units (these are high fixed-cost units using less expensive fuel and with the lowest operating costs) meet the based demands. Intermediate load generators (*i.e.*, most combined cycle facilities) are run regularly, by not on a full time basis. Peaking units are generally last dispatched and operated only on the days and hours of highest electricity demand. These units generally have low fixed costs, but high operating and fuel costs.

[11] *Id.*

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24 and 101

RIN 1515–AC77

Reimbursable Customs Services: Increase in Hourly Percentage Rate of Charge

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to increase the hourly percentage rate of charge for reimbursable Customs services. In a previous document published in the **Federal Register** on February 1, 2001, Customs had proposed increasing the rate of charge to 158 percent of the hourly rate of regular pay of the employee performing the service because the present rate of charge of 137 percent does not reimburse Customs for the actual costs of providing such services. Based on the comments received to the previous Notice and following a complete review of the costs of providing reimbursable Customs services, Customs is now proposing a new methodology for determining the rate of charge for reimbursable Customs services and to revise the rate of charge to 154 percent of the hourly rate of regular pay of the employee performing the service. The proposed increase in the hourly percentage rate of charge is based on the actual expenses incurred by Customs in fiscal year 2000 associated with providing reimbursable Customs services during regular hours of duty and includes an increased percentage rate of charge for administrative overhead costs associated with providing such reimbursable services. This document proposes that the new hourly percentage rate of charge will be reviewed biennially using the actual costs and expenses associated with providing requested reimbursable Customs services from the preceding fiscal year.

Further, this document proposes to increase the percentage rate of charge for administrative overhead costs associated with providing overtime

services. It also updates the list of national holidays in 19 CFR 101.6.

DATES: Comments must be received on or before December 9, 2002.

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

FOR FURTHER INFORMATION CONTACT: Dennis Lomax, Revenue Branch, National Finance Center, Indianapolis, IN 46278; telephone (317) 298–1200, ext. 1404.

SUPPLEMENTARY INFORMATION:

Background

Under certain circumstances, Customs provides inspectional and supervisory services to parties-in-interest who request such Customs services during regular hours of duty or on an overtime basis. When these Customs services are provided, however, the party-in-interest is required to reimburse the Government for the Customs employee's compensation and other chargeable expenses. Customs authority to charge these expenses is contained at 31 U.S.C. 9701, which provides, in part, that each government service provided to identifiable persons is to be as self-sustaining as possible and that the fees and charges established by the agency are to be based on the costs to the Government in providing the service.

The amount of compensation and expenses chargeable to parties-in-interest for reimbursable Customs services performed during regular hours of duty is presently based on a computational formula that yields an hourly percentage rate of charge that is provided for in the introductory text of § 24.17(d) of the Customs Regulations (19 CFR 24.17(d)), plus a reimbursable charge for Medicare compensation that is provided for at § 24.17(f), and a reimbursable charge for administrative overhead costs that is provided for at § 24.21. The rate of charge for reimbursable Customs services performed on an overtime or outside the basic 40-hour workweek basis is provided for at other sections in part 24 of the Customs Regulations (*see* 19 CFR 24.16 and 24.17(d)(1)).

The charge currently provided for the reimbursable services of a Customs employee performed on a regular workday during a basic 40-hour workweek, pursuant to § 24.17(d), is computed at a rate that is equal to 137 percent of the hourly rate of regular pay of the particular employee (plus additional charges for any night pay differential). This charge is based on a five-factor formula that computes an hourly percentage rate of charge that is intended to recover the estimated costs of various employee benefits such as leave, holidays, retirement, and life and health insurance and is only used to determine the costs of providing reimbursable Customs services during a basic 40-hour workweek.

In addition to the base 137 percent rate of charge for reimbursable Customs services performed during a basic 40-hour workweek, § 24.21 provides that 15 percent of the compensation and/or expenses of the Customs employee performing the reimbursable service is chargeable to parties-in-interest for administrative overhead costs. This 15 percent rate of charge for administrative overhead costs has been in effect for nearly 20 years.

In addition to the base 137 percent rate of charge set forth in § 24.17(d) and the 15 percent rate of charge set forth in § 24.21, § 24.17(f) further provides that parties-in-interest are also required to reimburse Customs for its share of Medicare costs for the employee. Section 24.17(f) currently provides that 1.35 percent of the reimbursable compensation expenses incurred will be the payment for Medicare costs. However, the regulations are incorrect because, pursuant to 26 U.S.C. 3111(b), Medicare compensation costs are to be recovered at a rate of charge that is equal to 1.45 percent of the reimbursable compensation expenses incurred.

On February 1, 2001, Customs published a Notice of Proposed Rulemaking (Notice) in the **Federal Register** (66 FR 8554) that proposed to increase the hourly percentage rate of charge for reimbursable Customs services. The proposed increase was based on a recommendation by Treasury's Office of Inspector General (OIG) following an audit of Customs charges to the courier hubs for reimbursable Customs services that found that the current 137 percent rate of charge computed was inadequate to cover Customs actual costs. The OIG noted that the formula used to determine the computational charge of 137 percent set forth in § 24.17(d) contained two outdated cost factors. First, the formula took account of 9 legal public holidays, but the number of public holidays is now 10 with the addition in 1983 of the Birthday of Martin Luther King, Jr. Second, the formula provided that the working hour equivalent of the Government's contributions for an employee's benefits was computed at 11½ percent of the annual rate of pay of an employee, but that should have risen to 28.55 percent since it was last computed. Accordingly, the OIG recommended that the rate of charge for reimbursable Customs services performed during regular hours of duty should be increased from 137 percent to 158 percent of the hourly rate of regular pay of the employee performing the service. The initial Notice only discussed the increase in the hourly rate of charge percentage for reimbursable Customs services within the context of § 24.17; there was no discussion regarding the additional percentage rate of charge for administrative overhead costs provided for at § 24.21(a).

Comments were solicited on this proposed rulemaking from interested parties with a response date of April 2, 2001. Five comments were timely received: three were from trade associations and two were from express consignment operators. All of the comments expressed general concern about the added increase in costs if the proposed increase in the hourly percentage rate of charge is adopted. Based on these comments, a review of the estimated costs of providing reimbursable Customs services during a basic 40-hour workweek was undertaken.

The comments and the results of Customs review of the computational formula and the additional charges for administrative overhead and Medicare costs associated with providing reimbursable Customs services during a basic 40-hour workweek are addressed below.

Discussion of Comments

Annual & Sick Leave

Comment: Three of the commenters objected to some of the number values attached to factors in the computational formula used to determine the rate of charge for reimbursable Customs services. Two of these commenters objected to the OIG using the maximum time frame for annual leave (26 days, which is the 208 hour figure in the present formula), which is based on the most senior Customs officers, and for sick leave (13 days, which is the 104 hour figure in the formula) as factors in the computational formula used to determine the rate of charge. These commenters felt that the number values attached to these factors had the effect of overstating costs because not all

Customs services provided are performed by Customs employees eligible for maximum leave time, which requires 15 years of Government service, and that there was a strong probability that most Customs officers do not use all of their eligible sick leave in a year. These commenters argue that because the number of annual leave and sick days used in the reimbursable computational formula are inappropriate, the calculations are too high and the number values for these factors must be reduced to fairly reflect Custom's costs.

A third commenter stated that if the numbers utilized for annual and sick leave were 50 percent of those being proposed, the computational formula would more accurately reflect the actual figures for work and non-work time, and thus provide a more accurate invoice for reimbursable charges. Noting that express carriers are responsible for reimbursement of Customs fees at double the normal rate of charge, it was stated that when benefits and administrative fees are added and then doubled the actual cost to an express operator for each $1.00 of salary cost is $3.04 under the current provisions and would be increased to $3.46 under the proposed rule. This commenter states that this 13.8 percent increase is significant and creates a real economic burden; however, if the numbers utilized for annual and sick leave were reduced by 50 percent the impact on express operators would be reduced from a 13.8 percent increase to only 5.3 percent, a far more realistic and acceptable increase.

These commenters urged Customs not to adopt the proposed rule; to completely review the Notice regarding the issues raised; and expressed a strong preference for eliminating entirely the current system under which reimbursable charges are assessed, preferring a system that is transparent and simple. Specifically, these commenters advocated a system funded on a transaction-based fee, *i.e.*, a fixed fee per informal shipment.

Customs response: Customs agrees that the present computational formula factors—and resulting hourly percentage rate of charge—do not represent the actual costs to Customs of providing requested inspectional and supervisory services and that a better system, one that is more transparent and simple for reimbursing the Government, should be adopted. To that end, Customs reexamined how reimbursable service charges were calculated and conducted a cost analysis. As a result of the cost analysis, Customs found that it slightly undercharges for the actual costs and expenses of providing requested reimbursable Customs services. Accordingly, Customs is proposing, in this document, a new hourly percentage rate of charge for reimbursable Customs services that is based on actual expenses.

Customs now addresses the comment regarding express carriers being responsible for reimbursement of Customs fees at double the normal hourly rate of charge and that if the numbers utilized for annual and sick leave were reduced by 50 percent of those being proposed the computational formula would more accurately reflect the actual figures for work and non-work time, providing a more accurate invoice for reimbursable charges. Customs does not agree with this comment. First, Customs does not charge for non-work time (*see* discussion below under Lunch Hours). Second, ''the reimbursement of Customs fees at double the normal rate'' issue is misleading because the fees billed are statutory. *See* 19 U.S.C. 58c(b)(9)(A), which provides for the aggregation of merchandise processing fees in an amount equal to reimbursable services. When merchandise is informally entered or released at a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the Merchandise Processing Fees (MPF) are billed in an amount equal to the reimbursable fee amount. Thus, each Customs assignment at these locations generates two billings, each for identical amounts. One of the billings is to reimburse Customs for providing Customs services (*see* 31 U.S.C. 9701 and 19 CFR 24.17, which provides for the reimbursable charge fee); the second billing is for MPFs (*see* 19 U.S.C. 58c(b)(9)(A)(ii) and 19 CFR 24.23(b)(2)(ii), which provide for the MPF when processing merchandise that is informally entered or released.) The generation of a second billing for MPFs that is equal to the amount of the billing for Customs services is in lieu of the per entry or release fee of $2.00, $6.00, or $9.00, provided for at 19 U.S.C. 58c(a)(10) and 19 CFR 24.23(b)(2)(i). This method of billing for the MPF releases the inspectors at the express consignment facilities from the responsibility of having to prepare collection documents for each informal entry which would dramatically slow the process of clearing merchandise and put the express consignment operators in jeopardy of not meeting their delivery deadlines. Accordingly, the billing for the MPF at a cost equal to the billing for Customs services is beneficial to express consignment operators.

Further, any increase in the hourly rate of charge percentage must represent reimbursement to the Government for actual expenses. Accordingly, Customs cannot adopt an artificial number, *i.e.*, 50 percent of the number of annual and sick leave hours used to calculate the reimbursable fee, that bears no relationship to those expenses.

It is also noted that the impact of the proposed increase in the hourly rate of charge percentage contained in this document (discussed below) is less than 1 percent of what is currently billed.

Regarding the comment proposing a system funded on a transaction-based fee, *i.e.*, a fixed fee per informal shipment, Customs points out it is bound by current law which is premised on a reimbursable payment scheme. In order to adopt a transaction fee approach, Congressional action is required. Customs does not have authority, on its own, to adopt a transaction fee system.

Customs agrees that the current system is not transparent and simple. While there is a computational formula set forth in the introductory paragraph of § 24.17(d) for determining reimbursable charges for Customs services, the actual billing practice to collect the fees for Customs services provided entails billing for costs and expenses that are not included in the formula, but are found in various sections of the Customs Regulations: §§ 24.16, 24.17 (other than the introductory paragraph of paragraph (d)), and 24.21. To remedy this situation, Customs is proposing in this document a new formula basis that would consolidate various regulatory provisions for clarity and be more accurate in providing reimbursement to Customs for the actual costs and expenses associated with providing requested Customs services.

Lunch Hours

Comment: Two commenters objected that the OIG Report provided that couriers could be invoiced for employee's time spent at lunch. These commenters stated that no such allowance should be allowed and that reimbursable charges should be assessed only for actual time worked.

Customs response: Regarding billings for the actual hours worked by Customs personnel, the OIG Report stated that Customs only billed 7 hours a day when inspectors worked a full 8 hours. This means that Customs did not bill couriers for employee's time spent at lunch.

Benefits Ratio

Comment: Two commenters stated that the OIG Report provided no

substantiation for the ratio of benefit costs to employee's salary. One of these commenters alleged that because the initial **Federal Register** Notice did not explain the OIG's audit report's conclusion—that the benefit ratio is 28.55 percent instead of 11.5 percent—that it violates the Administrative Procedure Act and Customs should withdraw the Notice.

Customs response: Customs disagrees that the initial Notice violated the Administrative Procedure Act (APA). In promulgating a rulemaking document for publication in the **Federal Register** one of the requirements is that the Notice of Proposed Rulemaking shall include either the terms or substance of the proposed rule or a description of the subjects and issues involved. See 5 U.S.C. 553(b)(3). Customs believes the initial Notice clearly stated that the proposal was to increase the rate of charge for reimbursable Customs services in accordance with the OIG Report and that this met the APA standard of a description of the subjects and issues involved. Nonetheless, Customs believes that this comment is moot as Customs is proceeding in this document with another proposal.

Revenue Raising

Comment: One commenter stated that the OIG Report suggests that the underlying purpose of the proposed 15 percent increase in the computational charge is not to reimburse Customs for costs of services, but rather, to raise revenue, which is an unlawful purpose.

Customs response: Customs disagrees with this interpretation of the OIG's Report statement. The OIG Report statement in question was presented as a net result, that is, that if Customs increased its hourly rate of charge percentage from 137 percent to 158 percent, this would result in a revenue enhancement to Customs in that it would enable Customs to collect all the revenue due for providing reimbursable Customs services.

Computation of Charges

Comment: One commenter stated that the proposed increase in the rate of charge was unreasonable and arbitrary, and would have a significant financial impact on all airports, not just user-fee airports. This commenter proposed that a more reasonable increase of 149 percent, one that is in line with similar services provided airports, be adopted.

Customs response: Customs has already discussed how the proposed increase in the hourly rate of charge percentage merely represents reimbursement to the Government based on actual expenses. Since the proposed increase in the hourly rate of charge percentage bore a direct relationship to actual expenses, as audited by the OIG, the proposal was neither unreasonable nor arbitrary. However, as indicated later in this document, Customs is now proposing a different rate of charge based on actual expenses during the fiscal year of 2000.

Application of Charges

Comment: Three of the commenters argued that the reimbursable charges imposed by Customs on the air express industry are not similarly imposed on the U.S. Postal Service (USPS), which gives USPS an unfair competitive advantage. These commenters recommended that Customs rectify this imbalance before attempting to increase the rate of charge for reimbursable Customs services.

Customs response: It is acknowledged that the billing schemes applicable to the USPS and the air express industry are statutorily different: one being grounded in the Consolidated Omnibus Budget Reconciliation Act of 1985, the other being grounded in the Omnibus Budget Reconciliation Act of 1987. But since the initial Notice concerned an increase in the rate of charge for reimbursable Customs services and not the application of this rate of charge, this comment falls outside the scope of this rulemaking and will not be addressed in this document.

Impact of Increase and Need for Delayed Effective Date for Final Rule

Comment: One commenter urged Customs to delay the effective date of any new reimbursable rate six months from the date of publication. The commenter stated that delaying the effective date would provide a reasonable amount of time for businesses whose budgets are already established based on the existing rate of charge for reimbursable Customs services to adjust to the proposed increased rate of charge.

Customs response: Customs cannot agree to this accommodation for several reasons. First, the proposed increase in the rate of charge is minimal. The present total charge for reimbursable Customs services is 153.45 percent and the proposed increase, as discussed below, will only raise the total charge to 154 percent. Customs does not believe that such a small increase would cause serious disruption to interested parties' budgets. Second, in consolidating the various regulatory provisions that comprise the total charge for reimbursable Customs services, Customs is making its regulations as transparent and simple as possible—a goal that should be accomplished as soon as possible. Third, the purpose for the change in the rate of charge for reimbursable Customs services is to provide full reimbursement to Customs for these services. For these reasons, allowing for a delayed effective date of six months would contradict the purpose of the reimbursable charges statute (31 U.S.C. 9701). Accordingly, in the final rule document Customs expects to provide for the normal 30 days delayed effective date provided for by the APA.

Further Consideration by Customs

Based upon the comments received to the initial Notice published on February 1, 2001, and upon further consideration of the factors employed in the computational formula to represent reimbursement to Customs for the costs and expenses associated with providing requested Customs services, Customs has decided to no longer use the five-factor computational formula that is presently used to determine the hourly percentage rate of charge for reimbursable Customs services. The computational formula currently provided at § 24.17(d) contains outdated cost factors and other factors that do not capture the actual costs to Customs of providing inspectional and supervisory services. Customs now believes that a straight comparison of actual costs based on data every other year—beginning with fiscal year 2000—yields an hourly percentage rate of charge that provides Customs with a firm basis for determining the fees it needs to charge for reimbursable Customs services. Further, Customs believes that consolidating the various regulatory provisions that comprise all the costs and expense factors used to charge parties-in-interest for requested Customs services will provide the trade community with the clarity it needs to understand how Customs arrives at the percentage rate charged.

New Proposed Rate of Charge

This document sets forth a new proposed methodology for determining the rate of charge for reimbursable Customs services performed on a regular workday during a basic 40-hour workweek, and, based on that methodology, proposes that the rate of charge be increased to a single rate of 154 percent of the hourly rate of regular pay of the employee performing the service. This new proposed hourly percentage rate of charge employs an updated computational formula that is based on the ratio of actual benefits to salary for personnel in the Office of Field Operations who performed

reimbursable services during regular hours of duty (not costs for overtime or services delivered outside the basic workweek) in fiscal year 2000. The new proposal consolidates in one section of the regulations (§ 24.17(d)) the other fee and expense provisions associated with providing reimbursable Customs services during regular hours of duty.

For the Office of Field Operations for fiscal year 2000, the ratio of benefits to salary was determined as follows:

	Millions
Salaries:	
Full-time	$479.1
Part-time	6.5
Total Salaries	485.6
Benefits:	
Life and Health Insurance	31.6
Retirement Contributions	55.5
FICA	18.1
Medicare	3.6
Uniforms	3.8
Cost of Living	2.9
All Others	3.6
Total Benefits	119.1

Benefits Rate of Charge = 24 percent (119.1 M/485.6 M).

Thus, the benefits rate of charge is calculated to be 24 percent. In determining this benefits ratio, Medicare costs are included. Medicare costs are not considered within the 137 percent rate of charge currently set forth in the regulations at § 24.17(d); they are added on to the 137 percent pursuant to § 24.17(f).

Because the Medicare compensation cost is directly factored into the proposed percentage rate of charge, it is proposed to revise paragraph (f) of § 24.17 to limit its application to provisions other than the provision providing for reimbursable Customs services during a regular workweek. Also, the reference to 1.35 percent is removed, as the rate was changed to 1.45 percent in 1986 by the Federal Insurance Contributions Act (FICA), which establishes this compensation charge.

Currently, in addition to the charge of 137 percent and the Medicare charge, Customs charges for administrative overhead for services performed during the regular workweek. Administrative overhead is provided for at § 24.21 of the Customs Regulations. In this document, Customs is proposing to consolidate the administrative overhead charge for work during a regular workweek into the hourly percentage rate of charge.

Administrative Overhead Charges for Regular Workweek Reimbursable Services

Section 24.21(a) provides, in part, that an additional charge for administrative overhead costs must be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing reimbursable and overtime services for the benefit of such parties under either § 24.16 or § 24.17. This charge is currently represented by the flat rate of charge of 15 percent. The flat rate of charge was adopted in 1984 because at that time Customs did not have a formal accounting system for determining the indirect costs of administrative overhead and chose to adopt the Treasury Department's recommendation that 15 percent of the identified costs of providing such services be used. See T.D. 84–231.

To determine whether the 15 percent administrative overhead charge truly represented reimbursement to the government, Customs took the actual indirect costs of administrative overhead expenses during regular hours of duty (not costs for overtime or services delivered outside the basic workweek) for the Office of Field Operations for fiscal year 2000 and found the following relationship:

%	Millions
Salaries:	
Full-time	$479.1
Part-time	6.5
Total Salary	$485.6
Administrative Support	$145.1

Administrative Overhead Rate of Charge = 30 percent (145.1 M/485.6 M).

Thus, the charge for administrative overhead is determined to be 30 percent of the compensation and/or expenses of the Customs officers performing the services. Combining the direct benefit and the indirect administrative overhead rates of charge gives a single rate of charge percentage that is calculated as follows:

	Millions
Benefits Costs	$119.1
Administrative Overhead	145.1
Total Benefit and Administrative Overhead Costs	264.2

Combined Rates of Charge = 54 percent (264.2 M/485.6 M).

Taking these tabulations into consideration, Customs in this document is proposing to amend § 24.17(d) to reflect that the charges for the services of a Customs employee on a regular workweek during a basic 40-hour workweek will be computed at 154 percent of the hourly rate of regular compensation for the particular Customs employee performing the services.

Because the administrative overhead cost is directly factored into the proposed percentage rate of charge for work during a regular workweek, Customs is proposing to amend § 24.21(a) to remove the references to reimbursable services and § 24.17.

Administrative Overhead Charges for Overtime Reimbursable Services

Customs also examined the relationship between administrative overhead expenses for overtime services and the compensation and/or expenses of the Customs officers performing overtime services. Customs took the actual indirect costs of administrative overhead expenses associated with providing Customs services on an overtime basis for the Office of Field Operations for fiscal year 2000 and found the following relationship:

	Millions
Overtime Salaries	$132.1
Administrative Support	39.5

Administrative Overhead Rate of Charge = 30 percent (39.5 M/132.1 M).

This 30 percent rate more accurately reflects the Government's cost in providing administrative overhead services to parties-in-interest. Accordingly, it is proposed to amend § 24.21(a) to reflect that the rate of charge for administrative overhead for Customs officers performing overtime services will be 30 percent of the compensation and/or expenses of the Customs officers performing the service. A conforming change is proposed to § 24.17(e).

With the proposed amendments to part 24 of the Customs Regulations, Customs believes that the calculation of the percentage charges for Customs services provided on either a reimbursable or overtime basis is more transparent and simple to compute.

The proposed new percentage rates of charge set forth in this document more accurately reflects the Government's actual costs in providing these services to parties-in-interest and will be reviewed biennially using the actual costs and expenses associated with providing requested reimbursable Customs services from the preceding fiscal year.

Other Amendments

In § 101.6, it is proposed to amend paragraph (a) by updating the list of national holidays on which Customs offices are closed by adding the third Monday in January, and the heading of paragraph (b) by correcting a typographical error.

Comments

Before adopting these proposed regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5 of the Treasury Department Regulations (31 CFR 1.5), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

The Regulatory Flexibility Act and Executive Order 12866

The proposed amendments are intended to conform the Customs regulations with statutory laws, which provide for ten legal public holidays and allow Customs to assess reimbursable charges to those parties-in-interest who require Customs services on either a reimbursable or overtime basis. Further, in the case of reimbursable charges for Customs services performed during regular hours of duty, because the proposed increases in the percentage rates of charge yield a combined increase that is so small (an increase of only .55 percent), pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, these proposed amendments do not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 24

Accounting, Customs duties and inspection, Fees, Financial and accounting procedures, Reimbursable charges, Reporting and recordkeeping requirements, Wages.

19 CFR Part 101

Customs duties and inspection, Organization and functions (Government agencies), Reimbursable charges, Reporting and recordkeeping requirements, Wages.

Proposed Amendments to the Regulations

For the reasons set forth above, it is proposed to amend parts 24 and 101 of the Customs Regulations (19 CFR parts 24 and 101), as set forth below:

PART 24—Customs Financial and Accounting Procedure

1. The general authority citation for part 24 continues to read, and the specific authority for § 24.17 is revised to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461; 4462; 31 U.S.C. 9701.

* * * * *

Section 24.17 also issued under 5 U.S.C. 6103; 19 U.S.C. 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562; 46 U.S.C. 2110, 2111, 2112;

* * * * *

2. In § 24.17:

a. The introductory text of paragraph (d) is revised and the table following the introductory text is removed;

b. Paragraph (e) is revised; and

c. Paragraph (f) is revised.

The revisions to paragraphs (d), (e), and (f) read as follows:

§ 24.17 Reimbursable services of Customs employees.

* * * * *

(d) *Computation charge for reimbursable services.* The charge for the services of a Customs employee on a regular workday during a basic 40-hour workweek is computed at a rate that is equal to 154 percent of the hourly rate of regular compensation for the particular Customs employee performing the services with an additional charge equal to any night pay differential actually payable under 5 U.S.C. 5545. The 154 percent hourly rate of charge is based on the reimbursable service expenses incurred by the Office of Field Operations during fiscal year 2000 and includes charges for administrative overhead and Medicare.

* * * * *

(e) The reimbursable charge for Customs services performed on an overtime basis shall be computed in accordance with §§ 24.16 and 24.21(a).

(f) *Medicare compensation costs.* In addition to other expenses and compensation chargeable to parties-in-interest set forth in this section, unless otherwise expressly provided for, such persons shall also be required to reimburse Customs for its share of applicable Medicare costs.

3. In § 24.21, the heading and paragraph (a) are revised to read as follows:

§ 24.21 Administrative overhead charges.

(a) *Overtime services.* The charge for the administrative overhead costs associated with providing Customs services on an overtime basis for parties-in-interest under the provisions of § 24.16 of this part shall be computed at a rate that is equal to 30 percent of the hourly rate of compensation for the particular Customs employee performing the service.

* * * * *

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301, 6103; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

2. In § 101.6:

a. Paragraph (a) is revised; and

b. Paragraph (b) is amended by removing the word ''hgurs'' in the heading and adding, in its place, the word ''hours''.

The revision reads as follows:

§ 101.6 Hours of business.

* * * * *

(a) *Saturdays, Sundays, and national holidays.*—(1) *National holidays.* In addition to Saturdays, Sundays, and any other calendar day designated as a holiday by Federal statute or Executive Order, Customs offices will be closed on the following national holidays:

(i) January 1;

(ii) The third Monday in January;

(iii) The third Monday in February;

(iv) The last Monday in May;

(v) July 4;

(vi) The first Monday in September;

(vii) The second Monday in October;

(viii)November 11;

(ix) The fourth Thursday in November; and

(x) December 25.

(2) *Observance of national holidays.* If a national holiday falls on a Saturday, then the Friday preceding that Saturday will be observed as the national holiday for work purposes. If a national holiday falls on a Sunday, then the Monday following that Sunday will be observed as the national holiday for work purposes.

* * * * *

Approved: October 2, 2002.

Robert C. Bonner,

Commissioner of Customs.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–25655 Filed 10–8–02; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 154–1154; FRL–7392–7]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa. The SIP revisions, regarding the State's construction permitting rules as they pertain to industrial anaerobic lagoons and anaerobic lagoons for animal feeding operations in Iowa, will help ensure Federal enforceability of the state's air program. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by November 8, 2002.

ADDRESSES: Comments may be mailed to Lynn Slugantz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Lynn Slugantz at (913) 551–7883.

SUPPLEMENTARY INFORMATION: *See* the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: June 3, 2002.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 02–25591 Filed 10–8–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI21

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Astragalus pycnostachyus* var. *lanosissimus*, a Plant From the Coast of Southern and Central California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch). Approximately 170 hectares (ha) (420 acres (ac)) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Santa Barbara and Ventura counties, California. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded or authorized by Federal agencies.

We are soliciting data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until December 9, 2002. Public hearing requests must be received by November 25, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

(2) You may also send comments by electronic mail (e-mail) to *fw1venturamilkvetch@fws.gov. See* the Public Comments Solicited section below for file format and other information about electronic filing.

(3) You may hand-deliver comments to our Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Rick Farris, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone 805/644–1766; facsimile 805/644–3958). Information regarding this proposal is available in alternate formats upon request.

SUPPLEMENTARY INFORMATION:

Background

Astragalus pycnostachyus var. *lanosissimus* (Ventura marsh milk-vetch) is an herbaceous perennial in the pea family (Fabaceae). It has a thick taproot and multiple erect, reddish stems, 40 to 90 centimeters (cm) (16 to 36 inches (in)) tall, that emerge from the root crown. The pinnately compound leaves (divided more than once on the same stem and arranged like a feather) are densely covered with silvery white hairs. The 27 to 39 leaflets are 5 to 20 millimeters (mm) (0.2 to 0.8 in) long. The numerous greenish-white to cream colored flowers are in dense clusters and are 7 to 10 mm (0.3 to 0.4 in) long. The calyx (a whorl of leaves below the flower) teeth are 1.2 to 1.5 mm (0.04 in) long. The fruits are single-celled pods 8 to 11 mm (0.31 to 0.43 in) long (Barneby 1964). The blooming time has been recorded as July to October (Barneby 1964); however, the one extant population was observed to flower from June to September (Wilken and Wardlaw 2001). This variety is distinguished from *A. pycnostachyus* var. *pycnostachyus* (brine milk-vetch) by certain flower characteristics (*i.e.*, the

length of calyx tube, calyx teeth, and peduncles (a stalk bearing a flower or flower cluster)). It is distinguished from other local *Astragalus* species by its overall size, perennial growth form, size and shape of fruit, and flowering time.

Little is known of the habitat requirements of *Astragalus pycnostachyus* var. *lanosissimus.* All but two of the known collections of this taxon were made prior to 1930, and specimen labels from these collections and original published descriptions contain virtually no habitat information. The related variety, *A. pycnostachyus* var. *pycnostachyus*, is found in or at the high edge of coastal saltmarshes and seeps. The only known population of *A. pycnostachyus* var. *lanosissimus* occurs in a sparsely vegetated low area, at an elevation of about 10 meters (m) (30 feet (ft)), on a site previously used for disposal of petroleum waste products (Impact Sciences, Inc. 1997). Dominant shrub species at the site are *Baccharis pilularis* (coyote brush), *Baccharis salicifolia* (mulefat), *Salix lasiolepis* (arroyo willow), and the non-native *Myoporum laetum* (myoporum) (Impact Sciences, Inc. 1997). The population occurs with sparse vegetative cover provided primarily by *Baccharis pilularis, Baccharis salicifolia,* a non-native *Carpobrotus* sp. (seafig) and a non-native annual grass, *Bromus madritensis* ssp. *rubens* (red brome). Soils are reported to be loam-silt loams (Impact Sciences, Inc. 1997). Soils may have been transported from other locations as a cap for the disposal site once it was closed. The origin of the soil used to cap the waste disposal site is unknown; however, because of the costs of transport, the soil source is likely local.

Despite the lack of information available from historical collections, the best description we have of the habitat of *Astragalus pycnostachyus* var. *lanosissimus* is from Wilken and Wardlaw (2001) who concluded that the species occurs in low-elevation coastal dune-swale areas, where freshwater levels (in the form of saturated soils or groundwater) are high enough to reach the roots of the plants. Sometimes, high groundwater is shown by the presence of water in sloughs or coastal creeks, but more typically evidence for freshwater availability is seen in the presence of native, freshwater-dependent plants, such as *Salix* spp. (willows), *Typha* spp. (cattails), *Baccharis salicifolia*, and others. The soils associated with *A. pycnostachyus* var. *lanosissimus* are well-drained, yet contain a mix of sand and clay. Because of the freshwater influence, the soils do not exhibit a white crust which would indicate saline or alkaline conditions.

Like the habitat requirements, little is known about the reproductive biology of *Astragalus pycnostachyus* var. *lanosissimus.* According to Wilken and Wardlaw (2001), the species appears to be self-compatible and partly self-pollinating; however, the flower structure of this species and other *Astragalus* suggests that pollination requires manipulation of flower parts by insects. Few insects have been observed visiting *A. pycnostachyus* var. *lanosissimus* flowers. Wilken and Wardlaw (2001) observed a bumblebee (*Bombus* sp.) and two skippers (Family: Hesperidae) visiting the plants, and other researchers have observed large insects visiting other *Astragalus* species (*e.g.*, Karron 1987). Therefore, it seems likely that insects are the natural pollinators of this plant. The life cycle of *A. pycnostachyus* var. *lanosissimus* thus requires that a pollinator community is present (Geer *et al.* 1995, Karron 1987). The pollinator community is supported by surrounding native vegetation. Non-native plants are likely to be detrimental as they compete with native plants, including *A. pycnostachyus* var. *lanosissimus,* for nutrients, water, and sunlight. Therefore, the percentage cover of exotic plants must be relatively low in areas designated as critical habitat for *A. pycnostachyus* var. *lanosissimus*. Recent research has shown that predation by non-native snails is a factor in the survival of seedlings in the extant population (Wilken and Wardlaw 2001).

Wilken and Wardlaw (2001) concluded that seed production in *Astragalus pycnostachyus* var. *lanosissimus* was limited by pollination and/or fertilization and seed predation by weevils (Family: Bruchidae). The reason for the low pollination rate is unknown, but could be attributed to factors that affect the local pollinator community, such as habitat loss, pesticides, and competition for nectar and aggression from non-native insects such as Argentine ant (*Linepithema humile*).

Low survivorship of seedlings and young plants observed in *Astragalus pycnostachyus* var. *lanosissimus* may be due in part to herbivory by snails (the non-native *Otala lactea* or *Helix aspersa*) and brush rabbits (*Sylvilagus bachmani*) (Wilken and Wardlaw 2001). Due to the combination of poor seedling and young plant survivorship and low seed production, the population of *A. pycnostachyus* var. *lanosissimus* declined from its rediscovery in 1997 until the 2001 season (Impacts Sciences 1997 and 1998; Wilken and Wardlaw 2001; Wilken, pers. comm., 2002). The population appears to be surviving due to having established a seedbank (not all seeds produced in one year will germinate the following year). The hard seed coat may require scarification (scraping or small cuts) that cannot happen within one season, so the seed may survive for one year or more in the soil until the coat can break down or is broken by some mechanical means (Wall, pers. comm., 2000). Also, Wilken and Wardlaw (2001) found that the plants may not become reproductive until more than 18 to 30 months following germination. The implication for *A. pycnostachyus* var. *lanosissimus* is that low seed production and thus a seed bank deficit, combined with low seedling survival and the mortality of some adult plants, may contribute to the population's decline unless the factors causing these problems (*e.g.*, snail herbivory, low pollination rate) can be addressed.

Astragalus pycnostachyus var. *lanosissimus* was first described by Per Axel Rydberg (1929) as *Phaca lanosissima* from an 1882 collection by S.B. and W.F. Parish made in what is now Orange County, California. The combination *A. pycnostachyus* var. *lanosissimus* was assigned to this taxon by Philip Munz and Jean McBurney in 1932 (Munz 1932).

The exact location of the type locality of *Astragalus pycnostachyus* var. *lanosissimus* is unclear. The specimen label from the plant collected in 1882 by S.B. and W.F. Parish identifies the site as ''La Bolsa.'' Based on the labeling of other specimens collected by the Parishes in 1881 and 1882, Barneby (1964) suggested that this collection may have come from the Ballona marshes in Los Angeles County. However, Critchfield (1978) believed that ''La Bolsa'' could have referred to Bolsa Chica, a coastal marsh system located to the south in Orange County. The California Natural Diversity Data Base (CNDDB) (CDFG 2002) concludes that ''La Bolsa'' is the Bolsa Bay area between Sunset Beach and Huntington Beach in Orange County. Collections of other plants from the ''La Bolsa'' area have been mapped as the Bolsa Chica salt marsh, although exact locations of the collections are not known.

In the five decades following its discovery, *Astragalus pycnostachyus* var. *lanosissimus* was collected from only a few locations in Los Angeles and Ventura counties. In a second 1882 collection, the plant was collected from near Santa Monica in Los Angeles County. It was also collected from the Ballona marshes just to the south in

1902, and ''Cienega'' in 1904, also likely near the Ballona wetlands. In Ventura County it was collected in 1901 and 1925 from Oxnard and in 1911 from an unspecified location in ''Ventura, California,'' a city adjacent to Oxnard.

Barneby (1964) believed that *Astragalus pycnostachyus* var. *lanosissimus* had been extirpated from Santa Monica southward, noting that there was still the possibility it survived in Ventura County (although he knew of no locations at that time). The species was briefly rediscovered in 1967 through the chance collection by R. Chase of a single specimen growing by a roadside between the cities of Ventura and Oxnard. Searches uncovered no other living plants at that location, although some mowed remains discovered on McGrath State Beach lands across the road from Chase's collection site were believed to belong to this taxon (information on herbarium label from specimen collected by R.M. Chase 1967). Floristic surveys and focused searches conducted in the 1970s and 1980s at historical collection locations did not locate any populations of *A. pycnostachyus* var. *lanosissimus* and the plant was presumed extinct (Isley 1986, Burgess 1987, Spellenberg 1993, Skinner and Pavlik 1994). On June 12, 1997, a population of the plant was rediscovered by a Service biologist in a degraded coastal dune system near Oxnard, California (Kate Symonds, pers. obs., 1997).

Based upon searches for *Astragalus pycnostachyus* var. *lanosissimus* between the last collection in 1967 and its rediscovery in 1997, the species is believed to have been extirpated from all of the general areas from which it had been collected except the single remaining extant population in Oxnard, Ventura County. Locations of collections from the late 1800s to early 1900s in Los Angeles County are now urbanized within the expansive Los Angeles metropolitan area. Approximately 90 percent of the Ballona wetlands, once encompassing almost 810 ha (2,000 ac), have been drained, dredged, and developed into the urban areas of Marina del Rey and Venice (Critchfield 1978, Friends of Ballona Wetlands 1998). Ballona Creek, the primary freshwater source for the wetland, had been straightened, dredged and channelized by 1940 (Friesen *et al.* 1981). Despite periodic surveys of what remains at the Ballona wetlands, *A. pycnostachyus* var. *lanosissimus* has not been collected there since the early 1900s (Gustafson 1981; herbarium labels from collections by H. P. Chandler and by E. Braunton, 1902, housed at UC Berkeley Herbaria).

In 1987, botanists searched specifically for *Astragalus pycnostachyus* var. *lanosissimus* without success at previous collection locations throughout its range in coastal habitats, including Bolsa Chica in Orange County and on public lands around Oxnard in Ventura County (F. Roberts, Service, *in. litt.*, 1987; T. Thomas, Service, pers. comm., 1997). Point Mugu Naval Air Weapons Station, in southern Ventura County, may have suitable habitat (Wilken and Wardlaw 2001); however, focused surveys have not been conducted there. *A. pycnostachyus* var. *lanosissimus* was not found during cursory surveys of the base, nor has this taxon ever been collected there despite habitat evaluations and vegetation sampling by the Navy for the past 15 years (Navy Base Ventura County 2002).

The single known population of *Astragalus pycnostachyus* var. *lanosissimus* near the city of Oxnard is in a degraded backdune community. From 1955 to 1981 the land on which it occurs was used as a disposal site for oil field wastes (Impact Sciences, Inc. 1998). In 1998, the City of Oxnard published a Final Environmental Impact Report (FEIR) for development of this site (Impact Sciences, Inc. 1998). In a final step, the project was approved by the California Coastal Commission in April 2002. The proposal for the site includes remediation of soils contaminated with hydrocarbons, followed by construction of 300 homes and a 2–ha (6–ac) lake on 37 ha (91 ac) of land. The proposed soil remediation would involve excavation and stockpiling of the soils, followed by soil treatment and redistribution of the soils over the site (Impact Sciences, Inc. 1998).

The proposed measures for conservation on the site would be to establish a 2 ha (5 ac) preserve that would be dominated by highly disturbed soils. The buffers between the development and preserve areas would be 15 meters (m) (50 feet (ft)). According to a comprehensive review of rare plant preserve design compiled by the Conservation Biology Institute (2000), buffers of that size are insufficient to protect a rare plant species because indirect effects (*e.g.*, fuel management, loss of pollinators, introduction of competing exotic plants) are not absorbed and are likely to extend well into the preserved area. Thus, the preserve proposed for *Astragalus pycnostachyus* var. *lanosissimus* has inadequate consideration of the biological needs of the species and unproven management and protection of the site. The proposed project, as described in the FEIR, could have several adverse effects on the only known population of *A. pycnostachyus* var. *lanosissimus*, possibly resulting in the extinction of this taxon in the wild. We anticipate that the project will exacerbate the problems the population already experiences with snail predation and exotic plants, and will also introduce pesticides, increase human access, interrupt pollination, and alter the freshwater inundation regime that the species apparently requires.

The Service was not involved in the agreements between the developer and local and State officials because our regulatory authority does not extend to listed plants on private land unless there is a Federal nexus, such as a Federal permit or funding. No nexus existed on the site and our role was strictly advisory.

A sooty fungus was found on the leaves of *Astragalus pycnostachyus* var. *lanosissimus* in late summer, 1997, as leaves began to senesce (die) or wither and the plants entered a period of dormancy (Impact Sciences, Inc. 1997). The effects of the fungus on the population are not known, but it is possible that the fungus attacks senescing leaves in great number only at the end of the growing season. The plants appeared robust when in flower in June 1997, matured seed by October 1997, and were regrowing in March 1998, after a period of dormancy, without obvious signs of the fungus (Steeck, in. litt, 1998). Wilken and Wardlaw (2001) did not detect any signs of pathogens on mature plants that appeared to be in poor health; however, two mature plants had infestations of aphids (Family: Aphididae) that were being tended by non-native Argentine ants. Cucumber mosaic virus, which is transmitted by aphids, was found in the *A. pycnostachyus* var. *lanosissimus* population (Wilken 2002).

In 1997, the seeds of *Astragalus pycnostachyus* var. *lanosissimus* were heavily infested with seed beetles (Bruchidae: Coleoptera). In a seed collection done for conservation purposes in 1997, the Service found that most fruits partially developed at least 4 seeds; however, seed predation reduced the average number of undamaged seeds to only 1.8 per fruit (Steeck, in. litt., 1998). Wilken and Wardlaw (2001) reported similar findings in 2000. Apparently heavy seed predation by seed beetles and weevils has been reported among other members of the genus *Astragalus* (Platt *et al.* 1974, Lesica 1995). Wilken and Wardlaw (2001) estimate that seed predation by these insects may reduce

seed viability by 30 percent in a given year.

Because of its small population size, the only natural population is also threatened by competition with non-native plant species. *Cortaderia selloana* (pampas grass), *Carpobrotus* sp., and *Bromus madritensis* ssp. *rubens* are invasive non-native plant species that occur at the site (Impact Sciences, Inc. 1997). *Carpobrotus* sp. in particular, are competitive, succulent species with the potential to cover vast areas in dense clonal mats and may harbor non-native snails. *Bromus madritensis* ssp. *rubens* grew in high densities around some mature individuals of *Astragalus pycnostachyus* var. *lanosissimus* in 1998 and seedlings were germinating among patches of *Carpobrotus* spp. and *Bromus* spp. in 1998 (D. Steeck, *in. litt., 1998*). Seedling survival rates in these areas have not yet been determined.

Efforts to conserve *Astragalus pycnostachyus* var. *lanosissimus* have been initiated by the landowner (North Shore at Mandalay LLC) and a task force of scientists from the University of California and Santa Barbara Botanic Garden, agencies (California Department of Fish and Game, U.S. Fish and Wildlife Service, California Department of Parks and Recreation), and plant propagation experts from the Rancho Santa Ana Botanic Gardens (RSABG). Contractors for the landowner and proponent of the development, North Shore at Mandalay LLC, have successfully grown plants in a remote greenhouse facility. Several plants were excavated from the natural population and potted prior to state and Federal listing, and other plants were started from seed gathered from the natural population. In addition, *A. pycnostachyus* var. *lanosissimus* seed from the site was placed in a seed storage collection and a seed bulking project at RSABG. RSABG has been successful in germinating *A. pycnostachyus* var. *lanosissimus* seed and growing the plants in containers (Wilken and Wardlaw 2001).

Research populations have been introduced in two locations within the historical range of *Astragalus pycnostachyus* var. *lanosissimus*: Mandalay State Beach, across the street from the extant population, and one at McGrath State Beach. Two transplantation experiments are underway outside of the known range of the species: one at Carpenteria Marsh and the other at Coal Oil Point, both in Santa Barbara County. Approximately 250 individuals were planted and are being irrigated at the Coal Oil Point Reserve. Seed has been introduced at 10 separate dune locations at the Reserve (Cristina Sandoval, Reserve Director, pers. comm., 2002). The success of any of these efforts in establishing self-sustaining populations of *A. pycnostachyus* var. *lanosissimus* is yet to be determined.

In 1997, the population of *Astragalus pycnostachyus* var. *lanosissimus* in Oxnard consisted of about 374 plants, of which 260 were small plants thought to have germinated in the last year and 114 were ''adult'' plants. Of these adult plants, fewer than 65 plants produced fruit in 1997 (Impact Sciences, Inc. 1997). In 1998, 192 plants were counted during surveys of the population. Service biologists placed cages around a sample of plants in 1999 to protect them from severe herbivory apparently done by small mammals, most likely brush rabbits. Despite this protection, only 30 to 40 plants produced flowers in 1999, which was believed to be less than half of those blooming in 1998 (Steeck, *in litt.*, 1998).

Wilken and Wardlaw (2001) state that the total number of adult plants declined between 1997 and 2000. Although 46 of 80 seedlings that germinated in the 2000 growing season were still present in October 2000, the total number of surviving adult plants in 2000 was estimated at 39. Many are believed to have succumbed to herbivory from snails and brush rabbits. Other losses are unexplained, sudden mortalities (Wilken and Wardlaw 2001). Following efforts to control snails in 2000 (*i.e.*, poisoning, hand removal, clearing of iceplant, fencing), and perhaps more favorable growing conditions in the winter of 2000–2001, more than 1,000 seedlings were observed (Wilken, pers. comm., 2002). Of these, more than 300 survived until October 2001 when they became dormant. At the time of this proposal, more recent survey data is not available.

Previous Federal Action

Federal actions for this taxon began pursuant to section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975, and *Astragalus pycnostachyus* var. *lanosissimus* was included on List C, among those taxa believed possibly extinct in the wild. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act and its intention to review the status of the plant taxa named therein.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list, which included *Astragalus pycnostachyus* var. *lanosissimus*, was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796) the Service withdrew the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. *A. pycnostachyus* var. *lanosissimus* was included in that withdrawal notice.

We published an updated Notice of Review (NOR), Review of Plant Taxa for Listing as Endangered and Threatened Species on December 15, 1980 (45 FR 82480). This notice included *Astragalus pycnostachyus* var. *lanosissimus* in a list of category 1 candidate species that were possibly extinct in the wild. Category 1 candidate species were taxa for which we had sufficient information on biological vulnerability and threats to support the preparation of listing proposals. These category 1 candidates were given high priority for listing were extant populations to be confirmed.

The Service maintained *Astragalus pycnostachyus* var. *lanosissimus* as a category 1 candidate in subsequent NORs: November 28, 1983 (48 FR 53640); September 27, 1985 (50 FR 39526); and February 21, 1990 (55 FR 6184). The Service published a NOR (58 FR 51144) on September 30, 1993, in which taxa whose existence in the wild was in doubt, including *A. pycnostachyus* var. *lanosissimus,* were moved to Category 2. Category 2 candidate species were taxa for which information then in our possession indicated that proposing to list the taxon as endangered or threatened was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules. On February 28, 1996

we published a NOR in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 species as candidates, including those taxa thought to be extinct. Thus, *A. pycnostachyus* var. *lanosissimus* was excluded from this and subsequent NORs. In 1997, *A. pycnostachyus* var. *lanosissimus* was rediscovered and a review of the taxon's status indicated that a proposed rule was warranted.

A proposed rule to list *Astragalus pycnostachyus* var. *lanosissimus* as endangered was published in the **Federal Register** on May 25, 1999 (64 FR 28136). On January 26, 2001, the Center for Biological Diversity (CBD) filed a Complaint for Declaratory and Injunctive Relief against the Service asking the court to enjoin the Service to render a final listing determination for *A. pycnostachyus* var. *lanosissimus.* The final rule listing the plant as endangered was published on May 21, 2001 (66 FR 27901).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exists: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. At the time *Astragalus pycnostachyus* var. *lanosissimus* was listed, we found that designation of critical habitat was prudent but not determinable, and that we would designate critical habitat once we had gathered the necessary data.

Despite this finding regarding critical habitat at the time of listing, the CBD lawsuit also sought to cause the Service to prepare a final rule designating critical habitat for *Astragalus pycnostachyus* var. *lanosissimus.* A stipulated settlement agreement and Order was filed with the court on August 2, 2001, which provides that the Service will submit for publication in the **Federal Register** a proposed critical habitat designation for *A. pycnostachyus* var. *lanosissimus* on or before October 1, 2002, and that the final designation will be submitted for publication on or before October 1, 2003.

Critical Habitat

Section 3 defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat.

Critical habitat also provides non-regulatory benefits to the species by informing public and private interest groups of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified, by helping people to avoid causing accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known, and using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best available scientific and commercial data demonstrate that unoccupied areas are essential for the conservation needs of the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for

recovery. Areas that support newly discovered populations in the future, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9(a)(2) prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus.* This information included data from the final rule listing the species as endangered (66 FR 27901), the CNDDB (CDFG 2002), recent biological surveys, reports and aerial photos, additional information provided by interested parties, and discussions with botanical experts. We also conducted site visits at locations managed by Federal and State agencies, including the Navy Base Ventura County/Point Mugu, McGrath State Beach, and Carpinteria Marsh.

Much of the critical habitat description is derived from Wilken and Wardlaw (2001) which represents the most complete information to date regarding the biology and habitat of *Astragalus pycnostachyus* var. *lanosissimus.* Of particular relevance to this critical habitat determination, Wilken and Wardlaw (2001) provide descriptions of the habitat of *A. pycnostachyus* var. *lanosissimus'* closest relative, *A. pycnostachyus* var. *pycnostachyus* (northern marsh milk-vetch). Wilken and Wardlaw (2001) collected data on habitat characteristics at sites occupied by *A. pycnostachyus* var. *pycnostachyus* and compared these with the characteristics at the extant population of *A. pycnostachyus* var. *lanosissimus.* Once common habitat characteristics had been established, Wilken and Wardlaw used these to evaluate areas for their suitability for establishing new populations of *A. pycnostachyus* var. *lanosissimus.* The factors evaluated included: degree of disturbance; vegetative cover (percent and type); associated species; proximity to subterranean water table; and potential threats. Wilken and Wardlaw (2001) also analyzed soil from the site where *A. pycnostachyus* var. *lanosissimus* currently exists for physical and chemical properties important for general plant growth, such as texture, pH, salinity, nutrients, and micronutrients.

Determining what constitutes habitat for *Astragalus pycnostachyus* var. *lanosissimus* is difficult due to having only one extant population on a site of questionable history (*i.e.*, soil dumping, oil waste) to sample. Also, the historical collections did not fully document the habitat where the plants were found. Therefore, both Wilken and Wardlaw (2001) and the Service's (Steeck, *in litt.,* 1998) data were used to characterize the habitat of *A. pycnostachyus* var. *lanosissimus* and to determine the primary constituent elements. Some differences between the two subspecies of *A. pycnostachyus* are apparent, especially in regards to associated plant species and general habitat type. These differences may be a function of a small data set for *A. pycnostachyus* var. *lanosissimus* due to its single population, uncertainty surrounding the presence of *A. pycnostachyus* var. *lanosissimus* on the extant site (*i.e.*, whether it is a natural occurrence or was introduced through soil dumping), and differences in the two subspecies in terms of what habitat may support them. We have paid particular attention to information from Wilken and Wardlaw (2001) because they analyzed conditions at the only known site where *A. pycnostachyus* var. *lanosissimus* currently occurs.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for reproduction, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the known historical geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Astragalus pycnostachyus* var. *lanosissimus* is described in the Background section of this proposed rule. The proposed critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *A. pycnostachyus* var. *lanosissimus* throughout its range and to provide those habitat components essential for the conservation of the species. These habitat components provide for: (1) Individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed dormancy; (2) areas that allow gene flow and provide connectivity or linkage within larger populations; (3) areas that provide basic requirements for growth, such as water, light, and minerals; and (4) areas that support populations of pollinators and seed dispersal organisms.

We believe the long-term probability of the conservation of *Astragalus pycnostachyus* var. *lanosissimus* is dependent upon the protection of the existing population site and sites where introductions can be conducted, as well as the maintenance of ecological functions within these sites, including connectivity between colonies (*i.e.*, groups of plants within sites) within close geographic proximity to facilitate pollinator activity and seed dispersal. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of *A. pycnostachyus* var. *lanosissimus.* Based on the best available information at this time, the primary constituent elements of critical habitat for *A. pycnostachyus* var. *lanosissimus* consist of, but are not limited to:

(1) Vegetation cover of at least 50 percent but not exceeding 75 percent, consisting primarily of known associated native species, including but not limited to, *Baccharis salicifolia, Baccharis pilularis, Salix lasiolepis, Lotus scoparius* (deerweed), and *Ericameria ericoides* (coast goldenbush);

(2) Low densities of non-native annual plants and shrubs, not exceeding 25 percent cover (combined with the minimum 50 percent native cover requirement, total cover of natives and non-natives should not exceed 75 percent);

(3) The presence of a high water table, either fresh or brackish, as evidenced by the presence of channels, sloughs, or depressions that may support stands of

Salix lasiolepis, Typha spp., and *Scirpus* spp. (cattail);

(4) Soils that are fine-grained, composed primarily of sand with some clay and silt, yet are well-drained; and

(5) Soils that do not exhibit a white crystalline crust that would indicate saline or alkaline conditions.

Criteria Used To Identify Critical Habitat

Critical habitat being proposed for *Astragalus pycnostachyus* var. *lanosissimus* includes the only known location where the species currently occurs and two other sites with high potential to support the species based upon habitat characteristics (including the analysis of Wilken and Wardlaw 2001) and/or historical occurrences. We believe that establishment of new, self-sustaining populations of *A. pycnostachyus* var. *lanosissimus* at other sites is essential for the species' survival because the species is currently known from a single location at which its future is uncertain due to its small population size and the high degree of threat from chance catastrophic events. Catastrophic events are a concern when the number of populations or geographic distribution of a species is severely limited (Shaffer 1981, 1987; Primack 1998; Meffe and Carroll 1997), as is the case with *A. pycnostachyus* var. *lanosissimus*. Because a critical habitat designation limited to this species' present range—one known location—would be inadequate to ensure its conservation, the establishment of additional locations for *A. pycnostachyus* var. *lanosissimus* is critical to reducing the risk of extinction.

For sites not currently occupied by *Astragalus pycnostachyus* var. *lanosissimus*, we first considered the historical range of the species based upon collection data and records from the CNDDB (CDFG 2001). From this potential distribution, we located the areas where the plants were observed or collected as closely as they could be discerned from the data. In some cases, we had to determine that old place names, such as ''La Bolsa,'' referred to sites with some similar name, like Bolsa Chica, or found references that made conclusions about modern place names from the data.

By examining aerial photographs and reviewing pertinent literature, and through discussions with knowledgeable individuals, we identified areas where habitat similar to that at the currently occupied site and where habitat similar to that occupied by the closest relative, *Astragalus pycnostachyus* var. *pycnostachyus,* may still exist. These broader areas were refined with information on the extant population and the other locations as derived from Wilken and Wardlaw (2001). We also engaged in discussions with the Carlsbad Fish and Wildlife Office which has responsibility for and experience with the historical locations in southern Los Angeles and Orange counties (K. Clark and J. Fancher, pers. comm., 2002).

The boundaries of the units were identified on aerial photographs and U.S. Geological Survey topographical maps and refined based upon adjacent land uses. For example, one unit is bordered on three sides by urban areas and on the final side by the Pacific Ocean. We decided that due to the limited suitable habitat available, the patchiness of such habitat, and the lack of information on related ecosystem functions that would support *Astragalus pycnostachyus* var. *lanosissimus*, we should include all natural vegetation within the units up to where land use changes and natural vegetation end. The critical habitat units were designed to encompass a large enough area to support existing ecological processes that may be essential to the conservation of *A. pycnostachyus* var. *lanosissimus* (*e.g.*, that provide areas into which populations might expand, provide connectivity or linkage between colonies within a unit, and support populations of pollinators and seed dispersal organisms).

Within the historical range of *Astragalus pycnostachyus* var. *lanosissimus*, we considered two of the collection localities: Bolsa Chica, Orange County, and the Ballona Wetlands, Los Angeles County. During discussions with biologists most familiar with these areas (K. Clark and J. Fancher, pers. comm., 2002), we concluded that, although the areas remain undeveloped for the most part, conditions have changed dramatically since the plants were collected. For example, the Bolsa Chica area has been altered by oil development, which created raised pads and lower excavated areas, and channelized the natural freshwater inflow that once existed. The influence of tidal flow is now more pronounced, to the point that the soils have become saline. The area, therefore, does not contain plant species that indicate freshwater influence. Plant species indicating freshwater influence are found at the currently occupied site and at locations where the close relative, *A. pycnostachyus* var. *pycnostachyus*, occurs. Also, long-range plans for Bolsa Chica are to increase the tidal influence by establishing a direct connection to the ocean across Bolsa Chica State Beach. The Ballona Wetlands are similarly isolated from a freshwater source and are subject to considerable disturbance. Consequently, we rejected both Bolsa Chica and the Ballona Wetlands as potential reintroduction sites for *A. pycnostachyus* var. *lanosissimus* and as critical habitat units.

For critical habitat outside of the historical range, we considered areas from Gaviota State Beach, Santa Barbara County, south to San Diego County. We have included only one critical habitat unit (Carpinteria Marsh) that could be considered outside of the known range of the species in this critical habitat proposal. That location is included because of its proximity to the historical distribution, the initial success of efforts to establish a population there, and the presence of primary constituent elements. Data to support designation of critical habitat elsewhere outside the historic range of *Astragalus pycnostachyus* var. *lanosissimus* are limited. In addition, we do not believe introducing *A. pycnostachyus* var. *lanosissimus* in the vicinity of *Astragalus pycnostachyus* var. *pychnostachyus* is prudent because of the potential for hybridization and dilution of genetic identity between the two varieties. Therefore, we do not believe it is appropriate to designate critical habitat elsewhere outside the historic range of *A. pycnostachyus* var. *lanosissimus*.

In selecting areas of proposed critical habitat we made an effort to avoid developed areas, such as housing developments, that are unlikely to contain the primary constituent elements or otherwise contribute to the conservation of *Astragalus pycnostachyus* var. *lanosissimus*. However, we did not map critical habitat in sufficient detail to exclude all lands unlikely to contain the primary constituent elements essential for the conservation of *A. pycnostachyus* var. *lanosissimus*. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

In summary, we selected critical habitat areas that provide for the conservation of *Astragalus pycnostachyus* var. *lanosissimus* where it is known to occur, as well as areas suitable for establishment of new

populations. As noted above, establishment of new populations is important to reduce the risk of extirpation from chance catastrophic events. If we determine that areas outside of the boundaries of the designated critical habitat are important for the conservation of this species, we may propose these additional areas as critical habitat in the future.

Special Management Considerations

It is essential to manage the critical habitat areas in a manner that provides for the conservation of *Astragalus pycnostachyus* var. *lanosissimus*. This includes not only the immediate area where the species may be present, but an additional area that can provide for normal population fluctuations that may occur in response to natural and unpredictable events. *A. pycnostachyus* var. *lanosissimus* is also dependent upon habitat components beyond the immediate areas on which the plant occurs, including the adjacent vegetation communities with which the species is associated, and sufficient areas to support the ecological processes of which the plant's life cycle is a part. These ecological processes include hydrology, pollination, seed dispersal, expansion of distribution, recolonization, and maintenance of natural predator-prey relationships.

Of paramount importance is the maintenance of a pollinator community as *Astragalus pycnostachyus* var. *lanosissimus* appears to be suffering from poor seed set (Wilken and Wardlaw 2001). Although self-compatible, *A. pycnostachyus* var. *lanosissimus* has a flower structure that suggests a relationship with large insects. In this case, the number of plants in the host plant population (*A. pycnostachyus* var. *lanosissimus*) appears to be insufficient in itself to support the pollinator community. Thus, the survival of a pollinator community is dependent upon sufficient natural vegetation beyond the footprint of the rare plant in question, as these other plants are able to sustain the pollinators which are not solely dependent upon the resources of the rare species, yet still provide pollination services to the rare plant. Given the patchiness of suitable habitat for *A. pycnostachyus* var. *lanosissimus* in the region under consideration in this proposal, and the lack of data on the minimum size of patches that can support the appropriate pollinators of *A. pycnostachyus* var. *lanosissimus*, we believe that all of the remaining natural vegetation within the proposed critical habitat units must be managed to maintain and enhance the value to a pollinator community. Maintenance and enhancement can include eradication of non-native plants, control of non-native insects (especially Argentine ants) and snails, revegetation with native shrubs and annuals, and irrigation as needed.

Because only one extant population of *Astragalus pycnostachyus* var. *lanosissimus* remains, Wilken and Wardlaw (2001) provided the following recommendations for experimental introductions of the species into the proposed critical habitat units:

(1) The experimental areas should be free from human incursion, except by researchers and monitors. Exclusion can be accomplished by signs, fencing, and enforcement;

(2) *Astragalus pycnostachyus* var. *lanosissimus* plantings should attempt to establish clusters to examine the gradients of conditions that may be present in the critical habitat areas;

(3) Plants should be grown in containers for transplant into experimental population areas, with emphasis on larger containers (one gallon minimum);

(4) Seeds should be collected from as many different plants as possible each year to establish a diverse genetic pool, and propagate individuals from many different collections;

(5) Transplantation of new container stock, germinated yearly, should occur once per year for at least 3 years to achieve a balanced age structure in the new population and to compensate for fluctuating mortality rates; and

(6) A monitoring program should be implemented to achieve specific goals defined prior to introduction of *Astragalus pycnostachyus* var. *lanosissimus*. The goals should include, at a minimum: population size; age class structure; survivorship; and reproductive success (*i.e.*, pollination, seed production, seedling survival).

Proposed Critical Habitat Designation

The proposed critical habitat areas described below constitute our best assessment at this time of the areas essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus*. The areas being proposed as critical habitat are: (1) Mandalay, including the site of the extant population at Fifth Street and Harbor Boulevard in Oxnard, Ventura County; (2) McGrath Lake area, McGrath State Beach, California Department of Parks and Recreation (CDPR), Ventura County, and (3) Carpinteria Salt Marsh Reserve run by the University of California, Santa Barbara, Santa Barbara County.

The only site occupied by a natural population of *Astragalus pycnostachyus* var. *lanosissimus* is in the Mandalay Unit, located at Fifth Street and Harbor Boulevard in the City of Oxnard. A research population has been initiated at the Mandalay State Beach portion of the unit. Research introductions have also occurred at the Carpinteria Salt Marsh Reserve and McGrath State Beach units. Despite the presence of research populations, we consider all of the units unoccupied except the portion of the Mandalay unit where the natural population occurs. Therefore, we propose to designate currently unoccupied habitat because the conservation of *A. pycnostachyus* var. *lanosissimus* requires it. The single extant natural population is likely to be extirpated by direct and indirect effects of the approved development of the North Shore at Mandalay project (*i.e.*, due to inadequate preserve design), or a catastrophic event could eliminate the population regardless of the development. In the absence of suitable off-site locations where the species could be established, it is possible that it could go extinct. The two unoccupied sites proposed for inclusion have been identified through research as the most likely candidates for new populations because the primary constituent elements are present and they can be adequately protected from the threats identified earlier. One site is within the historical range of the species and one is not. We believe the designation of currently unoccupied locations as critical habitat is essential to the conservation of *A. pycnostachyus* var. *lanosissimus*.

Also, our evaluation of *Astragalus pycnostachyus* var. *lanosissimus* has shown that suitable habitat areas are scarce within the historical range of the species. The combination of associated plant species, high groundwater, low salinity, and other primary constituent elements has either been removed by urbanization, agriculture, oil field development, or flood control projects. Other areas within the historical range were considered and rejected, and areas outside of the historical range were limited in scope and only one was included. The scarcity of suitable habitat has also contributed to the need to propose areas currently unoccupied by *A. pycnostachyus* var. *lanosissimus* as critical habitat.

In summary, we propose to designate approximately 170 ha (420 ac) of land in three units as critical habitat for *Astragalus pycnostachyus* var. *lanosissimus*. The approximate areas of proposed critical habitat by land ownership are shown in Table 1. Private lands comprise approximately 33 percent of the proposed critical habitat; and State lands comprise 67 percent. No

Federal lands are proposed for inclusion.

TABLE 1.—APPROXIMATE AREAS IN HECTARES (HA) AND ACRES (AC) OF PROPOSED CRITICAL HABITAT FOR *Astragalus pycnostachyus* VAR. *lanosissimus* BY LAND OWNERSHIP

Unit name	Private	State	Federal	Total
Mandalay Unit	42 ha (104 ac)	20 ha (49 ac)	0 ha (0 ac)	62 ha (153 ac)
McGrath Unit	14 ha (35 ac)	11 ha (27 ac)	0 ha (0 ac)	25 ha (62 ac)
Carpenteria Salt Marsh Unit	0 ha (0 ac)	83 ha (205 ac)	0 ha (0 ac)	83 ha (205 ac)
Total	56 ha (139 ac)	114 ha (281 ac)	0 ha (0 ac)	170 ha (420 ac)

Note: Approximate acres have been converted to hectares (1 ha = 2.47 ac). Based on the level of precision of mapping of each unit, hectares and acres greater than 10 have been rounded to the nearest whole number. Totals are sums of units.

The proposed critical habitat areas constitute our best assessment at this time of the areas that are essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus*. The three critical habitat units include the only known location where the species currently occurs and two other sites with high potential to support the species. A brief description of each critical habitat unit is given below:

Mandalay Unit

The Mandalay Unit is located on both sides of Harbor Boulevard and north of Fifth Street in the city of Oxnard, Ventura County. On the east side of Harbor Boulevard, the unit extends north from Fifth Street to the Edison Canal, and east from Harbor Boulevard to the Edison Canal. The western portion on Mandalay State Beach includes the area north of Fifth Street, west of Harbor Boulevard, east of an access road that bisects the park, and south of a point halfway between where Harbor Boulevard crosses the Edison Canal and Fifth Street. This unit covers 62 ha (152 ac) and is important because it contains the only known location where *Astragalus pycnostachyus* var. *lanosissimus* naturally exists and one research population. Additional area is included beyond the footprint of the extant population to provide area for expansion of the population and to preserve habitat that may support important pollinators.

The eastern portion of this unit is part of a pending development called the North Shore at Mandalay. The project includes a 2-ha (5-ac) preserve for *Astragalus pycnostachyus* var. *lanosissimus*; however, we believe it is unlikely that the species will persist on the site in the long-term, despite proposed management measures in the Memorandum of Understanding between the developer and the California Department of Fish and Game (CDFG), and a settlement agreement between the developer and the California Native Plant Society. The population will be mostly isolated from surrounding vegetation, and the ecological processes sustaining the population may be interrupted. Also, the project may allow increased human intrusion, provide habitat for non-native plants and snails, alter the hydrologic regime, and introduce pesticides and fertilizers that adversely affect the plants.

The portion of this unit on Mandalay State Beach is identified by Wilken and Wardlaw (2001) as a potential site for establishing a new population of *Astragalus pycnostachyus* var. *lanosissimus*. In 2002, the first efforts at establishing a new population were begun. The proximity of Mandalay State Beach to the extant population indicates that some natural exchange of seeds or pollen could take place if a second population were established at Mandalay State Beach. The site contains most of the primary constituent elements defined for *A. pycnostachyus* var. *lanosissimus* critical habitat, although Wilken and Wardlaw (2001) note some dense cover of non-native annuals. Also, using their five parameters, Wilken and Wardlaw (2001) ranked the Mandalay State Beach portion of this unit as one of the most similar to the natural occurrences of *A. pycnostachyus* var. *lanosissimus* and the closely related *A. pycnostachyus* var. *pycnostachyus*, and hence one of the top candidates for establishing a new population.

We discussed designation of critical habitat in this area with the CDPR. Because the area is currently operated by that agency and is public land, there is opportunity to work with the state to develop strategies to introduce *Astragalus pycnostachyus* var. *lanosissimus* and to form manageable reserves.

As discussed above, currently unoccupied areas (or those with research populations) that support the primary constituent elements are essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus* because they provide additional areas separate from the existing population of *A. pycnostachyus* var. *lanosissimus*, into which it can be introduced. We believe it is extremely important to have additional area to reduce the likelihood that the species may become extinct as the result of a catastrophic event, such as a fire or disease, that can affect an isolated population.

McGrath Unit

The site within McGrath Beach State Park is adjacent to McGrath Lake on the leeward side of the southern end of the lake, between the lake and Harbor Boulevard. A second site to the north, just south of the existing camping facilities, was examined but considered unsuitable by Wilken and Wardlaw (2001) due to frequent use by the public and large stands of non-native vegetation. The unit covers 25 ha (62 ac), of which 14 ha (35 ac) is privately owned.

Of the sites they examined, Wilken and Wardlaw (2001) identify the McGrath Lake area as having the best combination of characteristics similar to that of the extant population of *Astragalus pycnostachyus* var. *lanosissimus* and its closest relative, *A. pycnostachyus* var. *pycnostachyus* based upon five parameters (*i.e.*, dominant vegetation composed of a shrub canopy less than 75 percent; absence of competitive annual or perennial exotic plants; water table in close proximity; soil types consistent with that at the site of the extant population; and native habitat supporting pollinators).

The CDPR agreed to allow the CDFG and the RSABG to establish a research population on this site. The effort is still in its early stages and no conclusive data has yet been retrieved. We also discussed the proposed designation with representatives of the CDPR. Because part of this unit is currently operated by the CDPR and is public land, there is opportunity to work with

the state to develop strategies to introduce *Astragalus pycnostachyus* var. *lanosissimus* and to form manageable reserves. This unit is also one of the last known places where the species was observed growing naturally, and it is close to the extant population and shares many of the broader climatic and habitat features of that site.

As discussed above, currently unoccupied units (or those with research populations underway) are essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus* because they provide additional areas separate from the existing population of *A. pycnostachyus* var. *lanosissimus* into which it can be established. We believe it is important to have additional units to reduce the likelihood that the species may become extinct as the result of a catastrophic event. Additional geographically separated units can provide protection from chance events such as disease that can destroy the only remaining population.

Carpinteria Salt Marsh Unit

The Carpenteria Salt Marsh Unit extends from the Southern Pacific Railroad tracks south and west to Sand Point Drive and Santa Monica Creek. It lies north and west of Sandyland Cove Road and north of Avenue del Mar. The area is identified on the U.S.G.S. 7.5-minute Carpinteria quadrangle as ''El Estero'' and covers 83 ha (206 ac), which is all State-owned.

Much of this area may be saltmarsh habitat that is unsuitable for *Astragalus pycnostachyus* var. *lanosissimus*; however, the habitats surrounding the area where a research population has been established may support the pollinators and other ecological processes that *A. pycnostachyus* var. *lanosissimus* requires. The preliminary introduction of the plant occurred in a portion of the unit near the intersection of Sandyland Cove Road and the railroad tracks. We do not have recent data on the introduced plants' status. Wilken and Wardlaw (2001) identify this area as one of those ranking highest for *A. pycnostachyus* var. *lanosissimus* using the five parameters of habitat suitability they devised. These parameters closely parallel the primary constituent elements, so we believe that most, if not all, of the elements are represented at this site. The diverse native vegetation present may support a good pollinator community; however, a residential community is nearby and non-native snails were observed in the area.

This site in Santa Barbara County is near the range of the species as predicted by the historical collections and described by Skinner and Pavlik (1994), who list the known counties as Ventura, Los Angeles, and Orange. The regulations state that we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best available scientific and commercial data demonstrate that the unoccupied areas are essential for the conservation needs of the species (50 CFR 424.12(e)). We have included it here because of the high potential for successful establishment of a new population per Wilken and Wardlaw's (2001) findings. Also, given the limited availability of suitable sites within the known range and uncertainty surrounding the success of any attempt to establish new populations of a rare plant where it does not already occur, we believe this site is essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus.*

As discussed above, additional, currently unoccupied, units (or those with research populations) are essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus* because they provide additional areas separate from the existing population for *A. pycnostachyus* var. *lanosissimus* into which it can be introduced. We believe it is extremely important to have additional units to reduce the likelihood that the species may become extinct as the result of a catastrophic event. Additional geographically separated units can provide protection from chance events such as disease that can destroy the only remaining population.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed actions. The conservation measures in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide ''reasonable and prudent alternatives'' to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species, or resulting in the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

Activities on Federal lands that may affect *Astragalus pycnostachyus* var. *lanosissimus* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration, Environmental Protection Agency, or Federal Emergency Management Authority funding), would also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not Federally funded, authorized, or permitted do not require section 7 consultation.

We recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) of the Act jeopardy standard and the prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action. Critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 ensures that actions funded, authorized, or carried out by Federal agencies are not likely to jeopardize the continued existence of a listed species, or destroy or adversely modify the listed species' critical habitat. Actions likely to jeopardize the continued existence of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to destroy or adversely modify critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on the recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in the only area occupied by *Astragalus pycnostachyus* var. *lanosissimus* is not likely to result in a regulatory requirement above that already in place due to the presence of the listed species. Designation of critical habitat in areas not occupied by *A. pycnostachyus* var. *lanosissimus* may result in an additional regulatory requirement when a Federal nexus exists.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Astragalus pycnostachyus* var. *lanosissimus* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat of *Astragalus pycnostachyus* var. *lanosissimus* include, but are not limited to the following:

(1) Alteration of existing hydrology by lowering the groundwater table through surface changes or pumping of groundwater, or redirection of freshwater sources through diverting surface waters (*e.g.*, channelization);

(2) Compaction of soil through the establishment of trails or roads;

(3) Placement of structures or hardscape (*e.g.*, pavement, concrete, non-native rock or gravel);

(4) Removal of native vegetation that reduces native plant cover to below 50 percent;

(5) Introduction of non-native vegetation or creation of conditions that encourage the growth of non-natives, such as irrigation, landscaping, soil disturbance, addition of nutrients, etc.;

(6) Use of pesticides or other chemicals that can directly affect *Astragalus pycnostachyus* var. *lanosissimus*, its associated native vegetation, or pollinators;

(7) Introduction of non-native snails or Argentine ants or creation of conditions favorable to these species, through landscaping with non-native groundcover plants such as iceplant, irrigation, or other activities that encourage populations of these non-native species that have been detrimental to the existing population;

(8) Activities that isolate the plants or their populations from neighboring vegetation or open space and thus interfere with ecological processes that rely upon connectivity with adjacent habitat, such as maintaining pollinator populations and seed dispersal; and

(9) Soil disturbance that damages or interferes with the seedbank of the species, such as discing, tilling, grading, removal, or stockpiling.

Designation of critical habitat could affect the following agencies and/or actions: development on private lands requiring permits from Federal agencies, such as authorization from the Corps, pursuant to section 404 of the Clean Water Act, or a section 10(a)(1)(B) permit from the Service, or some other Federal action that includes Federal funding that will subject the action to the section 7 consultation process (*e.g.*, from the Federal Highway Administration, Federal Emergency Management Agency, or the Department of Housing and Urban Development);

military activities of the U.S. Department of Defense (Navy) on their lands or lands under their jurisdiction; the release or authorization of release of biological control agents by the U.S. Department of Agriculture; regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act; construction of communication sites licensed by the Federal Communications Commission; and authorization of Federal grants or loans. Where Federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans (HCPs) submitted by the applicant to secure an incidental take permit pursuant to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process, a process that would consider all federally-listed species affected by the HCP, including plants.

Several other species that are listed under the Act have been documented to occur in the same general areas as the current distribution of *Astragalus pycnostachyus* var. *lanosissimus.* These include brown pelican (*Pelecanus occidentalis*), western snowy plover (*Charadrius alexandrinus nivosus*), California least tern (*Sterna antillarum browni*), light-footed clapper rail (*Rallus longirostris levipes*), and *Cordylanthus maritimus* ssp. *maritimus* (salt marsh bird's beak).

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6131, FAX 503/231–6243).

Relationship to Habitat Conservation Plans

Currently, no HCPs exist that include *Astragalus pycnostachyus* var. *lanosissimus* as a covered species. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although take of listed plants is not prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species.

In the event that future HCPs are developed within the boundaries of proposed or designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *Astragalus pycnostachyus* var. *lanosissimus.* The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a system of interlinked habitat blocks configured to promote the conservation of the species through application of the principles of conservation biology.

We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *Astragalus pycnostachyus* var. *lanosissimus* and appropriate management for those lands. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Economic Analysis and Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat designation if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

We will conduct an analysis of the economic impacts of designating these proposed areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a comment period on the draft economic analysis and the proposed rule at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments are sought particularly concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Astragalus pycnostachyus* var. *lanosissimus* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* such as those derived from non-consumptive uses (*e.g.*, hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs);

(6) The methodology we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat; and

(7) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods: (1) You may mail comments to the Field Supervisor at the address provided in the **ADDRESSES** section above; (2) You may also comment via the Internet to *fw1venturamilkvetch@r1.fws.gov.* Please submit internet comments as an ASCII file avoiding the use of special characters and any form of encryption.

Please also include ''Attn: RIN–1018–AI21'' and your name and return address in your internet message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805–644–1766. Please note that the Internet address *fw1venturamilkvetch@r1.fws.gov* will be closed out at the termination of the public comment period; (3) You may hand-deliver comments to our Ventura Fish and Wildlife Office (*see* **ADDRESSES** section above).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (*see* **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices 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 jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). The Service is preparing a draft economic analysis of this proposed action. The Service will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of *Astragalus pycnostachyus* var. *lanosissimus.* This analysis will be available for public comment before finalizing this designation. The availability of the draft economic analysis will be announced in the **Federal Register**.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

This discussion is based upon the information regarding potential economic impact that is available to the Service at this time. This assessment of economic effect may be modified prior to final rulemaking based upon development and review of the economic analysis being prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect the position of the Service on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service,* 248 F.3d 1277 (10th Cir. 2001).

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 a rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the Regulatory Flexibility Act to require a certification statement. In today's rule, we are certifying that this rule will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (*http://www.sba.gov/size/*), 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 regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

In determining whether this rule could ''significantly affect a substantial number of small entities,'' we consider the number of small entities affected within particular types of economic activities and whether critical habitat could potentially affect a ''substantial number'' of small entities in counties supporting critical habitat areas. While SBREFA does not explicitly define ''substantial number,'' the Small Business Administration, as well as other Federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack a Federal nexus. In areas where the species is present, Federal agencies funding, permitting, or implementing activities are already required to avoid jeopardizing the continued existence of *Astragalus pycnostachyus* var. *lanosissimus* through consultation with us under section 7 of the Act. If this critical habitat designation is finalized, Federal agencies must also ensure that their activities do not destroy or adversely modify designated critical habitat through consultation with us. However, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants where the species is present because conservation already would be required due to the presence of a listed species.

In unoccupied areas, or areas of uncertain occupancy, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. Because *Astragalus pycnostachyus* var. *lanosissimus* has only been listed since June 2001, there have been no formal consultations involving the species. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the areas proposed for critical habitat which are considered unoccupied will be due to the critical habitat designation. Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

The majority of the areas proposed for critical habitat are state-managed public lands, for which projected land uses are resource protection, recreation, research, and education. Additionally, the private lands under consideration include the proposed North Shore development in the Mandalay unit. On non-federal lands, activities that lack federal involvement would not be affected by the critical habitat designation. Activities of an economic nature that are likely to occur on non-federal lands in the area encompassed by this proposed designation are primarily commercial or residential development. None of the developments recently approved by the local jurisdictions have any Federal involvement, and we are not aware of a significant number of future activities on any of the proposed units that would require Federal permitting or authorization; therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have no consultation history for *Astragalus pycnostachyus* var. *lanosissimus*, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on

our understanding of the needs of the species and the threats it faces, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with similar listed plants in California. In addition, the State of California listed *A. pycnostachyus* var. *lanosissimus* as an endangered species under the California Endangered Species Act of 1978, and we have also considered the kinds of actions required through State consultations for this species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed. In the absence of this economic analysis, we have reviewed our previously published analyses of the likely economic impacts of designating critical habitat for other California plant species, such as *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower). Like *Astragalus pycnostachyus* var. *lanosissimus, C. robusta* var. *hartwegii* is a native species restricted to certain specific habitat types along the coast of California and may require similar protective and conservation measures. *C. robusta* var. *hartwegii* also occurs close to the coast, in an area experiencing residential and commercial development pressure. Our high-end estimate of the economic effects of designating one critical habitat unit of *C. robusta* var. *hartwegii* ranged from $82,500 to $287,500 over ten years.

We believe that the economic effects of the proposed rule for *Astragalus pycnostachyus* var. *lanosissimus* will be less than those identified for other California plant critical habitat designations, such as *Chorizanthe robusta* var. *hartwegii*, because there is limited private land involved and the plant occurs naturally in only one of the proposed units. The designation of critical habitat in areas not occupied by *A. pycnostachyus* var. *lanosissimus* could result in extra costs involved with consultations that may not have occurred were it not for the designations; however, one unit is entirely State-owned and the burden of consultation should not cause economic hardship on private entities.

Efforts to establish *Astragalus pycnostachyus* var. *lanosissimus* on unoccupied sites would be mostly funded by Federal, State, and non-governmental organizations, and would likely not require private funding. Consequently, we believe that the economic effects of the proposed rule for *A. pycnostachyus* var. *lanosissimus* are likely to be minimal, similar to those identified for *Chorizanthe robusta* var. *hartwegii*.

In summary, we have concluded that this proposed rule would not result in a significant economic effect on a substantial number of small entities. The proposed designation includes one privately-owned parcel for which a project has been proposed and for which there is no Federal involvement or section 7 consultation required. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected to affect any small entities. Even if a small entity is affected, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. The kinds of measures we anticipate we would recommend can usually be implemented at low cost. Therefore, we are certifying that the proposed designation of critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

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.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

The Service will use the economic analysis to evaluate consistency with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing to designate approximately 170 ha (420 ac) of lands in Santa Barbara and Ventura counties, California as critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* in a takings implications assessment. This preliminary assessment concludes that this proposed rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Astragalus pycnostachyus* var. *lanosissimus* imposes no additional restrictions beyond those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in unoccupied areas may require consultation under section 7 of the Act on non-Federal lands (where a Federal nexus occurs) that might otherwise not have occurred.

The designation may have some benefit to the CDPR in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of this species are specifically identified. While this definition and identification does not alter where and what Federally sponsored activities may occur, it may assist local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered

Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Astragalus pycnostachyus* var. *lanosissimus*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

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), Executive Order 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 proposed designation of critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary author of this proposed rule is Rick Farris, Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h) revise the entry for *Astragalus pycnostachyus* var. *lanosissimus* under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Astragalus pycnostachyus var. *lanosissimus*.	Ventura marsh milk-vetch.	U.S.A. (CA)	Fabaceae—Pea	E	708	17.96(b)	NA

3. In § 17.96, amend paragraph (a) by adding an entry for *Astragalus pycnostachyus* var. *lanosissimus* in alphabetical order under Family Fabaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Fabaceae: *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch).

(1) Critical habitat units are depicted for Santa Barbara and Ventura counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* are the habitat components that provide:

(i) Vegetation cover of at least 50 percent but not exceeding 75 percent, consisting primarily of known associated native species, including but not limited to, *Baccharis salicifolia, Baccharis pilularis, Salix lasiolepis, Lotus scoparius,* and *Ericameria ericoides*;

(ii) Low densities of non-native annual plants and shrubs, not exceeding 25 percent cover (combined with the minimum 50 percent native cover requirement, total cover of natives and non-natives should not exceed 75 percent);

(iii) The presence of a high water table, either fresh or brackish, as evidenced by the presence of channels, sloughs, or depressions that may support stands of *Salix lasiolepis, Typha* spp., and *Scirpus* spp.;

(iv) Soils that are fine-grained, composed primarily of sand with some clay and silt, yet are well-drained; and

(v) Soils that do not exhibit a white crystalline crust that would indicate saline or alkaline conditions.

(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Units.

(i) Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and proposed critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) *McGrath and Mandalay Units.* Ventura County, California.

(i) Mandalay Unit A. From USGS 1:24,000 quadrangle map Oxnard, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 293381, 3786370; 293036, 3787170; 292994, 3787290; 292974, 3787330; 292995, 3787330; 293017, 3787330; 293122, 3787270; 293269, 3787190; 293331, 3787150; 293362, 3787140; 293399, 3787130; 293570, 3787080; 293640,

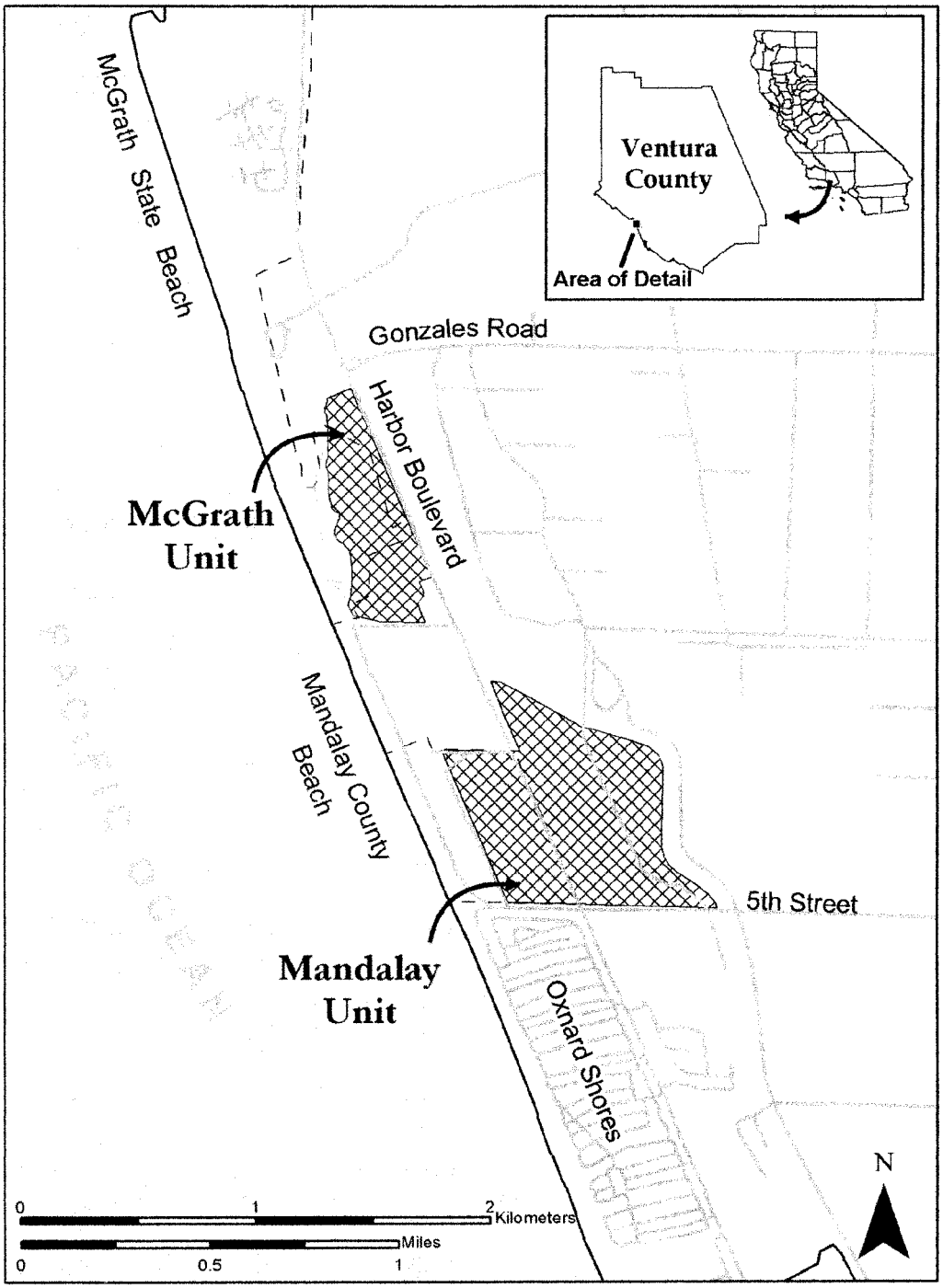
3787050; 293665, 3787040; 293686, 3787020; 293699, 3786990; 293707, 3786960; 293701, 3786620; 293713, 3786580; 293732, 3786540; 293760, 3786520; 293851, 3786460; 293903, 3786420; 293928, 3786380; 293936, 3786360; 293381, 3786370.

(ii) *Mandalay Unit B.* From USGS 1:24,000 quadrangle map Oxnard, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 293352, 3786380; 293044, 3786380; 292798, 3786960; 292761, 3787040; 293070, 3787030; 293352, 3786380.

(iii) *McGrath Unit.* From USGS 1:24,000 quadrangle map Oxnard, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 292406, 3788600; 292474, 3788440; 292752, 3787790; 292716, 3787780; 292704, 3787770; 292702, 3787770; 292717, 3787730; 292718, 3787720; 292715, 3787710; 292692, 3787680; 292725, 3787600; 292530, 3787600; 292415, 3787630; 292394, 3787670; 292400, 3787690; 292403, 3787710; 292407, 3787720; 292412, 3787770; 292412, 3787800; 292412, 3787820; 292409, 3787840; 292401, 3787900; 292375, 3787940; 292348, 3787960; 292338, 3787980; 292338, 3788000; 292343, 3788010; 292353, 3788030; 292358, 3788040; 292360, 3788050; 292360, 3788060; 292354, 3788070; 292338, 3788070; 292326, 3788090; 292322, 3788120; 292313, 3788150; 292310, 3788170; 292312, 3788230; 292309, 3788250; 292301, 3788260; 292302, 3788280; 292304, 3788290; 292308, 3788300; 292311, 3788320; 292307, 3788330; 292308, 3788350; 292310, 3788380; 292310, 3788390; 292310, 3788400; 292311, 3788420; 292306, 3788450; 292305, 3788480; 292301, 3788490; 292295, 3788500; 292297, 3788520; 292304, 3788550; 292306, 3788560; 292406, 3788600.

(iv) Map of McGrath and Mandalay Units Follows:

BILLING CODE 4310–55–P



Proposed Critical Habitat for the Ventura Marsh Milk-Vetch: McGrath and Mandalay Units

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(6) *Carpinteria Salt Marsh.* Santa Barbara and Ventura counties, California.

(i) *Carpinteria Salt Marsh Unit A.* Santa Barbara County, California. From USGS 1:24,000 quadrangle map Carpinteria, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 266039, 3810060; 266166, 3810060; 266335, 3810050; 266449, 3810040; 266521, 3810040; 266572, 3810030; 266621, 3810010; 266711, 3809980; 266784, 3809950; 266912, 3809880; 267485, 3809530; 267463, 3809500; 267453, 3809470; 267428, 3809440; 267403, 3809390; 267381, 3809360; 267343, 3809300; 267290, 3809250; 267255, 3809190; 267243, 3809170; 267214, 3809160; 267185, 3809170; 267148, 3809200; 267094, 3809240; 267058, 3809260; 267023, 3809260; 266973, 3809260; 266932, 3809250; 266889, 3809250; 266813, 3809250; 266793, 3809260; 266772, 3809270; 266720, 3809290; 266690, 3809300; 266655, 3809310; 266644, 3809330; 266645, 3809350; 266602, 3809360; 266580, 3809380; 266544, 3809420; 266498, 3809480; 266456, 3809530; 266408, 3809590; 266356, 3809650; 266320, 3809690; 266264, 3809750; 266206, 3809810; 266162, 3809860; 266122, 3809900; 266081, 3809940; 266053, 3809960; 266042, 3809980; 266033, 3809990; 266032, 3810010; 266037, 3810060; 266039, 3810060.

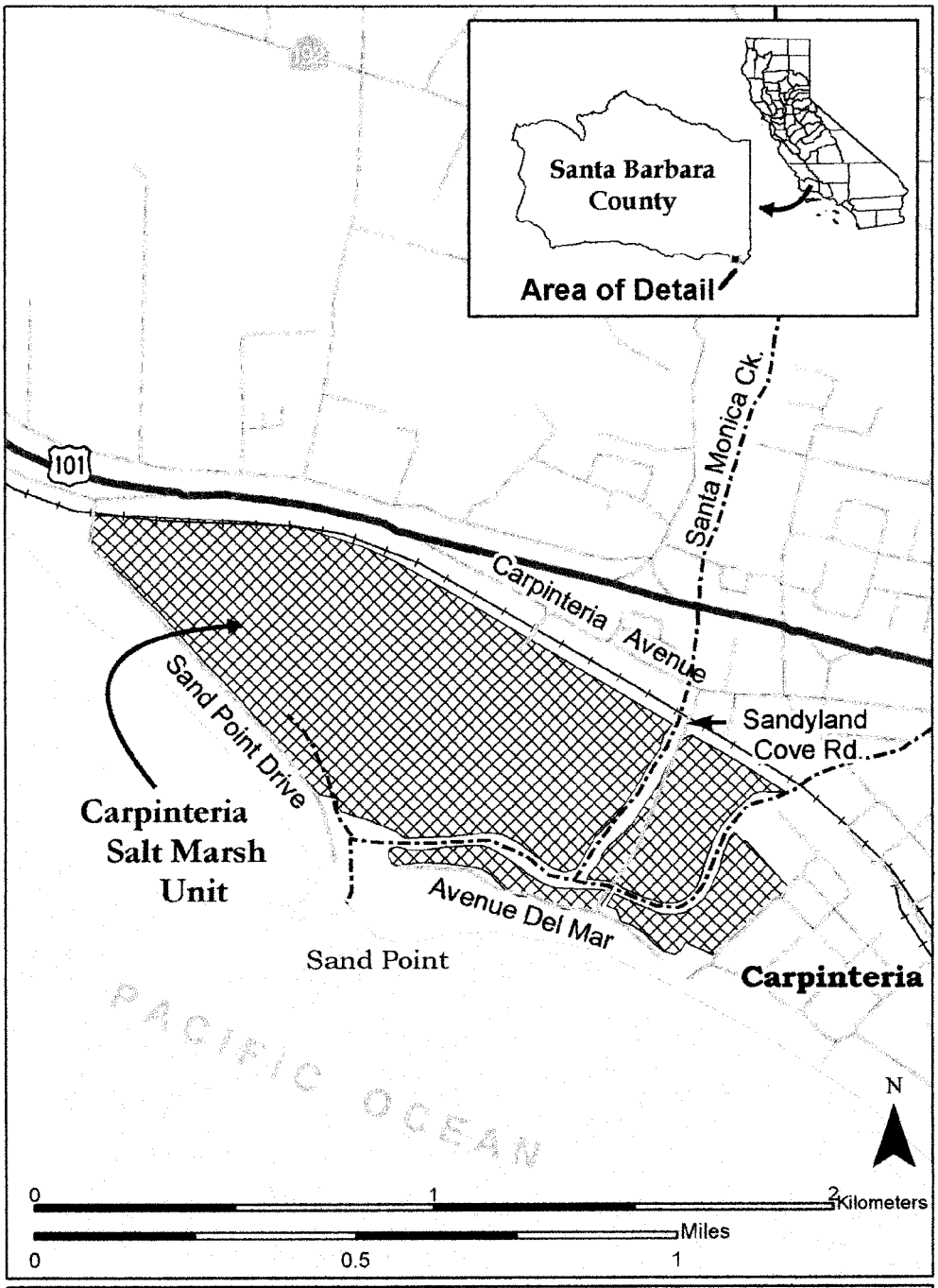
(ii) *Carpinteria Salt Marsh Unit B.* Santa Barbara County, California. From USGS 1:24,000 quadrangle map Carpinteria, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 267531, 3809510; 267588, 3809470; 267654, 3809440; 267708, 3809400; 267767, 3809360; 267755, 3809360; 267733, 3809360; 267710, 3809360; 267684, 3809360; 267662, 3809340; 267638, 3809310; 267621, 3809290; 267602, 3809270; 267587, 3809240; 267577, 3809220; 267563, 3809180; 267555, 3809150; 267544, 3809120; 267526, 3809100; 267504, 3809090; 267480, 3809080; 267458, 3809080; 267434, 3809090; 267413, 3809100; 267387, 3809110; 267357, 3809120; 267342, 3809130; 267318, 3809140; 267270, 3809140; 267275, 3809160; 267291, 3809170; 267303, 3809190; 267309, 3809210; 267319, 3809220; 267342, 3809240; 267365, 3809260; 267384, 3809280; 267411, 3809330; 267435, 3809360; 267454, 3809390; 267469, 3809420; 267490, 3809470; 267508, 3809490; 267531, 3809510.

(iii) *Carpinteria Salt Marsh Unit C.* Santa Barbara County, California. From USGS 1:24,000 quadrangle map Carpinteria, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 267638, 3809260; 267658, 3809240; 267668, 3809240; 267775, 3809120; 267611, 3808980; 267584, 3808950; 267538, 3808970; 267516, 3808980; 267504, 3808960; 267488, 3808950; 267462, 3808960; 267437, 3808980; 267408, 3809010; 267386, 3809020; 267354, 3809040; 267344, 3809070; 267320, 3809080; 267337, 3809110; 267410, 3809070; 267443, 3809060; 267461, 3809050; 267487, 3809050; 267513, 3809060; 267532, 3809070; 267548, 3809080; 267564, 3809100; 267576, 3809120; 267600, 3809170; 267613, 3809210; 267627, 3809250; 267638, 3809260.

(iv) *Carpinteria Salt Marsh Unit D.* Ventura County, California. From USGS 1:24,000 quadrangle map Carpinteria, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 266801, 3809220; 266818, 3809220; 266839, 3809220; 266859, 3809220; 266883, 3809220; 266912, 3809220; 266939, 3809230; 266960, 3809230; 266988, 3809230; 267008, 3809230; 267025, 3809220; 267044, 3809210; 267062, 3809200; 267085, 3809180; 267105, 3809170; 267127, 3809150; 267149, 3809140; 267171, 3809130; 267190, 3809120; 267211, 3809120; 267239, 3809120; 267262, 3809120; 267290, 3809120; 267312, 3809120; 267331, 3809110; 267323, 3809100; 267314, 3809090; 267305, 3809080; 267294, 3809060; 267290, 3809060; 267279, 3809060; 267271, 3809060; 267258, 3809070; 267240, 3809070; 267223, 3809070; 267208, 3809070; 267190, 3809080; 267169, 3809090; 267147, 3809100; 267125, 3809100; 267099, 3809100; 267079, 3809110; 267061, 3809120; 267047, 3809140; 267029, 3809150; 267022, 3809160; 267012, 3809170; 266993, 3809170; 266970, 3809180; 266940, 3809180; 266912, 3809180; 266883, 3809190; 266862, 3809190; 266843, 3809180; 266823, 3809180; 266810, 3809180; 266795, 3809180; 266787, 3809180; 266781, 3809190; 266775, 3809200; 266773, 3809210; 266776, 3809220; 266783, 3809220; 266791, 3809230; 266801, 3809220.

(v) Map of Carpinteria Salt Marsh Unit Follows:

BILLING CODE 4310–55–P



Proposed Critical Habitat for the Ventura Marsh Milk-Vetch: Carpinteria Salt Marsh Unit

* * * * *

Dated: September 30, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–25372 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register

Vol. 67, No. 196

Wednesday, October 9, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 3, 2002.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Information Collection for Document Delivery Services.

OMB Control Number: 0518–0027.

Summary of Collection: The National Agricultural Library (NAL) accepts requests from libraries and other organizations in accordance with the national and international interlibrary loan code and guidelines. In its national role, NAL collects and supplies copies or loans of agricultural materials not found elsewhere. 7 USC 3125a and 7 CFR 505 gives NAL the authority to collect this information. NAL provides photocopies and loans of materials directly to USDA staff, other Federal agencies, libraries and other institutions, and indirectly to the public through their libraries. The Library charges for some of these activities through a fee schedule. In order to fill a request for reproduction or loan of items the library must have the name, mailing address, phone number, and patron ID number of the respondent initiating and request, and depending on the method of delivery, may require a fax number, e-mail address, or Ariel IP address. The collected information is used to deliver the material to the respondent, bill for and track payment of applicable fees, monitor the return to NAL of loaned material, identify and locate the requested material in NAL collections, and determine whether the respondent consents to the fees charged by NAL.

Need and Use of the Information: The information collected is used by NAL document delivery staff to identify the protocol for processing the request. The information collected determines whether the respondent is charged or exempt from any charges and what process the recipient uses to make payment if the request is chargeable. The information provided is also used by staff to process/package the reproduction or loan for delivery. Without the requested information NAL has no way to locate and deliver the loan or reproduction to the respondent, and thus cannot meet its mandate to supply agricultural material.

Description of Respondents: Federal Government; Not-for-profit institutions; State, Local or Tribal Government; Business or other for-profit.

Number of Respondents: 2500.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 725.

National Agricultural Statistics Service

Title: Egg, Chicken, and Turkey Surveys.

OMB Control Number: 0535–0004.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production. Thousands of farmers, ranchers, agribusinesses and others voluntarily respond to nationwide surveys about crops, livestock, prices, and other agricultural activities. Estimates of egg, chicken, and turkey production are an integral part of this program. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. This statute specifies ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which she can obtain * * * by the collection of statistics * * * and shall distribute them among agriculturists''. Information published from the surveys in this docket is needed by USDA economists and government policy makers to ensure the orderly marketing of broilers, turkeys and eggs.

Need and Use of the Information: Statistics on these poultry products contribute to a comprehensive program of keeping the government and poultry industry abreast of anticipated changes. All of the poultry reports are used by producers, processors, feed dealers, and others in the marketing and supply channels as a basis for their production and marketing decisions.

Description of Respondents: Farms, Business or other for profit.

Number of Respondents: 3,149.

Frequency of Responses: Reporting: Weekly; Monthly; Annually.

Total Burden Hours: 3,133.

National Agricultural Statistics Service

Title: Agricultural Labor Survey.

OMB Control Number: 0535–0109.

Summary of Collection: The 1938 Agricultural Adjustment Act, as amended in 1948, requires wage rate data for computation of an index component. This component is used in calculation of parity prices. National Agricultural Statistics Service (NASS) primary function is to prepare and issue State and national estimates of crop and livestock production, disposition, and prices. The Agricultural Labor Survey

provides employment data for equitable allocation and distribution of these funds to where seasonal workers need housing and education. The survey is the only timely and reliable source of information on the size of the farm worker population. NASS will collect information using a survey.

Need and Use of the Information: NASS will collect information on wage rate estimates and the year-to-year changes in these rates and how changes in wage rates help measure the changes in costs of production of major farm commodities. Farm worker organizations, private and government agencies will use agricultural labor data for the planning and placement of farm workers, in determining immigration policies and to measure the availability of farm workers across the Nation.

Description of Respondents: Farm.

Number of Respondents: 12,425.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 10,608.

Farm Service Agency

Title: USDA Registration Form to Request Electronic Access Code.

OMB Control Number: 0560–0219.

Summary of Collection: The USDA County Base Agency's (CBA) have developed a management and technical process that addresses user authentication and authorization prerequisites for providing services electronically. The process provides an electronic alternative to traditional ink signatures. The process is based on a one-time registration requirement for each CBA customer desiring access to any on-line services that require user authentication. The information collected on form AD–2016, USDA Registration Form to Request Electronic Access Code, is necessary to enable the authentication of users and grant them access to only those resources for which they are authorized.

Need and Use of the Information: The voluntary registration process applies to CBA customers and partners (non-CBA employees) who request Farm Service Agency, Rural Development, and Natural Resources Conservation Service provided services. Registration can be requested by the customer in person, by mail, or by fax. The information collected on form AD–2016 will be used to verify and validate the identity of registrants and to enable the electronic authentication of users. The user will then have access to these authorized resources without needing to re-authenticate within the context of a single Internet session.

Description of Respondents: Farms; Individuals or Households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,100,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,331,000.

Rural Housing Service

Title: 7 CFR 3575–A, ''Community Program Guaranteed Loans''.

OMB Control Number: 0575–0137.

Summary of Collection: The Rural Housing Service (RHS) is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes for the development of essential community facilities primarily serving rural residents. The Community Facilities Division of the RHS is considered community Programs under the 7 CFR, part 3575, subpart A. Implementation of the Community Programs guaranteed loans program was effected to comply with the Appropriations Act of 1990 when Congress allocated funds for this authority. The guaranteed loan program encourages lender participation and provides specific guidance in the processing and servicing of guaranteed Community Facilities loans. RHS will collect information using several forms.

Need and Use of the Information: RHS will collect information to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 125.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 76,977.

Animal & Plant Health Inspection Service

Title: Importation of Poultry Meat and Other Poultry Products from Sinaloa and Sonora Mexico

OMB Control Number: 0579–0144.

Summary of Collection: Title 21 U.S.C. authorizes sections 111, 114, 114a, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as brucellosis, as well as to take actions to prevent and to manage exotic diseases such as exotic Newcastle disease and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal & Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products. Veterinary Services, a division within USDA's Animal and Plant Health Inspection Service (APHIS), is responsible for administering regulations intended to prevent the introduction of animal diseases, such as exotic Newcastle disease into the United States. APHIS currently has regulations in place that restrict the importation of poultry meat and other poultry products from Mexico due to the presence of exotic Newcastle disease in the country. However, APHIS does allow the importation of poultry meat and poultry products from the Mexican States of Sinaola and Sonora because they have determined that poultry meat and products from these two Mexican States pose a negligible risk of introducing exotic Newcastle disease into the United States. To ensure that these items are safe for importation, APHIS requires that certain data appear on the foreign meat inspection certificate that accompanies that poultry meat and other poultry products from Sinaloa and Sonora to the United Stats. APHIS also requires that serial numbered seals be applied to containers carrying the poultry meat and other poultry products.

Need and Use of the Information: APHIS will collect information to certify that the poultry meat or other poultry products were (1) derived from poultry born and raised in commercial breeding establishments in Sinaloa and Sonora; (2) derived from poultry that were slaughtered in Sinaloa or Sonora in a Federally-inspected slaughter plant approved to export these commodities to the United States in accordance with Food Safety & Inspection regulations; (3) processed at a Federally inspected processing plant in Sinaloa or Sonora; and (4) kept out of contact with poultry from any other State within Mexico. APHIS will also collect information to ensure that the poultry meat or poultry products from Sinaloa and Sonora pose the most negligible risk possible for introducing exotic Newcastle disease into the United States.

Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 10.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 40.

Agricultural Marketing Service

Title: Livestock & Meat Market News.

OMB Control Number: 0581–0154.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621), Section 203(g), directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization. Livestock and Meat Market News provides a timely exchange of accurate and unbiased information on current marketing conditions (supply, demand, prices, trends, movement, and other information) affecting trade in livestock, meats, grain, and wool. Administered by the U.S. Department of Agriculture's Agricultural Marketing Service (AMS), this nationwide market news program is conducted in cooperation with approximately 30 States departments of agriculture. AMS will collect information using market reports.

Need and Use of the Information: AMS will collect information on price, supply, and movement of livestock, meat carcasses, meat and pork cuts, and meat hyproducts. Several agencies, agricultural universities and colleges use the information collected to keep apprised of the current market conditions, movement of livestock and meat in the United States and to determine available supplies and current pricing.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government; Farm; Individuals or households.

Number of Respondents: 450.

Frequency of Responses: Reporting: Weekly; Other (Daily).

Total Burden Hours: 7,202.

Food and Nutrition Service

Title: Food Stamp Mail Issuance Report.

OMB Control Number: 0584–0015.

Summary of Collection: Section 7(d) of the Food Stamp Act of 1977 requires the Secretary of Agriculture to develop appropriate procedures for determining and monitoring the amount of food coupon inventories maintained by State agencies for the Food Stamp Program. Section 7(f) makes State agencies strictly liable for financial losses involved in coupon issuance with the exception of coupons sent through the mail to the extent prescribed in the regulations. The Food and Nutrition Service (FNS), on behalf of the Secretary, requires each coupon issuer to submit quarterly a written report of the issuer's operations during the periods. The FNS will collect information using FNS Form 259, Food Stamp Mail Issuance Report.

Need and Use of the Information: FNS will collect information to establish the issuance and accountability systems which ensures that only certified eligible households receive benefits; that program benefits are timely distributed in the correct amount; and that coupon issuance and reconciliation activities are properly conducted and accurately reported to FNS. The State agency is responsible, regardless of any agreements to the contrary, for ensuring that assigned duties are carried out in accordance with FSP regulations.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 200.

Frequency of Responses: Recordkeeping; Reporting: Quarterly.

Total Burden Hours: 67.

Agricultural Research Service

Title: Food Stamp Nutrition Connection Resource Sharing Form.

OMB Control Number: 0518–NEW.

Summary of Collection: In 2001, the United States Department of Agriculture's Food and Nutrition Service (FNS) established the Food Stamp Nutrition Connection to improve access to Food Stamp Program nutrition resources. The National Agricultural Library's Food and Nutrition Information Center (FNIC) currently develops and maintains this resource system. A proposed voluntary ''Sharing Form'' would give Food Stamp nutrition education providers the opportunity to share their resources and learn about existing materials. Data collected using this form will help FNIC identify nutrition education and training resources for review and inclusion in an online database. FNS encourages, but does not require or mandate, state Food Stamp nutrition education programs to submit materials to FNIC for inclusion in the Food Stamp Nutrition Connection database.

Need and Use of the Information: FNIC will use the collected information to help build an online database of nutrition education and training materials. Food Stamp nutrition education providers could use this information to identify and obtain curricula, lesson plan, research, training tools and participant materials. The information will be collected using online and printed versions of the form. Failure to collect this information would significantly inhibit FNIC's ability to provide up-to-date information on existing nutrition education materials that are appropriate for Food Stamp nutrition education programs.

Description of Respondents: Not-for-profit institutions; Federal Government; State, Local or Tribal Government; Business or other for-profit.

Number of Respondents: 50.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16.

Rural Business-Cooperative Service

Title: Survey of Cooperatives on Selecting Director Candidates for Director Elections.

OMB Control Number: 0570–NEW.

Summary of Collection: The Rural Business-Cooperative Service (RBS) mission is to assist farmer-owned cooperatives in improving the economic well being of their farmer-members. The Cooperative Marketing Act of 1926 established the Cooperative Services Program (CS). Cooperatives are a distinctive form of business in operating with democratic control and ownership by members. The agricultural businesses operated by cooperatives are becoming increasingly complicated and their industries are competitive. The existing conditions for Cooperatives practices and operations are not longer exceptive and they need to adopt formal methods for screening and evaluation.

Need and Use of the Information: RBS developed a survey to collect information on different methods and procedures used in selecting candidates for election to board of directors, for recruitment, and for monetary compensation for directors.

Description of Respondents: Business or other for-profit.

Number of Respondents: 490.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 113.

Animal & Plant Health Inspection Service

Title: Foreign Quarantine Notices.

OMB Control Number: 0579–0049.

Summary of Collection: The United States Department of Agriculture is responsible for preventing plant disease or insect pests from entering the United States, preventing the spread of pests and noxious weeds not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. The Plant Protection Act authorizes the Department to carry out this mission. Under the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of

plant pests and other articles to prevent the introduction of plant pests into the United States. Implementing the laws is necessary to prevent injurious plant and insect pest from entering the United States, a situation that could produce serious consequences for U.S. agriculture. The Animal and Plant Health Inspection Service (APHIS) is required to collect information from a variety of individuals, both within and outside the United States, who are involved in growing, packing, handling, transporting, and importing foreign plants, roots, bulbs, seeds, importing foreign logs, lumber, other unmanufactured wood articles, and other plant products. APHIS will collect this information using a number of forms.

Need and Use of the Information: APHIS will collect information to ensure that plants, fruits, vegetables, roots, bulbs, seeds, foreign logs, lumber, other unmanufactured wood articles, and other plant products imported into the United States do not harbor plant diseases or insect pests that could cause serious harm to U.S. agriculture.

Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Number of Respondents: 92,457.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 91,138.

Animal & Plant Health Inspection Service

Title: TB Payments to El Paso Texas.

OMB Control Number: 0579–0193.

Summary of Collection: Title 21 U.S.C. authorizes sections 111, 114, 114a, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as foot-and-mouth disease, rinderpest, and other foreign animal diseases. More specifically, 21 U.S.C. 111, 115, and 118 authorize the Secretary of Agriculture to take such measures as she may deem proper to prevent the introduction or dissemination of any contagious or communicable disease of animals or live poultry from a foreign country into the United States or from one State to another. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection (APHIS) ability to compete in exporting animals and animal products. Since 1985, State Animal Health Officials in Texas, along with APHIS, have been taking measure to eliminate tuberculosis in dairy herds in the El Paso, Texas area. As a result of these eradication efforts, dairy herds in the El Paso area have become free of tuberculosis, only to become reinfected again. Because of this situation, APHIS determined that in order to further the eradication of tuberculosis in the United States, it is necessary to remove all bovine dairy herds from El Paso area. APHIS published an interim rule that would allow them to make payments to El Paso dairy herd owners if these owners agree to dispose of their dairy herds, closing their existing dairy operations. and refrain from establishing new cattle breeding operations in the area. A number of information collection activities will be used to collect information for dairy owners.

Need and Use of the Information: APHIS will collect information to provide payment to owners of dairy cattle and other property used in connection with dairy operations in the area of El Paso, Texas. To be eligible for payment under this program, all owners of dairy operations in the area of El Paso, Texas must sign and adhere to an agreement with APHIS.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government; Farms.

Number of Respondents: 95.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 875.

Sondra A. Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 02–25677 Filed 10–8–02; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–02'06]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: The meeting dates are: October 19, 2002, 8 a.m. to 6:30 p.m.; and October 20, 2002, 8 a.m. to 6 p.m. Requests from individuals and organizations wishing to make an oral presentation at the meeting are due by the close of business on October 9, 2002.

ADDRESSES: The meeting will take place at the Radisson Barceló Hotel, Board Room, 2121 P Street, NW., Washington, DC. Requests to make an oral presentation at the meeting may be sent to Ms. Katherine Benham at USDA–AMS–TMD–NOP, 1400 Independence Avenue, SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250–0200. Requests to make an oral presentation at the meeting may also be sent electronically to Ms. Katherine Benham at *katherine.benham@usda.gov*, via telephone at (202) 205–7806, or via facsimile at (202) 205–7808.

The October NOSB meeting agenda is available at *http://www.ams.usda.gov/nop* or from Ms. Katherine Benham at (202) 205–7806, preceding addresses or via telephone (202) 205–7806.

FOR FURTHER INFORMATION CONTACT: Richard Mathews, Program Manager, National Organic Program, (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production and to advise the Secretary on other aspects of the implementation of the OFPA. The NOSB met for the first time in Washington, DC, in March 1992, and currently has six committees working on various aspects of the organic program. The committees are: Accreditation, Crops, Livestock, Materials, International, and Processing.

In August of 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture. Since that time, the NOSB has submitted 42 addenda to its recommendations and reviewed more than 241 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held on September 17–19, 2002, in Washington, DC.

The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000 (65 FR 80548). The rule became effective April 21, 2001.

The principal purposes of the meeting are to provide an opportunity for the

NOSB to: Receive an update from the USDA/NOP, receive various committee reports, receive reports from the Materials Task Force and Composting Task Force, and review materials to determine if they should be included on the National List of Allowed and Prohibited Substances.

The Materials Committee will report on current petitions' statuses, and report on EPA List 3 and 4 Inerts. The Materials Committee will also present for NOSB consideration 10 materials for possible inclusion on the National List of Allowed and Prohibited Substances. The Livestock Committee will present for NOSB consideration its recommendations on ''dairy herd replacements'', and the scope of review for excipients and other materials. The Processing Committee will discuss the ion exchange production process, present a recommendation for the scope of materials review, and present a recommendation for when handling becomes processing for producers and retailers. The Crops Committee will present its recommendations for hydroponic production, planting stock, and application of the 20% sodium nitrate annotation. The Accreditation Committee will report on the review of NOP accreditation procedures and present its recommendation for grower group certification criteria. Finally, the International Committee will discuss and present its recommendation on US/EU equivalency.

Materials to be reviewed at the meeting by the NOSB are as follows:

Crop Production: Potassium Silicate, Potassium Sulfate, 1,4 Dimethylnaphthalene, and Butylated Hydroxytoluene (BHT); and for *Livestock Production*: Mineral Oil, Calcium Propionate, Furosemide, Atropine, Flunixin, and Proteinated Chelates.

For further information, *see http://www.ams.usda.gov/nop*. Copies of the NOSB meeting agenda can be requested from Ms. Katherine Benham by telephone at (202) 205–7806; or obtained by accessing the NOP Web site at *http://www.ams.usda.gov/nop.*

The meeting is open to the public. The NOSB has scheduled time for public input on Saturday, October 19, 2002, from 8:15 a.m. until 10:15 a.m., and Sunday, October 20, 2002, from 8 a.m. until 9 a.m., at the Radisson Barceló Hotel, 2121 P Street, NW., Washington, DC. Individuals and organizations wishing to make an oral presentation at the meeting may make their requests via letter, telephone, e-mail or facsimile as set forth in the addresses section of this notice. While persons wishing to make a presentation, may also sign up at the door, advance registration will ensure that a person has the opportunity to speak during the allotted time period and will help the NOSB to better manage the meeting and to accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing. Written submissions may contain information other than that presented at the oral presentation.

Written comments must be submitted to Ms. Benham, prior to or after the meeting, at USDA–AMS–TMD–NOP, 1400 Independence Avenue, SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250–0200. Persons submitting written comments at the meeting are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site *http://www.ams.usda.gov/nop* to view available documents prior to the meeting. Approximately 6 weeks following the meeting interested persons will be able to visit the NOSB portion of the NOP Web site to view documents from this meeting.

Dated: October 3, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–25678 Filed 10–8–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Comet Administrative Study Environmental Impact Statement—Klamath National Forest

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Forest Service is canceling the Notice of Intent for the Comet Administrative Study EIS—Klamath National Forest that was published in **Federal Register**, Vol. 65, No. 230 on pages 71087 through 71088 on Wednesday, November 29, 2000. The usefulness of the study has diminished due to changing circumstances, so it will no longer be pursued.

FOR FURTHER INFORMATION CONTACT: Margaret J. Boland, Forest Supervisor, Klamath National Forest, USDA Forest Service, 1312 Fairlane Road, Yreka, California 96097.

Dated: September 27, 2002.

Margaret J. Boland,

Forest Supervisor.

[FR Doc. 02–25651 Filed 10–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Southern Intertie Project; Notice of Availability of a Record of Decision

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), has issued a Record of Decision (ROD) for the Southern Intertie Project. The decision of RUS is that the National Environmental Policy Act process is satisfied with respect to a request for financing assistance from Golden Valley Electric Association (GVEA) for its share of the cost of constructing the Southern Intertie Project. The project being proposed by the Intertie Participants Group (IPG), of which GVEA is a member, is the construction of a 138 kilovolt (kV) transmission line between the Kenai Peninsula and Anchorage, Alaska. The construction of the project will be undertaken in accordance with the FEIS.

FOR INFORMATION CONTACT: Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, USDA Rural Utilities Service, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–1784, fax (202) 720–0820. The e-mail address is: *lwolfe@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: The RUS preferred alternative, the Tesoro Route, would connect the Bernice Lake Substation on the Kenai Peninsula with the Pt. Woronzof Substation in Anchorage. This alternative would parallel the Tesoro Pipeline from the Captain Cook State Recreational Area to Pt. Possession (Route A). At Pt. Possession three options are available to cross the Turnagain Arm and terminate at the Pt. Woronzof Substation. Route Option B crosses the Turnagain Arm via Fire Island to the Pt. Woronzof Substation. Route Option C crosses the Turnagain Arm directly from Pt. Possession to a landing at the Pt. Woronzof Substation. Route Option D would cross the Turnagain Arm from Pt. Possession to Pt. Campbell. From the Pt. Campbell landing, this alternative would continue to parallel the Tesoro pipeline through Kincaid Park and

terminate at the Pt. Woronzof Substation (Route Option N).

As stated in the Final Environmental Impact Statement (FEIS), the RUS preferred alternative route between Pt. Possession and Anchorage is Route Option D/N. However, RUS considers both Route Options B and C acceptable alternatives.

Notices of availability of the FEIS were published in the **Federal Register** on July 10, 2002, at 67 FR 45701, by RUS and on July 12, 2002, at 67 FR 46185 by EPA. The 30-day comment period ended on August 12, 2002. Comments were received from 2 agencies and 5 non-profit organizations. No new issues or concerns were identified in these comments.

The RUS is the lead Federal agency in the environmental review process. The U.S. Fish and Wildlife Service (USFWS) and the U.S. Army Corps of Engineers (USACE) are serving as cooperating agencies. The USFWS' ROD was issued on September 11, 2002. The USACE's ROD is pending.

Agencies, persons, and organizations on the FEIS mailing list will receive a copy of each agency's ROD. The RUS' ROD is available online at *http://www.usda.gov/rus/water/ees/eis.htm.* The USFWS' ROD is available online at *http://www.r7.fws.gov/compatibility/completed/kenai/kenai.cfm.*

Dated: October 2, 2002.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–25703 Filed 10–8–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Submission for OMB Review; Comprehensive Economic Development Strategy (CEDS)—Comment Request

ACTION: Extension of a currently approved collection, comment request.

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA).

Title: Comprehensive Economic Development Strategy Guidelines.

Agency Form Number: Not Applicable.

OMB Approval Number: 0610–0093.

Type of Request: Extension of a currently approved collection.

Burden: 34,430 hours.

Average Hours Per Response: (1) Initial CEDS for Districts and other EDA supported Planning Organizations—242 hours; (2) CEDS Document for non-districts and non-EDA supported organizations—27 hours; (3) Annual CEDS Report—52 hours; and (4) CEDS Update—77 hours.

Number of Respondents: Approximately 640 respondents.

Needs and Uses: The Economic Development Administration (EDA) provides investments that will help our partners across the nation (states, regions and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and higher skill, higher wage jobs through world-class capacity building, infrastructure, business assistance, research grants and strategic initiatives.

Information gathered through CEDS is needed by EDA to ensure that areas served by an EDA-supported planning organization have or are developing a continuous community-based planning process and have thoroughly thought out what type of economic development is needed in the area to alleviate unemployment, underemployment, and/or depressed incomes. This information is required under the Public Works and Economic Development Act of 1965, as amended, including the comprehensive amendments by the Economic Development Administration Reform Act of 1998, Public Law 105–393, (PWEDA). Additionally, information is used by EDA to determine: if statutory requirements are met on eligibility for projects for public works and economic adjustment (except for strategy/planning); district designation requirements; and if planning requirements are met. CEDS is the foundation for most of EDA's programs. CEDS is a continuous, broad based and diverse process put in place to describe and to address economic distress through a particular economic development project(s) activity(es).

Affected Public: State, local or Tribal Government and not-for profit organizations.

Frequency: One time for Initial Document, Annual Report, and Updates are due every five (5) years for districts and other EDA-supported planning organizations.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, U.S. Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via Internet at *dhynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–25697 Filed 10–8–02; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–601]

Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and rescission, in part, of antidumping duty administrative review.

SUMMARY: In response to requests by the Stainless Steel Cookware Committee (the Committee), the petitioner, and two manufacturers/exporters of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on top-of-the-stove stainless steel cooking ware from Korea. The period of review (POR) is January 1, 2001, through December 31, 2001.

We preliminarily determine that certain manufacturers/exporters sold subject merchandise at less than normal value (NV) during the POR. If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on all appropriate entries. We invite interested parties to comment on the preliminary results. Parties who submit comments in this proceeding should also submit with the argument(s): (1) A statement of the issue(s) and (2) a brief summary of their argument (not to exceed five pages).

EFFECTIVE DATE: October 9, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham and Thomas F. Futtner, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 482–6320 and (202) 482–3814, respectively.

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's regulations are to the regulations at 19 CFR part 351 (2001).

Background

The Department published an antidumping duty order on top-of-the-stove stainless steel cooking ware (cookware) from Korea on January 20, 1987 (52 FR 2139). On January 2, 2002, the Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on cookware from Korea (67 FR 56) covering the period January 1, 2001, through December 31, 2001.

On January 31, 2002, in accordance with 19 CFR 351.213(b), the Committee, whose members are Regal Ware, Inc., The West Bend Company, New Era Cookware and Vita-Craft Corporation, requested that we conduct an administrative review of twenty-six specific manufacturers/exporters of cookware from Korea: Daelim Trading Co., Ltd. (Daelim), Dong Won Metal Co., Ltd. (Dong Won), Chefline Corporation, Sam Yeung Ind. Co., Ltd., Namyang Kitchenflower Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Dong Hwa Stainless Steel Co., Ltd., Il Shin Co., Ltd., Hai Dong Stainless Steel Ind. Co., Ltd., Han Il Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sungjin International Inc., Sae Kwang Aluminum Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., Seshin Co., Ltd., Pionix Corporation, East West Trading Korea, Ltd., Clad Co., Ltd., and B.Y. Enterprise, Ltd. On January 31, 2002, Daelim and Dong Won requested that the Department conduct reviews of their exports of the subject merchandise to the United States. In accordance with 19 CFR 351.221(b), we published a notice of initiation of the review on February 26, 2002 (67 FR 8780).

On March 25, 2002 and on April 4, 2002, we issued Section A antidumping questionnaires to each of the twenty-six manufacturers/exporters listed above.[1]

The following twenty-four companies failed to respond to the Department's Section A questionnaire: Chefline Corporation, Sam Yeung Ind. Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Il Shin Co., Ltd., Hai Dong Stainless Steel Ind. Co., Ltd., Han Il Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sungjin International Inc., Sae Kwang Aluminum Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., Seshin Co., Ltd., East West Trading Korea, Ltd., Clad Co., Ltd., B.Y. Enterprise, Ltd., Pionix Corporation, Namyang Kitchenflower Co., Ltd., and Dong Hwa Stainless Steel Co., Ltd. On August 1, 2002 and August 2, 2002, we informed each of these companies that because they failed to respond to the Department's questionnaire, we may use facts available (FA) to determine their dumping margins. In response, the following manufacturers/exporters reported that they had no sales or shipments during the POR: Hai Dong Stainless Steel Co., Ltd, Sungjin International, Inc., Seshin Co., Ltd., Sae Kwang Aluminum Co, Ltd., Dong Hwa Stainless Steel Co, Ltd., Pionix Corporation, Il Shin Co., Ltd., and Wonkwang Inc. We confirmed using U.S. Customs (Customs) data that there were no entries of subject merchandise from these firms during the POR. Accordingly, we are preliminarily rescinding the review with respect to these manufacturers/exporters.

On April 16, 2002 and April 19, 2002, respectively, Dong Won and Daelim responded to Section A of the antidumping questionnaire. On May 13, 2002, the Department issued Sections B, C and D of the Department's questionnaire to these two companies. Dong Won and Daelim filed narrative responses to Sections B, C and D on July 8, 2002. On July 12, 2002, Daelim and Dong Wong submitted electronic databases and calculation worksheets for Sections B, C, and D of the Department's questionnaire.

On August 12, 2002 and August 13, 2002, respectively, the Department issued Section A through D supplemental questionnaires to Dong Won and Daelim. The responses to these supplemental questionnaires were received on September 3, 2002 and on September 4, 2002.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise subject to this antidumping order is top-of-the-stove stainless steel cookware from Korea. The subject merchandise is all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of the order are stainless steel oven ware and stainless steel kitchen ware. The subject merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7323.93.00 and 9604.00.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

The Department has issued several scope clarifications for this order. The Department found that certain stainless steel pasta and steamer inserts (63 FR 41545, August 4, 1998), certain stainless steel eight-cup coffee percolators (58 FR 11209, February 24, 1993), and certain stainless steel stock pots and covers are within the scope of the order (57 FR 57420, December 4, 1992). Moreover, as a result of a changed circumstances review, the Department revoked the order on Korea in part with respect to certain stainless steel camping ware (1) made of single-ply stainless steel having a thickness no greater than 6.0 millimeters; and (2) consisting of 1.0, 1.5, and 2.0 quart saucepans without handles and with lids that also serve as fry pans (62 FR 3662, January 24, 1997).

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

Facts Available

Application of FA

Section 776(a)(2) of the Act provides that if any interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information by the deadlines for submission of the information or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in making its determination.

As stated above, on March 25, 2002 and on April 4, 2002, we issued Section A questionnaires to twenty-six manufacturers/exporters of the subject merchandise. Eight companies ultimately advised the Department that they did not sell subject merchandise to the United States during the POR. The following sixteen companies failed to respond to the Department's Section A questionnaire: Chefline Corporation, Sam Yeung Ind. Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Han II Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., East West Trading Korea, Ltd., Clad Co., Ltd., B.Y. Enterprise, Ltd., and Namyang Kitchenflower Co., Ltd. On August 2, 2002, we informed each of these companies that because they failed to respond to the Department's questionnaire, we may use FA to determine their dumping margins.

Because these sixteen companies failed to provide any of the necessary information requested by the Department, pursuant to section 776(a)(2)(B) of the Act, we must establish the margins for these companies based totally on facts otherwise available.

Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). These 16 companies were given two opportunities to respond, and did not. Moreover, these companies failed to offer any explanation for their failure to respond to our questionnaires. As a general matter, it is reasonable for the Department to assume that these companies possessed the records necessary for this review; however, by not supplying the information the Department requested, these companies failed to cooperate to the best of their ability. As these 16 companies have failed to cooperate to the best of their ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 31.23 percent, the highest rate determined for any respondent in any segment of this proceeding. *See Final Determination of Sales at Less Than Fair Value; Certain Stainless Steel Cookware from Korea*, 51 FR 42873 (November 26, 1986) (*Final LTFV Determination*).

Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA further provides that the term ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The rate used as AFA in this segment was originally calculated using verified information from the investigative segment of this proceeding. *See Final LTFV Determination.* The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as AFA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. Furthermore, we have no new information that would lead us to reconsider the reliability of the rate being used in this case.

As to the relevance of the margin used for AFA, the courts have stated that ''[b]y requiring corroboration of adverse inference rates, Congress clearly intended that such rates should be reasonable and have some basis in reality.'' *F.Lli De Cecco Di Filippo Fara S. Martino S.p.A.,* v. *U.S.*, 216 F.3d 1027, 1034 (Fed. Cir. 2000).

The rate selected is the rate currently applicable to certain companies, including fifteen of the sixteen companies that failed to respond to the Department's questionnaires in this POR. *See Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review*, 67 FR 40274 (June 12, 2002) (*Final Results*). In determining a relevant AFA rate, the Department assumes that if the non-responding parties could have demonstrated that their dumping margins were lower, they would have participated in this review and attempted to do so. *See Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1190–91 (Fed. Cir. 1990). Therefore, given these sixteen companies' failure to cooperate to the best of their ability in this review, we have no reason to believe that their dumping margins would be any less than the highest rate in this proceeding. This rate ensures that they do not benefit by failing to cooperate fully. Therefore, we consider the rate of 31.23 percent relevant and appropriate to use as AFA for the non-responding parties.

NV Comparisons

To determine whether sales of cookware from South Korea to the United States were made at less than NV, we compared the export price (EP) to the NV for Daelim and EP and constructed export price (CEP) to the NV for Dong Won, as specified in the *EP*, *CEP* and *NV* sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP and CEP transactions.

EP

Where Daelim and Dong Won sold merchandise directly to unaffiliated purchasers in the United States, we used EP, in accordance with section 772(a) of the Act, as the price to the United States. For both respondents, we calculated EP using the packed prices charged to the first unaffiliated customer in the United States (the starting price).

We made deductions from the starting price for movement expenses in accordance with section 772(c) of the Act. Movement expenses included, where appropriate, brokerage and handling, international freight, and marine insurance, in accordance with section 772(c)(2)(A) of the Act. For Dong Won, we disallowed a duty drawback adjustment to the starting price. *See* Calculation Memorandum for Dong Won, dated October 3, 2002, on file in the Central Records Unit (CRU), B–099 of the main Department Building.

CEP

For Dong Won, we calculated CEP, in accordance with subsection 772(b) of the Act, for those sales to unaffiliated purchasers that took place after importation into the United States. We based CEP on the packed FOB prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions for discounts. We also made deductions for movement expenses in accordance with 772(c)(2)(A) of the Act. Movement expenses included foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling, U.S. Customs duties, and U.S. inland freight. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, and other indirect selling expenses. Also, we made an adjustment for profit in accordance with section 772(d)(3) of the Act.

NV

1. Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Since Daelim's and Dong Won's aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of their respective U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, pursuant to section 773(a)(1)(B) of the Act, we based NV on home market sales.

2. Cost of Production (COP) Analysis

In the review segment of this proceeding that was most recently completed prior to initiating this review, we disregarded home market sales found to be below the cost of production (COP) for Daelim and Dong Won. *See Top-of-the Stove Stainless Steel Cooking Ware from the Republic of Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review,* 66 FR 45664 (August 29, 2001). Pursuant to section 773(b)(2)(A)(ii) of the Act, this provides reasonable grounds to believe or suspect in this review segment that Daelim and Dong Won made sales in the home or third country markets at prices below the COP. Consequently we initiated a COP inquiry with respect to both Daelim and Dong Wong and conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated, respectively, COP based on the sum of Daelim and Dong Won's cost of materials and fabrication (COM) for the foreign like product, plus amounts for selling, general, and administrative (SG&A) expenses, including financial expenses, and packing costs. For the preliminary results, we relied on Daelim's and Dong Won's submitted information without adjustment.

B. Test of Foreign Market Sales Prices

We compared COP to foreign market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to foreign market prices, less any applicable movement charges, discounts and rebates, and selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, within the meaning of section 773(b)(2)(B) of the Act. Because we compared prices to POR or fiscal year average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found, looking at Dong Won's and Daelim's home market sales, that both firms made sales at below COP prices within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit for the recovery of costs within a reasonable period of time. Therefore, we excluded these sales from our analysis and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products sold in the relevant foreign markets meeting the description in the ''Scope of the Review'' section of this notice, above, for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the foreign markets made in the ordinary course of trade (*i.e.*, sales within the contemporaneous window which passed the cost test), we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Further, as in prior segments of this proceeding, merchandise was considered ''similar'' for purposes of comparison only if it is of the same ''product type,'' (*i.e.*, (1) vessels or (2) parts). Among merchandise which was identical on the basis of ''product type,'' we then selected the most ''similar'' model through a hierarchical ranking of the remaining 11 product characteristics listed in sections B and C of our antidumping questionnaire and application of the difference in merchandise test. If there were no sales of identical or similar merchandise in the foreign market to compare to U.S. sales, we compared U.S. sales to the constructed value (CV) of the product sold in the U.S. market during the comparison period. For a further discussion of the Department's product comparison methodology see *Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review,* 66 FR 45664 (August 29, 2001)

and accompanying Issues and Decision Memorandum at Comment 1.

Level of Trade (LOT)

In accordance with section 773(a)(7)(A) of the Act, if the Department compares a U.S. sale at one LOT to NV sales at a different LOT, we will adjust the NV to account for the difference in LOT if the difference affects price comparability as evidenced by a pattern of consistent price differences between sales at the different LOTs in the market in which NV is determined.

Section 351.412(c)(2) of the Department's regulations states that the Secretary will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). To make this determination, the Department reviews such factors as selling functions, classes of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even if substantial, are not alone sufficient to establish a difference in the LOT. Similarly, while customer categories such as ''distributor'' and ''wholesaler'' may be useful in identifying different LOTs, they are insufficient in themselves to establish that there is a difference in the LOT.

In determining whether separate LOTs actually existed in the foreign and U.S. markets for each respondent, we examined whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services) offered to each customer or customer category, in both markets.

Dong Won reported home market sales through one channel of distribution, sales made by Dong Won to unaffiliated distributors/wholesalers and retailers. Upon review of the record, we found that Dong Won performed the same selling functions at the same degree for all home market sales. Therefore, we preliminarily determined that Dong Won made all home market sales at one LOT for purposes of our antidumping analysis.

For the U.S. market, Dong Won reported both EP and CEP sales. After reviewing the U.S. market selling functions reported by Dong Won, and after deducting the CEP selling expenses incurred by Dong Won's U.S. affiliate, we found that Dong Won provided a qualitatively different degree of services on EP sales than for CEP sales. We therefore found the selling functions were sufficiently different to warrant a preliminary determination that two separate LOTs exist in the United States.

When we compared EP sales to home market sales, we found that Dong Won provided a qualitatively different degree of services on home market sales than on EP sales. In addition, the differences in selling functions performed for home market and EP transactions indicate that home market sales involved a more advanced stage of distribution than EP sales. Our preliminary analysis demonstrates that the home market LOT is different from, and constitutes a more advanced stage of distribution than the EP LOT because, the home market LOT includes significantly more selling functions at a higher level of service with greater selling expenses than the EP LOT. *See* Memorandum on LOT for Dong Won, dated October 3, 2002 (Dong Won LOT Memo).

Section 773(a)(7)(A) of the Act describes the LOT adjustment. Section 351.412(a) of the Department's regulations states that the Secretary is authorized to adjust NV to account for the effect on the comparability of U.S. and home market prices when sales in the two markets are not made at the same LOT. Section 351.412(d) of the Department's regulations states that the Secretary will determine that a difference in LOT has an effect on price comparability only if it is established that there is a pattern of consistent price differences between sales at the LOT of the EP or CEP and the LOT at which NV is determined. Section 351.412(d)(2) states that the Secretary will make the determination under section 351.412(d)(1) on the basis of sales of the foreign like product by the producer, or when this is not possible, on sales of different or broader product lines, sales by other companies, or on any other reasonable basis.

As discussed above, we found that there is only one LOT in the market in which NV is determined. Therefore, it is not possible to determine a pattern of price differences on the basis of sales of the foreign like product by the producer. Furthermore, we do not have information on the record in this review to determine a pattern of price differences on the basis of sales of different or broader product lines, sales by other companies, or on any other reasonable basis. As such, no LOT adjustment is possible for comparison to Dong Won's EP transactions.

For CEP sales, Dong Won performed fewer selling functions than in the home market. In addition, the differences in selling functions performed for home market and CEP transactions indicate that home market sales involved a more advanced stage of distribution than CEP sales. Our preliminary analysis demonstrates that the home market LOT is different from, and constitutes a more advanced stage of distribution than, the CEP LOT because, after making the CEP deductions under section 772(d) of the Act, the home market LOT includes significantly more selling functions at a higher level of service with greater selling expenses than the CEP LOT.

Section 773(a)(7)(B) of the Act provides for a CEP offset to NV when NV is established to be at a LOT which constitutes a more advanced LOT than the LOT of the CEP transaction, but the data available do not provide an appropriate basis upon which to determine a LOT adjustment. Since NV is established at a LOT which constitutes a more advanced LOT than the LOT of the CEP transaction, and, as discussed above, the data do not provide an appropriate basis upon which to determine a LOT adjustment, we conclude that Dong Won is entitled to a CEP offset to NV. *See* Dong Won LOT Memo.

Daelim reported sales through two channels of distribution for its home market sales. The first channel of distribution was sales through its affiliate in the home market, Living Star. The second channel of distribution was direct sales to home market customers. Daelim performs the same selling activities for home market sales in both channels of distribution. Although these functions are not performed at the same degree of intensity, we found that the differences in degree of intensity in selling functions between the two channels of distribution does not give rise to a substantial distinction. Therefore, we conclude that there is one LOT in the home market. *See* Memorandum on LOT for Daelim, dated October 3, 2002. Daelim reported only EP sales in the U.S. market. For EP sales, Daelim reported one LOT, consisting of two channels of distribution.

Upon review of the record we found that Daelim performed the same selling functions (*i.e.*, inventory maintenance, technical advice, warranty services, freight & delivery arrangement, and advertising) at the same degree for EP sales as compared to home market sales. As such, we preliminarily find that there are no differences in the number, type, and degree of selling functions that Daelim performs for home market sales as compared to its EP sales. Therefore, because we are calculating NV at the same LOT as Daelim's EP sales, no LOT adjustment is warranted. *See* 19 CFR 351.412(b)(1).

Date of Sale

In accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporters's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer established the material terms of sale on some other date. For both foreign market and U.S. transactions, Daelim and Dong Won reported the date of the contract (*i.e.*, purchase order date) as the date of sale, *i.e.*, the date when the material terms of sale are finalized. The respondents note that the purchase order confirms all major terms of sale—price, quantity, and product specification—as agreed to by the respondents and the customer. Because there is nothing on the record to indicate that there were changes in the material terms of sale between the purchase order (or revised purchase order) and the invoice, the Department preliminarily determines that the purchase order date is the most appropriate date to use for the date of sale.

CV

In accordance with section 773(e) of the Act, we calculated CV based on the respondents' respective COM employed in producing the subject merchandise, SG&A expenses, the profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the COM and G&A expenses as reported in the CV portion of respondents' questionnaire responses. We used the U.S. packing costs as reported in the U.S. sales portion of the respondents' questionnaire responses. For selling expenses, we used the average of the selling expenses reported for home market sales that passed the cost test, weighted by the total quantity of sales of each product. For profit, we first calculated, based on the home market sales that passed the cost test, the difference between the home market sales value and home market COP, and divided the difference by the home market COP. We then multiplied this percentage by the COP for each U.S. model to derive profit.

Price-to-Price and Price-to-CV Comparisons

For those comparison products for which there were sales that passed the cost test, we based the respondent's NV on the price at which the foreign like product is first sold for consumption in Korea, in the usual commercial quantities, in the ordinary course of trade in accordance with section 773(a)(1)(B)(i) of the Act.

In accordance with section 773(a)(6) of the Act, for both CV and NV, we made adjustments, where appropriate, for inland freight, inland insurance, and discounts. We also reduced CV and foreign market prices by packing costs incurred in the foreign market, in accordance with section 773(a)(6)(B)(i) of the Act. In addition, we increased CV and foreign market prices for U.S. packing costs, in accordance with section 773(a)(6)(A) of the Act. We made further adjustments to foreign market prices, when applicable, to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we made an adjustment for differences in circumstances of sale by deducting foreign market direct selling expenses and adding any direct selling expenses associated with U.S. sales not deducted under the provisions of section 772(d)(1) of the Act. Finally, in the case of Dong Wong, where appropriate, we made a CEP offset adjustment to account for comparing U.S. and foreign market sales at different LOTs.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margins exist for the period January 1, 2000, through December 31, 2000:

Manufacturer/Exporter	Margin (percent)
Dong Won Metal Co., Ltd	0.20
Dae-Lim Trading Co., Ltd	0.90
Chefline Corporation	31.23
Sam Yeung Ind. Co., Ltd	31.23
Kyung-Dong Industrial Co., Ltd	31.23
Han Il Stainless Steel Ind. Co., Ltd	31.23
East One Co., Ltd	31.23
Charming Art Co., Ltd	31.23
Won Jin Ind. Co., Ltd	31.23
Hanil Stainless Steel Ind. Co., Ltd	31.23
East West Trading Korea, Ltd	31.23
Clad Co., Ltd	31.23
B.Y. Enterprise, Ltd	31.23
Namyang Kitchenflower Co., Ltd	31.23
Ssang Yong Ind. Co., Ltd	31.23
O. Bok Stainless Steel Co., Ltd	31.23
Bae Chin Metal Ind. Co	31.23
Poong Kang Ind. Co., Ltd	31.23

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments, within 120 days from the publication of these preliminary results.

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates for the merchandise subject to this review. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rates against the entered Customs values for the subject merchandise on each of the importer's entries during the POR. For Daelim and Dong Won, we have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the entered value of sales used to calculate those duties. For all other respondents, the assessment rate will be based on the margin percentage identified above. We will direct Customs to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is *de minimis*, *i.e.*, less then 0.5 percent.

Furthermore, the following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of top-of-stove stainless steel cooking ware from Korea entered, or withdrawn from warehouse, for consumption on or after publication

date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates established in the final results of this administrative review, except if the rate is less than 0.5 percent *ad valorem* and, therefore, *de minimis*, no cash deposit will be required; (2) for exporters not covered in this review, but covered in the original LTFV investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the LTFV investigation, the cash deposit rate will be 8.10 percent, the ''all-others'' rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 3, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–25686 Filed 10–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an Amended Export Trade Certificate of Review, Application No. 84–13A12.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Northwest Fruit Exporters (''NFE'') on June 11, 1984. Notice of issuance of the Certificate was published in the **Federal Register** on June 14, 1984 (49 FR 24581).

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2001).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 84–00012, was issued to NFE on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); October 22, 1997 (62 FR 55783, October 28, 1997); November 2, 1998 (63 FR 60304, November 9, 1998); October 20, 1999 (64 FR 57438, October 25, 1999); October 16, 2000 (65 FR 63567, October 24, 2000); and October 5, 2001 (66 FR 52111, October 12, 2001).

NFE's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): L & M Companies, Selah, Washington; Orondo Fruit Co., Inc., Orondo, Washington; and Rawland F. Taplett d/b/a R.F. Taplett Fruit & Cold Storage Co., Wenatchee, Washington;

2. Delete the following companies as ''Members'' of the Certificate: Chief Wenatchee Growers, Wenatchee, Washington; Dole Northwest, Wenatchee, Washington; Fossum Orchards, Inc., Yakima, Washington; Garrett Ranches Packing, Wilder, Idaho; R.E. Redman & Sons, Inc., Wapato, Washington; Regal Fruit Cooperative, Tonasket, Washington; Sun Fresh International, LLC, Wenatchee, Washington; Taplett Fruit Packing Inc., Wenatchee, Washington; Voelker Fruit & Cold Storage, Inc., Yakima, Washington; and Williamson Orchards, Caldwell, Idaho; and

3. Change the listing of the following Members: ''Allan Bros., Inc., Naches, Washington'' to the new listing ''Allan Bros., Naches, Washington''; ''Borton & Sons, Yakima, Washington'' to ''Borton & Sons, Inc., Yakima, Washington''; ''Carlson Orchards, Yakima, Washington'' to ''Carlson Orchards, Inc., Yakima, Washington''; ''CPC International Apple Co., Tieton, Washington'' to ''CPC International Apple Company, Tieton, Washington''; ''Domex Marketing Co., Yakima, Washington'' to ''Domex Marketing, Yakima, Washington''; ''Douglas Fruit Co., Pasco, Washington'' to ''Douglas Fruit Company, Inc., Pasco, Washington''; ''Dovex Fruit Company, Wenatchee, Washington'' to ''Dovex Fruit Co., Wenatchee, Washington''; ''Hansen Fruit & Cold Storage, Co., Yakima, Washington'' to ''Hansen Fruit & Cold Storage Co., Inc., Yakima, Washington''; ''Jenks Bro. Cold Storage, Inc., Royal City, Washington'' to ''Jenks Bros. Cold Storage & Packing, Royal City, Washington''; ''Kershaw Fruit & Cold Storage, Yakima, Washington'' to ''Kershaw Fruit & Cold Storage, Co., Yakima, Washington''; ''Keystone Ranch, Riverside, Washington'' to ''Keystone Fruit Co. L.L.C. dba Keystone Ranch, Riverside, Washington''; ''Lloyd Garretson, Co., Inc., Yakima, Washington'' to ''Lloyd Garretson Co. Yakima, Washington''; ''Northern Fruit Co., Wenatchee, Washington'' to ''Northern Fruit Company, Inc., Wenatchee, Washington''; ''Northwestern Fruit & Produce Co., Yakima, Washington'' to ''Apple King, LLC, Yakima, Washington''; ''Obert Cold Storage, Zillah, Washington'' to ''Obert Cold Storage, Inc., Zillah, Washington''; ''Poirier Packing & Warehouse, Pateros, Washington'' to ''Poirier Warehouse, Pateros, Washington''; ''Price Cold Storage, Yakima, Washington'' to ''Price Cold Storage & Packing Co., Inc., Yakima, Washington''; ''Rainier Fruit Sales, Selah, Washington'' to ''Rainier Fruit Company, Selah, Washington; ''Rowe Farms, Naches, Washington'' to ''Rowe Farms, Inc., Naches, Washington''; ''Sund-Roy, Inc., Yakima,

Washington'' to ''Sund-Roy L.L.C., Yakima, Washington''; ''Valley Fruit, Wapato, Washington'' to ''Valley Fruit III LLC, Wapato, Washington''; ''Yakima Fruit & Cold Storage, Yakima, Washington'' to ''Yakima Fruit & Cold Storage Co., Yakima, Washington''; and ''Zirkle Fruit Co., Selah, Washington'' to ''Zirkle Fruit Company, Selah, Washington''.

The effective date of the amended certificate is July 8, 2002. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: October 3, 2002.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 02–25682 Filed 10–8–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, education and extension, science and technology programs, and other matters as described below:

DATES: The announced meeting is scheduled during two days: Tuesday, October 22, 8:30 a.m. to 6 p.m.; Wednesday, October 23, 8:30 a.m. to 12:15 p.m.

ADDRESSES: U.S. Department of Commerce, Herbert C. Hoover Building, 14th & Constitution Avenue, Northwest, Room 6059, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald C. Baird, Director, National Sea Grant College program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11761, Silver Spring, Maryland 20910, (301) 713–2448.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academic, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting is as follows:

Tuesday, October 22, 2002

8:30 a.m.—Welcoming and Opening of Meeting, Approval of Minutes and Agenda, Introductory Remarks.
8:45 a.m.—Executive Committee Report, Summary of Executive Committee Meeting, Meetings with NOAA, Leadership Retreat, Sea Grant Association.
9:15 a.m.—State of Sea Grant, Strategy in the Next Five Years, Reauthorization/OMB—Competition and Merit, Strategic Planning in Sea Grant and NOAA, NOAA's Changing Organizational Structure, National Ocean Commission, Improving Sea Grant's Role in NOAA.
10 a.m.—Sea Grant Association President's Report.
10:30 a.m.—Break.
10:45 a.m.—Draft Allocation Policy.
11:30 a.m.—Program Evaluation.
12:15 p.m.—Fisheries Extension.
12:45 p.m.—Lunch.
2 p.m.—Sea Grant and NOAA, Functions of the NOAA Sea Grant Office, Discussion: Strategy to Better Integrate Sea Grant into NOAA, National Communications Strategy.
4 p.m.—Panel Roundtable for New Members, How the Panel Operates, Recent Reports, Panel Member Insights. Wednesday, October 23, 2002
8:30 a.m.—NOAA Update.
9:30 a.m.—Congressional Update.
10:30 a.m.—Break.
10:45 a.m.—Debrief on the Executive Committee Meetings
11:15 a.m.—NSGO Update, National Competitions, New Hampshire Sea Grant College Application, FY2003 Budget, Education Update, Climate Extension.
12 noon—Wrap-up, Sea Grant Week Meeting.
12:15 p.m.—Adjourn.

Dated: October 3, 2002.

Louisa Koch,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 02–25669 Filed 10–08–02; 8:45 am]

BILLING CODE 3510–KA–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Comment Request—Baby-Bouncers, Walker-Jumpers, and Baby-Walkers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC) requests comments on a proposed extension of approval, for a period of three years from the date of approval by the Office of Management and Budget (OMB), of information collection requirements in regulations regarding children's articles called baby-bouncers, walker-jumpers, or baby-walkers. The collection of information consists of requirements that manufacturers and importers of these products must establish and maintain records of inspections, testing, sales, and distributions to demonstrate that the products are not banned by rules issued under the Federal Hazardous Substances Act and codified at 16 CFR part 1500.

The CPSC will consider all comments received in response to this notice before requesting approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive written comments not later than December 9, 2002.

ADDRESSES: Written comments should be captioned ''Baby-Bouncers'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR part 1500, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416, extension 2226.

SUPPLEMENTARY INFORMATION: Products called ''baby-bouncers,'' ''walker-jumpers,'' or ''baby-walkers'' are intended to support children younger than two years of age while they sit, bounce, jump, walk, or recline. Regulations issued under provisions of the Federal Hazardous Substances Act (15 U.S.C. 1261, 1262) establish safety requirements for these products.

A. Requirements for Baby-Bouncers, Walker-Jumpers, and Baby Walkers

One CPSC regulation bans any such product if it is designed in such a way that exposed parts present hazards of amputations, crushing, lacerations,

fractures, hematomas, bruises or other injuries to children's fingers, toes, or other parts of the body. 16 CFR 1500.18(a)(6).

A second CPSC regulation establishes criteria for exempting baby-bouncers, walker-jumpers, and baby-walkers from the banning rule under specified conditions. 16 CFR 1500.86(a)(4). The exemption regulation requires certain labeling on these products and their packaging to identify the name and address of the manufacturer or distributor and the model number of the product. Additionally, the exemption regulation requires that records must be established and maintained for three years relating to testing, inspection, sales, and distributions of these products. The regulation does not specify a particular form or format for the records. Manufacturers and importers may rely on records kept in the ordinary course of business to satisfy the recordkeeping requirements if those records contain the required information.

The OMB approved the collection of information requirements in the regulations under control number 3041–0019. OMB's most recent extension of approval expires on January 31, 2003. The CPSC now proposes to request an extension of approval without change for the regulations' information collection requirements.

The safety need for this collection of information remains. Specifically, if a manufacturer or importer distributes products that violate the banning rule, the records required by section 1500.86(a)(4) can be used by the firm and the CPSC (i) to identify specific models of products that fail to comply with applicable requirements, and (ii) to notify distributors and retailers if the products are subject to recall.

B. Estimated Burden

The CPSC staff estimates that about 28 firms are subject to the testing and recordkeeping requirements of the regulations. The CPSC staff estimates further that the burden imposed by the regulations on each of these firms is approximately 2 hours per year. Thus, the total annual burden imposed by the regulations on all manufacturers and importers is about 56 hours.

The CPSC staff estimates that the hourly wage for the time required to perform the required testing and to maintain the required records is about $28.40 (rate for total compensation of technical workers, 2002), and that the annual total cost to the industry is approximately $1,590.40.

During a typical year, the CPSC will expend approximately two days of professional staff time reviewing records required to be maintained by the regulations for baby-bouncers, walker-jumpers, and baby-walkers. The annual cost to the Federal government of the collection of information in these regulations is estimated to be $680 (based on $42.50/hour staff time).

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: October 3, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–25633 Filed 10–8–02; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements; Notification Requirements Under Safety Regulations for Coal and Woodburning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the July 9, 2002 **Federal Register** (67 FR 45483), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval through October 31, 2005, of information collection requirements in the safety regulations for coal and woodburning appliances (16 CFR part 1406). No responses were received in response to the notice. The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

These regulations require manufacturers and importers of certain coal and woodburning appliances to provide safety information to consumers on labels and instructions and an explanation of how certain clearance distances in those labels and instructions were determined. The requirements to provide copies of labels and instructions to the Commission have been in effect since May 16, 1984. For this reason, the information burden imposed by this rule is limited to manufacturers and importers introducing new products or models, or making changes to labels, instructions, or information previously provided to the Commission. The purposes of the reporting requirements in part 1406 are to reduce risks of injuries from fires associated with the installation, operation, and maintenance of the appliances that are subject to the rule, and to assist the Commission in determining the extent to which manufacturers and importers comply with the requirements in part 1406.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Notification Requirements for Coal and Woodburning Appliances, 16 CFR part 1406.

Type of request: Extension of approval.

Frequency of collection: Labeling, plus one-time requirement for reporting of new models or changes.

General description of respondents: Manufacturers and importers of coal and woodburning appliances.

Estimated Number of respondents: 5.

Estimated average number of responses per respondent: 1 per year.

Estimated number of responses for all respondents: 5 per year.

Estimated number of hours per response: 3.

Estimated number of hours for all respondents: 15 per year.

Estimated cost of collection for all respondents: $397.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by November 8, 2002 to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503;

telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov.*

Copies of this request for an extension of an information collection requirement are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2226.

Dated: October 2, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–25632 Filed 10–8–02; 8:45 am]

BILLING CODE 6355–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2002–1]

Quality Assurance for Safety-Related Software

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a(a)(5) concerning quality assurance for safety-related software.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before November 8, 2002.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Andrew L. Thibadeau at the address above or telephone (202) 694–7000.

Dated: October 1, 2002.

John T. Conway,

Chairman.

September 23, 2002.

Background

Two core Integrated Safety Management (ISM) functions evolving from the Department of Energy's (DOE) implementation of Defense Nuclear Facilities Safety Board (Board) Recommendation 95–2, *Safety Management* are: (1) Analyzing hazards; and (2) identifying and implementing controls to prevent and/or mitigate potential accidents. DOE relies heavily on computer software to analyze hazards, and design and operate controls that prevent or mitigate potential accidents.

DOE and its contractors use many codes to evaluate the consequences of potential accidents. Safety controls and their functional classifications are often based on these evaluations. Functional classifications establish the level of rigor to which controls are designed, procured, maintained, and inspected. The robustness and reliability of many structures, systems, and components (SSCs) throughout DOE's defense nuclear complex depend on the quality of the software used to analyze and to guide these decisions, the quality of the software used to design or develop controls, and proficiency in use of the software. In addition, software that performs safety-related functions in distributed control systems, supervisory control and data acquisition systems (SCADA), and programmable logic controllers (PLC) requires the same high quality needed to provide adequate protection for the public, the workers, and the environment. Other types of software, such as databases used in safety management activities, can also serve important safety functions and deserve a degree of quality assurance commensurate with their safety significance.

In some areas where there is at present no substantial activity in development of new software for safety applications, new calculations are usually based on existing codes, with data inputs and some logic chains often modified to fit the problems of the moment. It is therefore necessary to ensure that software so modified is not placed in general use in competition with generally validated and more widely useable software.

Software quality assurance (SQA) provides measures designed to ensure that computer software will perform its intended functions. Such measures must be applied during the design, testing, documentation, and subsequent use of the software, and must be maintained throughout the software life cycle. It is generally accepted that an effective SQA program ensures that:

- All requirements, including the safety requirements, are properly specified.
- Models are a valid representation of the physical phenomena of interest, and digital control functions are properly executed.
- Input and embedded data are accurate.
- Software undergoes an appropriate verification and validation process.
- Results are in reasonable agreement with available benchmark data.
- All internal logic states of PLCs and SCADA are understood, so that no sequence of inputs, even those due to component failure, can leave the controlled system in an unexpected or unanalyzed state.
- Computer codes are properly and consistently executed by analysts.
- Code modifications and improvements are controlled, subjected to regression and re-acceptance testing, and documented.

DOE identified inadequate SQA as a problem as early as December 1989, when its Office of Environment, Safety and Health (DOE–EH) issued ENVIRONMENT, SAFETY & HEALTH BULLETIN EH–89–9, *Technical Software Quality Assurance Issues.* This bulletin states, ''Inadequate SQA for scientific and technical codes at any phase in their ''life cycle'' may not only result in lost time and/or excessive project costs, but may also endanger equipment and public or occupational sectors.'' The bulletin cites problems with all three types of software noted above (analysis, design, and operation). Likewise, a 1997 assessment performed by DOE's Accident Phenomenology and Consequence Assessment Methodology Evaluation Program determined that only a small fraction of accident analysis computer codes meet current industry SQA standards. SQA problems continue to persist, as documented in the Board's technical report DNFSB/TECH–25, *Quality Assurance for Safety-Related Software at Department of Energy Defense Nuclear Facilities,* issued in January 2000.

An integrated and effective SQA infrastructure still does not exist within DOE. This situation can lead to both errors in technical output from software used in safety analyses and incorrect performance of instrumentation and controls for safety-related systems. In a letter to DOE dated January 20, 2000, the Board identified these deficiencies and requested that DOE provide a corrective action plan within 60 days. On October 3, 2000, the Board received DOE's corrective action plan, but found that it did not sufficiently respond to the Board's concerns. On October 23, 2000, the Board asked for a new plan of action; DOE has never submitted a revised plan, although several deliverables under the original plan have been received.

During the Board's August 15, 2001, public meeting on quality assurance,

DOE proposed a revised set of actions to improve SQA processes and practices. Since then, DOE has attempted to develop a Quality Assurance Improvement Plan that includes SQA as a key goal. This action now appears stalled as a result of internal differences over objectives and funding. Thus, despite well over two years of effort, DOE has failed to develop and implement effective corrective actions in response to the Board's reporting requirement.

This situation is not acceptable. To improve SQA in the DOE complex, the Board recommends prompt actions to achieve the following:

Responsibility and Authority

1. Define responsibility and authority for the following: developing SQA guidance, conducting oversight of the development and use of software important to safety, and directing research and development as noted below. Roles and responsibilities should address all software important to safety, including, at a minimum, design software, instrumentation and control software, software for analysis of consequences of potential accidents, and other types of software, such as databases used for safety management functions.

2. Assign those responsibilities and authorities to offices/individuals with the necessary technical expertise.

Recommended Computer Codes for Safety Analysis and Design

3. Identify software that would be recommended for use in performing design and analyses of SSCs important to safety, and for analysis of expected consequences of potential accidents.

4. Identify an organization responsible for management of each of these software tools, including SQA, technical support, configuration management, training, notification to users of problems and fixes, and other official stewardship functions.

Proposed Changes to the Directives System

5. Establish requirements and guidance in the DOE directives system for a rigorous SQA process, including specific guidance on the following: grading of requirements according to safety significance and complexity; performance of safety reviews, including failure analysis and fault tolerance; performance of verification and validation testing; and training to ensure proficiency of users.

Research and Development

6. Identify evolving areas in software development in which additional research and development is needed to ensure software quality.

Appendix—Transmittal Letter to the Secretary of Energy Defense Nuclear Facilities Safety Board

September 23, 2002.

The Honorable Spencer Abraham, Secretary of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1000.

Dear Secretary Abraham: The Defense Nuclear Facilities Safety Board (Board) has been following closely the Department of Energy's (DOE) response to a reporting requirement dated January 20, 2000, which requested a corrective action plan to address deficiencies documented in the Board's technical report DNFSB/TECH–25, *Quality Assurance for Safety-Related Software at Department of Energy Defense Nuclear Facilities.* Although more than two years have since elapsed, DOE has been unable to develop and execute an acceptable plan to resolve these issues, some of which were identified as early as 1989. Since the Board's August 15, 2001, public meeting on quality assurance, DOE has been developing an overall Quality Assurance Improvement Plan that includes software quality assurance as a key element, but this effort has not yet produced any substantial results.

As a result, the Board on September 23, 2002, unanimously approved Recommendation 2002–1, *Quality Assurance for Safety-Related Software,* which is enclosed for your consideration. After your receipt of this recommendation and as required by 42 U.S.C. 2286d(a), the Board will promptly make it available for access by the public in DOE's regional public reading rooms. The Board believes that the recommendation contains no information that is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please see that it is promptly placed on file in your regional public reading rooms. The Board will also publish this recommendation in the **Federal Register**.

Sincerely,
John T. Conway,
Chairman.

[FR Doc. 02–25488 Filed 10–8–02; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.256]

Office of Elementary and Secondary Education; Territories and Freely Associated States Educational Grant (T&FASEG) Program; Notice Inviting Applications for New Awards

Purpose of Program: This program provides local educational agencies (LEAs) in the U.S. Territories (American Samoa (AS), the Commonwealth of the Northern Mariana Islands (CMNI), Guam (GU), and the Virgin Islands (VI)) and the Freely Associated States (the Federated States of Micronesia (FSM), the Republic of the Marshall Islands (RMI), and the Republic of Palau (RP)) with financial assistance to provide direct educational services to assist all students with meeting challenging State academic standards and to carry out activities described in the Elementary and Secondary Education Act as reauthorized by the No Child Left Behind Act of 2001 (NCLB), including teacher training, curriculum development, development or acquisition of instructional materials, and general school improvement and reform.

Deadline for Transmittal of Applications: December 9, 2002.

Deadline for Intergovernmental Review: January 7, 2003.

Applications Available: October 9, 2002.

Eligible Applicants: LEAs in AS, CNMI, GU, VI, FSM, RMI, and the RP.

Note: The Freely Associated States (FSM, RMI and RP) are eligible for these funds only until an agreement for the extension of U.S. educational assistance under new Compacts of Free Association for those States become effective.

Available Funds: $4,750,000.00.

Estimated Range of Awards: $250,000–800,000.

Estimated Average Size of Awards: $475,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Supplemental Information:

The T&FASEG program provides financial assistance to the Territories and Freely Associated States for programs that will enable students to make progress toward achieving high State academic standards and the high levels of educational achievement envisioned by the NCLB. The T&FASEG program is a supplemental resource to local school jurisdictions to help improve the quality of teaching and learning to ensure that no child is left behind. The grants may be used for educational purposes that are consistent with the purposes and programs authorized in the Elementary and Secondary Education Act (ESEA), as reauthorized by the NCLB.

Under the T&FASEG program, the Secretary awards grants for projects to'

(a) Conduct activities consistent with the purposes of the ESEA as reauthorized by the NCLB, including the types of activities authorized by ESEA—

(1) Title I—Improving The Academic Achievement of the Disadvantaged.

(2) Title II—Preparing, Training and Recruiting High Quality Teachers and Principals.

(3) Title III—Language Instruction for Limited English Proficient and Immigrant Students.

(4) Title IV—21st Century Schools.

(5) Title V—Promoting Informed Parental Choice and Innovative Programs.

(b) Provide direct educational services that assist all students with meeting challenging State content standards. For the purposes of this program, the term ''direct educational services''—

(1) Means activities that are designed to improve student achievement or the quality of education; and

(2) Includes instructional services for students and teacher training.

Allowable Activities

The following illustrates some of the many types of activities that a grantee may conduct with funds under this program:

- Programs based on scientifically based research that are designed to strengthen the knowledge and skills of elementary and secondary students in primarily reading, language arts and mathematics, but may also include science, foreign languages, civics and government, economics, history, and geography.
- The establishment of professional development programs that provide pre-service and in-service training and give teachers, principals, and administrators the knowledge and skills to help students meet challenging State or local academic content standards and student academic achievement standards.
- Programs to recruit, train, and hire highly-qualified teachers.
- The planning, design, and operation of model, innovative schools and programs that—

(1) Are based on scientifically based research and methods of teaching and learning; and

(2) Are specially tailored to meet the educational needs of children in the area to be served.

- Programs for early language, literacy, and pre-reading development, particularly for students from low-income families.
- Programs for the development of curricula and instructional materials and the acquisition and use of instructional materials, including library and reference materials, academic assessments, reference materials, computer software and hardware for instructional use, and other curricular materials that are tied to high academic standards, that are used to improve student achievement, and that are a part of an overall education reform plan.
- Programs that involve families, communities, and businesses in the planning and operation of educational programs for their children.
- Programs to enhance student and parental choice among public schools, including charter schools.

Note: The full text of the NCLBA may be found on the Internet at: *http://www.ed.gov/legislation/ESEA02/.*

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Selection Criteria: The Secretary will use the following selection criteria in accordance with 34 CFR 75.209–75.210 to evaluate applications under this competition. As provided for in the authorizing legislation, the Secretary, in making awards under this program, will take into consideration the recommendations of Pacific Resources for Education and Learning (PREL). PREL will use the following criteria in developing its recommendations, and the Secretary will use them in making final funding decisions.

(a) *Need for Project.* (25 points.)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(iii) The extent to which the proposed project will address the needs of disadvantaged and other students who are at risk of educational failure.

(b) *Significance.* (10 points.)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The significance of the proposed project to education in the area to be served.

(ii) The significance of the problems or issues to be addressed by the proposed project.

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(c) *Quality of the Project Design.* (25 points.)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable, and the extent to which they will be measured.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(iv) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(v) The extent to which the proposed project encourages parental involvement.

(vi) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(d) *Adequacy of Resources.* (5 points.)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(e) *Quality of project personnel.* (10 points.)

(1) The Secretary considers the quality of the project personnel who will carry out the proposed project.

(2) In determining the quality of the personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(f) *Quality of the project evaluation.* (15 points.)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide a scientific basis for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data.

(g) *Quality of project services.* (10 points.)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(iii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(iv) The extent to which the services to be provided by the proposed project are focused on individuals with greatest needs.

Waiver of Proposed Rulemaking: It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules, competitive preferences and program definitions. Section 437 (d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt from rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). The Secretary, in accordance with section 437 (d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards.

For Applications and Further information contact: Valerie Rogers, U. S. Department of Education, 400 Maryland Avenue, SW, Room 3E245, Washington, DC 20202–6140. Telephone (202) 260–2543.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this document in an alternative format, (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

Individuals with disabilities also may obtain a copy of the application package in 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: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at the previous site. If you have questions about using, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in 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. 6331.

Dated: October 4, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–25700 Filed 10–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, October 12, 2002 8:30 a.m.–Noon.

ADDRESSES: Crosby Senior Center, 8910 Willey Road, Harrison, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

8:30 a.m.—Call to Order
8:30–8:45 a.m.—Chair's Remarks and Ex Officio Announcements
8:45–9 a.m.—Plan for Upcoming Chairs Meeting
9–10 a.m.—Silos Update and Discussion
10–10:15 a.m.—Break
10:15–11:45 a.m.—Record Report Discussion
11:45–12 p.m.—Public Comment
Noon—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date

due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, % Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on October 4, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–25680 Filed 10–8–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2418–001, et al.]

Northeast Utilities Service Company, et al.; Electric Rate and Corporate Regulation Filings

September 30, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Northeast Utilities Service Company

[Docket No. ER02–2418–001]

Take notice that on September 26, 2002, Northeast Utilities Service Company (NUSCO) submitted a correction to the rate schedule with respect to The Connecticut Light and Power Company (CL&P) which was correctly identified in the transmittal letter, but not correctly identified on the top left of each page of the composite copies included as Attachment 2 to the filing. The CL&P rate schedule designation should read ''CL&P First Revised FERC Electric Rate Schedule No. 492.''

Comment Date: October 17, 2002.

2. Reliant Energy Mid-Atlantic Power Holdings, LLC

[Docket No. ER02–2600–000]

Take notice that on September 25, 2002 Reliant Energy Mid-Atlantic Power Holdings, LLC (REMPH) filed notice of the cancellation of its FERC Electric Rate Schedule No. 1 as it applies to Units 1 and 2 of REMPH's Warren Station only. REMPH states that the cancellation results from the decommissioning of the units at the Warren Station and will be effective on September 30, 2002.

Comment Date: October 16, 2002.

3. American Atlas #1, Ltd., L.L.L.P.

[Docket No. ER02–2601–000]

Take notice that on September 26, 2002, American Atlas #1, Ltd., L.L.L.P. (American Atlas), tendered for filing a Notice of Cancellation of Rate Schedule respecting American Atlas Electric Tariff No. 1, which became effective June 1, 1999, in Docket No. ER99–3086–000. American Atlas requests that the cancellation become effective November 25, 2002.

Comment Date: October 17, 2002.

4. Southern California Edison Company

[Docket No. ER02–2602–000]

Take notice that on September 26, 2002, Southern California Edison Company (ASCE) tendered for filing the Amended and Restated Radial Lines Agreement (Agreement) between SCE and Reliant Energy Ormond Beach, L.L.C.

The Agreement serves to show revisions for replacement of Capacitance Coupled Voltage Transformers that are needed for SCE to operate and maintain the radial lines, and to conform to the requirements of the Commission's Order No. 614.

SCE respectfully requests that the Agreement become effective on September 27, 2002. Copies of this filing were served upon the Public Utilities Commission of the State of California and Reliant Energy Ormond Beach, L.L.C.

Comment Date: October 17, 2002.

5. MidAmerican Energy Company

[Docket No. ER02–2603–000]

Take notice that on September 26, 2002, MidAmerican Energy Company (MidAmerican), filed with the Commission a Generation Interconnection Contract between MidAmerican, as transmission and distribution delivery services provider, and MidAmerican, as wholesale merchant, which incorporates the revisions as agreed to in the First Amendment to Generation Interconnection Contract, dated May 1, 2002 (Revised Contract).

MidAmerican requests an effective date of May 1, 2002, for the Revised Contract and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: October 17, 2002.

6. Keystone Energy Group, Inc.

[Docket No. ER02–2605–000]

Take notice that on September 26, 2002, Keystone Energy Group, Inc. (Keystone) petitioned the Commission for acceptance of Keystone Rate schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and waiver of certain Commission regulations.

Keystone intends to engage in wholesale electric power and energy purchases and sales as a marketer. Keystone is not in the business of generating or transmitting electric power.

Comment Date: October 17, 2002.

7. Madison Gas and Electric Company

[Docket No. ER02–2606–000]

Take notice that on September 26, 2002, Madison Gas and Electric Company (MGE) tendered for filing a service agreement under MGE's Market-Based Power Sales Tariff with Sempra Energy Trading Corp.

MGE requests the agreement be effective on the date it was filed with the Federal Energy Regulatory Commission.

Comment Date: October 17, 2002.

8. Quonset Point Cogen, L.P.

[Docket No. ER02–2607–000]

Take notice that on September 27, 2002, Quonset Point Cogen, L.P. (Quonset) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for an order accepting its FERC Electric Rate Schedule No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and waiving certain regulations of the Commission. Quonset requests expedited Commission consideration and waiver of the prior notice requirements so that its Electric Rate Schedule No. 1 can become effective on October 15, 2002.

Comment Date: October 18, 2002.

9. Kentucky Utilities Company

[Docket No. ER02–2608–000]

Take notice that on September 27, 2002, Kentucky Utilities Company (KU) filed an amendment to its Interchange Agreement with the City of Paris, Kentucky, to incorporate certain changes required in connection with KU's transfer of certain distribution facilities to the City of Paris. The Amendment does not change any rates

or charges under the Interchange Agreement as previously approved and on file with this Commission.

Comment Date: October 18, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25646 Filed 10–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

October 2, 2002.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 9, 2002 (30 Minutes Following Regular Commission Meeting).

PLACE: Hearing Room 5, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public, Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey, Breathitt and Brownell voted to hold a closed meeting on October 9, 2002. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25735 Filed 10–4–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7392–8]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

DATES: The meeting will be held on Wednesday, November 6, 2002, from 1 p.m. to 5 p.m., and on Thursday, November 7, 2002, from 8:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Bay Tower Hotel and Conference Center, 711 Casino Magic Drive, Bay St. Louis, MS 39520 (1–800–5–MAGIC–5)

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda is attached.

The meeting is open to the public.

Dated: September 30, 2002.

Gloria D. Car,

Designated Federal Officer.

Gulf of Mexico Program—Citizens Advisory Committee Meeting—Bay Towers Hotel and Conference Center, Bay St. Louis, Mississippi, November 6–7, 2002

Draft Agenda

Wednesday, November 6

11:45–1:00 CAC Members Networking Luncheon (at hotel)
1:00–1:20 p.m. Opening Remarks/ Introductions (Jim Kachtick, Chair), Review and approval of November 7–8, 2001 and June 11–13, 2002, Meeting Summaries, Jim Kachtick, Chair
1:20–1:45 Chair Report, Jim Kachtick, Chair
- Follow-up on CAC Action Items

1:45–2:15 GMP Director's Report, Gloria Car, GMPO Associate Director
2:15–2:30 Break
2:30–3:15 Presentation: Dockwatch Update (Jellyfish), Dr. William Graham, Dauphin Island Sea Lab
3:15–5:00 Casino Magic Golf Course Gulf Guardian Award Video Golf Course Tour (tentative)
Evening Dinner Sponsored by Hancock County Board of Supervisors—location to be announced

Thursday, November 7

7:30–8:30 Continental Breakfast
8:30–9:15 CAC Projects Report, Jennyfer Smith, Battelle
- Dockwatch Project
- Coastal Bird Trail
- FFA Environmental Speech Project
- GMP Presentation for CAC Members
- CAC Web Page and Status of Bulletin Board

9:15–9:45 Election of Officers
9:45–10:30 Members Roundtable and Participation Reports
10:30–10:45 Break
10:45–11:30 Presentation on the Gulf Restoration Network, Cynthia Sarthou, Gulf Restoration Network
11:15–11:30 Meeting Calendar for 2003
11:30–12:00 Citizens Advisory Committee Wrap-up
- Discussion and Recommendations

12:00 Adjourn

[FR Doc. 02–25683 Filed 10–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0270; FRL–7276–7]

Pesticide Product; Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any

previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0270, must be received on or before November 8, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0515; e-mail address: *reynolds.alan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide manufacturer. Potentially affected entities may include, but are not limited to:

Pesticide manufacturers (NAICS 32532)

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

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0270. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit

comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0270. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0270. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0270.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0270. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Application

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient Not Included in any Previously Registered Products

File symbol: 74411–R. Applicant: Insect Biotechnology, Inc., 100 Capitola Drive, Suite 307, Durham, NC 27713. Product name: Technical Trypsin Modulating Oostatic Factor (TMOF). Product type: Insecticide. Active ingredient: Trypsin Modulating Oostatic Factor at 100%. Proposed classification/Use: Manufacturing use product for formulation into insecticidal products for mosquito control.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: September 30, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–25684 Filed 10–8–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0244; FRL–7198––2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0244, must be received on or before November 8, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0244 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard Cole, Biopesticide and Pollution Prevention Division, Office of Pesticide Programs, (7511C) Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food

manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

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

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

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0244. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0244. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0244. In contrast to EPA's

electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0244.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0244. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 24, 2002.

Janet L. Andersen,

Director, Biopesticide and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Mycogen Seeds c/o Dow AgroSciences LLC, and represents the view of the Mycogen Seeds. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues, or an explanation of why no such method is needed.

Mycogen Seeding c/o Dow AgroSciences LLC

PP 2G6494

EPA has received a pesticide petition 2G6494 from Mycogen Seeds c/o Dow AgroSciences LLC , 9330 Zionsville Road, Indianapolis, IN 46268–1054, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a temporary tolerance for the plant-incorporated protectant *Bacillus thuringiensis* subspecies aizawai Cry1F (synpro) insect control protein and the genetic material responsible for the production of this protein in or on cotton. (See EPA document OPP–2002–0244, FRL–7196–2 published elsewhere in this issue of the **Federal Register**.)

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Mycogen Seeds c/o Dow AgroSciences LLC has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Mycogen Seeds c/o Dow AgroSciences LLC and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product name and Proposed Use Practices

This notice of filing summarizes information submitted and cited by Mycogen Seeds c/o Dow AgroSciences LLC in support of a request for a temporary exemption from tolerance residues of the plant incorporated-protectant *Bacillus thuringiensis* subspecies aizawai Cry1F (synpro) insect control protein and the genetic material responsible for the production of this protein in cotton.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues. Bacillus thuringiensis* subspecies aizawai Cry1F (synpro) insect control protein is expressed in cotton plants to provide protection from key lepidopteran insect pests such as the tobacco budworm and pink bollworm. Cry1F (synpro) transgenic plants are derived from transformation events that contain the insecticidal gene via a plasmid insert. The Cry1F (synpro) protein poses no foreseeable risks to non-target organisms including mammals, birds, fish, beneficial insects, and earthworms. Cry1F (synpro)-protected cotton provides growers with a highly efficacious tool for controlling important insect pests in cotton in a manner that is fully compatible with integrated pest management practices.

2. *Analytical method.* A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed. No analytical method is included because this petition requests a temporary exemption from the requirement for a tolerance.

C. Mammalian Toxicological Profile

Cry proteins have been deployed as safe and effective pest control agents in microbial *Bacillus thuringiensis* formulations for almost 40 years. There are currently 180 registered microbial *Bacillus thuringiensis* products in the United States for use in agriculture, forestry, and vector control. The numerous toxicology studies conducted with these microbial products show no significant adverse effects, and demonstrate that the products are practically non-toxic to mammals. An exemption from the requirement of a tolerance has been in place for these products since at least 1971 (40 CFR 180.1011).

Toxicology studies conducted to determine the toxicity of Cry1F (synpro) insect control protein demonstrated that the protein has very low toxicity. In an acute oral toxicity study in the mouse (male and female), the estimated acute LD_{50} was determined to be >2,000 mg/kg of the microbially produced test substance.

In an *in vitro* study, Cry1F protein was rapidly and extensively degraded in simulated gastric conditions in the presence of pepsin at pH 1.2. Cry1F (synpro) was completely proteolyzed to amino acids and small peptide fragments in <1 minute. This indicates that the protein is highly susceptible to digestion in the human digestive tract and that the potential for adverse health effects from chronic exposure is virtually nonexistent. Moreover, proteins in general are not known to be carcinogenic. A search of relevant databases indicated that the amino acid sequence of the Cry1F (synpro) protein exhibits no significant homology to the sequences of known allergens or protein toxins. Thus, Cry1F (synpro) is highly unlikely to exhibit an allergic response.

The results of a study to determine the lability of the Cry1F (synpro) protein to heat demonstrated that the protein was deactivated after exposure to 75° or 90°C for 30 minutes, according to bioassay results on tobacco budworm.

The genetic material necessary for the production of the Cry1F (synpro) insect control protein are nucleic acids (DNA) which are common to all forms of plant and animal life. There are no known instances of where nucleic acids have caused toxic effects as a result of dietary exposure.

Collectively, the available data on Cry1F (synpro) protein along with the safe use history of microbial *Bacillus thuringiensis* products establishes the safety of the plant pesticide *Bacillus thuringiensis* subspecies aizawai Cry1F (synpro) insect control protein and the genetic material necessary for its production in all raw agricultural commodities.

D. Aggregate Exposure

Non-dietary exposure. Insecticidal crystal proteins of *Bacillus thuringiensis* are known to have a high degree of insect specificity via binding to specific receptors in the insect gut, and do not harm people, wildlife or many beneficial insects (Ballester et al., 1999; Aronson and Shai, 2001). The level of protein that is expressed in corn plants is very low. The small amount of Cry1F (synpro) in plant tissue is deep in the plant matrix, which greatly reduces availability for dermal or respiratory exposure. Significant dietary exposure to Cry1F (synpro) protein is unlikely to occur. Dietary exposures at very low levels, via ingestion of processed commodities, although they may occur, are unlikely to be problematic because of the low toxicity and the high degree of digestibility of the protein. In addition, the protein is not likely to be present in drinking water because the protein is deployed in minute quantities within the plant, and studies demonstrate that Cry1F (synpro) protein is rapidly degraded in soil. In summary, the potential for significant aggregate exposure to Cry1F (synpro) protein is highly unlikely.

E. Cumulative Exposure

Common modes of toxicity are not relevant to consideration of the cumulative exposure to *Bacillus thuringiensis* Cry1F (synpro) insect control protein. The product has demonstrated low mammalian toxicity and Bt insecticidal crystal proteins are known to bind to specific receptors in the insect gut, such that biological effects do not appear to be cumulative with any other known compounds.

F. Safety Determination

1. *U.S. population.* The deployment of the product in minute quantities within the plant, the very low toxicity of the product, the lack of allergenic potential, and the high degree of digestibility of the protein, are all factors in support of Mycogen's assertion that no significant risk is posed by exposure of the U.S. population to *Bacillus thuringiensis* subspecies aizawai Cry1F (synpro) insect control protein.

2. *Infants and children.* Non-dietary exposure to infants and children is not anticipated, due to the proposed use pattern of the product. Due to the very low toxicity of the product, the lack of allergenic potential, and the high degree of digestibility of the protein, dietary exposure is anticipated to be at very low levels and is not anticipated to pose any harm to infants and children.

G. Effects on the Immune and Endocrine Systems

Given the rapid digestibility of Cry1F (synpro) insecticidal crystal protein, no chronic effects are expected. Cry1F (synpro) insecticidal crystal protein, or metabolites of the insecticidal crystal protein are not known to, or are expected to have any effect on the immune or endocrine systems. Proteins in general are not carcinogenic, therefore, no carcinogenic risk is associated with the Cry1F (synpro) protein.

H. Existing Tolerances

There are no existing tolerances or exemptions from tolerance for *Bacillus thuringiensis* subspecies aizawai Cry1F (synpro) granted to Mycogen Seeds c/o Dow AgroSciences LLC.

[FR Doc. 02–25584 Filed 10–8–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0244; FRL–7196––2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0244, must be received on or before November 8, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0244 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard Cole, Biopesticide and Pollution Prevention Division, Office of Pesticide Programs, (7511C) Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in OPP–2002–0244. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0244. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0244 The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0244. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0244.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0244. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

September 24, 2002.

Janet L. Andersen,

Director, Biopesticide and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Mycogen Seeds c/o Dow AgroSciences LLC, and represents the view of the Mycogen Seeds. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues, or an explanation of why no such method is needed.

Mycogen Seeding c/o Dow AgroSciences LLC

PP 2G6494

EPA has received a pesticide petition (2G6494) from Mycogen Seeds c/o Dow

AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180, to establish an exemption from the requirement of a temporary tolerance for the plant incorporated protantant; *bacillus thuringiensis* var *Kurstaki* CrylAc in or on cotton. The plant also expresses the Cry1F protein (refer to FRL–7198–2 published elsewhere in this issue of the **Federal Register**).

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Mycogen Seeds c/o Dow AgroSciences LLC has submitted the following summary of information, data, and arguments in support of their pesticide petition. EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Bacillus thuringiensis subspecies *kurstaki.* Cry1Ac (synpro) insect control protein is expressed in cotton plants to provide protection from key lepidopteran insect pests such as the tobacco budworm and pink bollworm. Cry1Ac (synpro) transgenic plants are derived from transformation events that contain the insecticidal gene via a plasmid insert. The Cry1Ac (synpro) protein poses no foreseeable risks to non-target organisms including mammals, birds, fish, beneficial insects, and earthworms. Cry1Ac (synpro) protected cotton provides growers with a highly efficacious tool for controlling important insect pests in cotton in a manner that is fully compatible with integrated pest management practices.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The Cry1Ac gene was isolated from *bacillus thuringiensis* subspecies *kurstaki* and modified before it was inserted into cotton plants to produce a full length protein. The Cry1Ac (synpro) insecticidal protein has been adequately characterized. Several safety studies were conducted using a microbially produced test substance preparation that contained 14% Cry1Ac protein. Studies conducted to establish the equivalence of the Cry1Ac (synpro) protein obtained from cotton, or from a microbial source demonstrate that the materials are similar with respect to molecular weight, immunoreactivity, lack of post-translational glycosylation and spectrum of bioactivity.

2. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* No analytical method is included because this petition requests a temporary exemption from the requirement for a tolerance.

C. Mammalian Toxicological Profile

Cry proteins have been deployed as safe and effective pest control agents in microbial bacillus thuringiensis formulations for almost 40 years. There are currently 180 registered microbial bacillus thuringiensis products in the United States for use in agriculture, forestry, and vector control. The numerous toxicology studies conducted with these microbial products show no significant adverse effects, and demonstrate that the products are practically non-toxic to mammals. An exemption from the requirement of a tolerance has been in place for these products since at least 1971 (40 CFR 180.1011).

Toxicology studies conducted to determine the toxicity of Cry1Ac (synpro) insecticidal crystal protein demonstrated that the protein has very low toxicity. In an acute oral toxicity study in the mouse (male and female), the estimated acute LD_{50} was determined to be >5,000 mg/kg of the microbially produced test substance containing 14% Cry1Ac (synpro) protein. In an *in vitro* study, Cry1Ac (synpro) protein was rapidly and extensively degraded in simulated gastric conditions in the presence of pepsin at pH 1.2. Cry1Ac (synpro) was completely proteolyzed to amino acids and small peptide fragments in <1 minute. This indicates that the protein is highly susceptible to digestion in the human digestive tract and that the potential for adverse health effects from chronic exposure is virtually nonexistent. Moreover, proteins in general are not known to be carcinogenic. A search of relevant data bases indicated that the amino acid sequence of the Cry1Ac (synpro) protein exhibits no significant homology to the sequences of known allergens or protein toxins. Thus, Cry1Ac (synpro) is highly unlikely to exhibit an allergic response.

The results of a study to determine the lability of the Cry1Ac (synpro) protein to heat demonstrated that the protein was deactivated after exposure to 75 °C or 90 °C for 30 minutes, according to bioassay results on tobacco budworm. The genetic material necessary for the production of the Cry1Ac (synpro) insecticidal crystal protein are nucleic acids (DNA) which are common to all forms of plant and animal life. There are no known instances of where nucleic acids have caused toxic effects as a result of dietary exposure.

Collectively, the available data on Cry1Ac (synpro) protein along with the safe use history of microbial *bacillus thuringiensis* products, establishes the safety of the plant pesticide *bacillus thuringiensis* subspecies *kurstaki*, Cry1Ac (synpro) insecticidal crystal protein and the genetic material necessary for its production in all raw agricultural commodities.

D. Aggregate Exposure

Insecticidal crystal proteins of bacillus thuringiensis are known to have a high degree of insect specificity via binding to specific receptors in the insect gut, and do not harm people, wildlife or many beneficial insects (Ballester et al., 1999; Aronson and Shai, 2001). The level of protein that is expressed in corn plants is very low. The small amount of Cry1Ac (synpro) in plant tissue is deep in the plant matrix, which greatly reduces availability for dermal or respiratory exposure. Significant dietary exposure to Cry1Ac (synpro) protein is unlikely to occur. Dietary exposures at very low levels, via ingestion of processed commodities, although, they may occur, are unlikely to be problematic because of the low toxicity and the high degree of digestibility of the protein. In summary the potential for significant aggregate exposure to Cry1Ac (synpro) protein is highly unlikely.

E. Cumulative Exposure

Common modes of toxicity are not relevant to consideration of the cumulative exposure to *bacillus thuringiensis* Cry1Ac (synpro) insecticidal crystal protein. The product has demonstrated low mammalian toxicity, and *Bt* insecticidal crystal proteins are known to bind to specific receptors in the insect gut, such that biological effects do not appear to be cumulative with any other known compounds.

F. Safety Determination

1. *U.S. population.* The deployment of the product in minute quantities within the plant, the very low toxicity of the product, the lack of allergenic potential, and the high degree of digestibility of the protein, are all factors in support of Mycogen's assertion that no significant risk is posed by exposure of the U.S. population to *bacillus thuringiensis*

subspecies *kustaki* Cry1Ac (synpro) insect control protein.

2. *Infants and children.* Non-dietary exposure to infants and children is not anticipated, due to the proposed use pattern of the product. Due to the very low toxicity of the product, the lack of allergenic potential, and the high degree of digestibility of the protein, dietary exposure is anticipated to be at very low levels and is not anticipated to pose any harm to infants and children.

G. Effects on the Immune and Endocrine Systems

Given the rapid digestibility of Cry1Ac (synpro) insecticidal crystal protein, no chronic effects are expected. Cry1Ac (synpro) insecticidal crystal protein, or metabolites of the insecticidal crystal protein are not known to, or are expected to have any effect on the immune, or endocrine systems. Proteins in general are not carcinogenic; therefore, no carcinogenic risk is associated with the Cry1Ac (synpro) protein.

H. Existing Tolerances

There are no existing tolerances or exemptions from tolerance for *bacillus thuringiensis* subspecies *kurstaki* Cry1Ac (synpro) granted to Mycogen Seeds c/o Dow AgroSciences LLC.

[FR Doc. 02–25585 Filed 10–8–02; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 10, 2002, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Acting Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 12, 2002 (Open)
- September 12, 2002 (Open and Closed)
- September 17, 2002 (Closed)
- September 26, 2002 (Open)

B. Reports

- Corporate Approvals
- Provisions of the 2002 Farm Bill
- Conditions and Trends in the Dallas Field Office Portfolio

C. New Business

- Regulations
  - Final Rule—Adjusting Civil Money Penalties for Inflation
- *Other*
  - Reaffiliation of Northwest Farm Credit Services, ACA with CoBank, ACB
  - Merger of AgAmerica, FCB with and into AgriBank FCB
  - East Carolina Farm Credit, ACA Restructuring
  - Consolidation of the Federal Land Bank Association of Western Oklahoma, FLCA, Clinton, PCA, and PCA of Woodward to form an ACA (with subsidiaries)

Closed*

- *New Business*
  - Investments
  - Securities Issues

Dated: October 4, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–25760 Filed 10–7–02; 10:32 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Thursday, October 10, 2002

October 3, 2002.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on , which is scheduled to commence at in Room TW–C305, at 445 12th Street, SW, Washington, DC.

Item No.	Bureau	Subject
1	International	*Title:* International Settlements Policy Reform and International Settlement Rates (IB Docket No. 96–261). *Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning the reform of the International Settlements Policy, its international simple resale and benchmarks policy, and the issue of foreign mobile termination rates.
2	Media	*Title:* Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service (MM Docket No. 99–325). *Summary:* The Commission will consider a First Report and Order concerning digital operation by terrestrial radio broadcasters.
3	Enforcement	*Title:* SBC Communications, Inc., Apparent Liability for Forfeiture. *Summary:* The Commission will consider a Forfeiture Order concerning compliance with the shared transport condition of the SBC/Ameritech merger order.
4	Enforcement	The Enforcement Bureau will report to the Commission on recent enforcement activities.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com.*

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events web page at *http://www.fcc.gov/realaudio.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–25759 Filed 10–7–02; 10:32 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Federal Register Citation of Previous Notice: 67 FR 62472, October 7, 2002

ACTION: Notice; correction.

SUMMARY: The Federal Housing Finance Board published a Sunshine Act Notice in the **Federal Register** on October 7, 2002, regarding the Board of Directors meeting of October 9, 2002. The Notice contained an incorrect title of an agenda item.

Correction

In the **Federal Register** on October 7, 2002, in FR 67, Number 194, on page 62472, correct the last agenda item to read:

- Appointment—Financing Corporation Directorate (Tentative)

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Arnold Intrater,

General Counsel.

[FR Doc. 02–25915 Filed 10–7–02; 2:29 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011821.

Title: MSC/CMA CGM Space Charter Agreement.

Parties: Mediterranean Shipping Company, S.A., CMA CGM S.A.

Synopsis: The agreement authorizes MSC to charter space to CMA CGM in the trades between United Kingdom, Belgium, France, Germany and Mexico, on the one hand, and the U.S. East and Gulf Coasts (Eastport, Maine to Brownsville, TX), on the other hand.

Agreement No.: 011822.

Title: Priority/Crowley Space Charter Agreement.

Parties: Priority Transport, Inc., Crowley Liner Service, Inc.

Synopsis: The agreement authorizes Crowley to charter space fromPriority Transport in the trade between San Juan, Puerto Rico, and Santo Domingo, the Dominican Republic.

Agreement No.: 011823.

Title: Contship/P&O Nedlloyd Vessel Sharing Agreement.

Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V., Contship Containerlines.

Synopsis: Under the proposed agreement, the parties are authorized to share vessel space between the U.S. East Coast and North Europe, the Mediterranean, Australia, New Zealand, the Caribbean, the South Pacific, and Singapore.

Agreement No.: 011824.

Title: Contship/P&O Nedlloyd-CMA CGM/Marfret Agreement.

Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V., Contship Containerlines, CMA CGM S.A., CMA CGM (UK) Limited, Compagnie Maritime Marfret S.A.

Synopsis: Under the proposed agreement, the parties are authorized to share vessel space between the U.S. East Coast and North Europe, the Mediterranean, Australia, New Zealand, the Caribbean, the South Pacific, and Singapore.

Agreement No.: 011825.

Title: CS/PONL–HSDG Agreement.

Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V. and Contship Containerlines, Hamburg-Süd.

Synopsis: Under the proposed agreement, the parties are authorized to share vessel space between the U.S. East Coast and North Europe, the Mediterranean, Australia, New Zealand, the Caribbean, the South Pacific, and Singapore.

Agreement No.: 011826.

Title: CS/PONL–Hapag-Lloyd Agreement.

Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V., Contship Containerlines, Hapag-Lloyd Container Linie GmbH.

Synopsis: Under the proposed agreement, the parties are authorized to share vessel space between the U.S. East Coast and North Europe, the Mediterranean, Australia, New Zealand, the Caribbean, the South Pacific, and Singapore.

Agreement No.: 011827.

Title: Europe-Australia-New Zealand-U.S. East Coast Bridging Agreement.

Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V., Contship Containerlines, CMA CGM S.A., CMA CGM (UK) Limited, Compagnie Maritime Marfret S.A., Hamburg-Süd, Hapag-Lloyd Container Linie GmbH.

Synopsis: The proposed agreement would allow the parties to the Contship/P&O Nedlloyd Vessel Sharing Agreement, the CS/PONL–CMA CGM/Marfret Agreement, the CS/PONL–HSDG Agreement, and the CS/PONL–Hapag-Lloyd Agreement to discuss and agree on operational matters and slot allocations in connection with their services between the U.S. East Coast and North Europe, the Mediterranean, Australia, New Zealand, the Caribbean, the South Pacific, and Singapore.

By Order of the Federal Maritime Commission.

Dated: October 4, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–25694 Filed 10–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–14]

Avalon Risk Management, Inc., General Agent for Aegis Security Insurance Co. v. Michael Brian Deitchman, Arnistics, LLC and Advanced Global Logistics; Notice of Filing of Complaint and Assignment

Avalon Risk Management, Inc., General Agent for Aegis Security Insurance Co., (''Complainant'') has filed a complaint against Michael B. Deitchman; Arnistics, LLC; and Advanced Global Logistics (''Respondents''). Complainant states that it provided Ocean Transportation Intermediary (''OTI'') bonds to the Respondents, who represented that they would comply with all Federal Maritime Commission (''Commission'') OTI regulations, including paying freight and related charges. However, Complainant alleges that Respondents fraudulently induced carriers to release cargo to them or their agents, thus causing carriers to lose their liens on the cargo without payment. Four carriers have settled claims for the resultant damages with Complainant, to whom they have assigned their recovery rights.

Complainant states that Respondent Deitchman breached the settlement agreement he entered into to indemnify the Complainant for the costs associated with the claims, thus violating the Shipping Act of 1984 (''Shipping Act'') by obtaining ocean transportation at less than the rates that would otherwise be applicable. Respondents are said to have violated section 10(a)(1) of the Shipping Act by issuing checks with insufficient funds as payment to carriers for the ocean freight and other charges incurred by Respondents, thereby obtaining ocean transportation at less than the rates that would otherwise be applicable. Complainant also alleges that Respondents violated certain OTI fiduciary duties.

Complainant asks the Commission to issue orders (1) compelling Respondents to answer its charges and scheduling a hearing in Washington DC; (2) against the Respondents for their violations of the Shipping Act; (3) compelling Respondents to make reparations to Complainant, plus interest, costs and attorneys' fees; and (4) holding that the Respondents' business activities described in the Complaint are unlawful and in violation of the Shipping Act and ordering them to cease and desist therefrom.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by October 1, 2003, and the final decision of the Commission shall be issued by January 26, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–25695 Filed 10–8–02; 8:45 am]

BILLING CODE 6730–01–P

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 November 1, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. State Bankshares, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of State Bank of Moorhead, Moorhead, Minnesota.

In connection with this application, Applicant also has applied to acquire Northern Capital Holding Company, Fargo, North Dakota, and thereby engage in providing trust services, and brokerage and financial advisory services, pursuant to §§ 225.28 (b) (5), (b)(6), (b)(7), and (b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, October 3, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–25643 Filed 10–8–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 10 a.m. (EDT) October 21, 2002.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and part closed to the public.

MATTERS TO BE CONSIDERED: emsp;

Parts Open to the Public

1. Approval of the minutes of the September 17, 2002, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director (with discussion of litigation to be closed to the public).

Part Closed to the Public

Discussion of litigation.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 7, 2002.

David L. Hutner,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–25927 Filed 10–7–02; 3:16 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Trade Commission.

TIME AND DATE: 2 p.m., Monday, November 4, 2002.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: *Portions Open to Public:*

(1) Oral argument in Polygram Holding *et al.* Docket 9298.

Portions Closed to the Public:

(2) Executive session to follow oral argument in Polygram Holding, *et al.* Docket 9298.

FOR FURTHER INFORMATION CONTACT: Mitch Katz, Office of Public Affairs: (202) 326–2180, Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 02–25755 Filed 10–7–02; 9:28 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[Wildlife Order 186; 4–U–AL–0767]

Public Buildings Services; Mobile Point Light Station, Gulf Shores, AL

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c) notice is hereby given that:

1. The General Services Administration transferred 32.34 acres of land and improvements, identified as Mobile Point Light Station, Gulf Shores, AL to the U.S. Fish and Wildlife Service Department of the Interior by transfer letter dated June 12, 2002.

2. The above property was conveyed for wildlife conservation in accordance with the provisions of section 1 of Pub. L. 80–537 (16 U.S.C. 667b), as amended by Pub. L. 92–432.

Dated: September 25, 2002.

Gordon S. Creed,

Assistant Commissioner, Office of Property Disposal.

[FR Doc. 02–25650 Filed 10–8–02; 8:45 am]

BILLING CODE 6820–96–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0268]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cosmetic Product Voluntary Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 8, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Cosmetic Product Voluntary Reporting Program—(21 CFR 720.4, 720.6, and 720.8)—(OMB Control Number 0910–0030)—Extension

Under the Federal Food, Drug, and Cosmetic Act (the act), cosmetic products that are adulterated under section 601 of the act (21 U.S.C. 361) or misbranded under section 602 of the act (21 U.S.C. 362) cannot legally be distributed in interstate commerce. To assist FDA in carrying out its responsibility to regulate cosmetics, FDA requests under part 720 (21 CFR part 720), but does not require, that firms that manufacture, pack, or distribute cosmetics file with the agency an ingredient statement for each of their products (§ 720.4). Ingredient statements for new submissions (§ 720.4) are reported on Form FDA 2512, ''Cosmetic Product Ingredient Statement,'' and on Form FDA 2512a, a continuation form. Changes in product formulation (§ 720.6) are also reported on Forms FDA 2512 and FDA 2512a. When a firm discontinues the commercial distribution of a cosmetic, FDA requests that the firm file Form FDA 2514, ''Discontinuance of Commercial Distribution of Cosmetic Product Formulation'' (§ 720.6). If any of the information submitted on or with these forms is confidential, the firm may submit a request for confidentiality under § 720.8.

FDA uses the information received on these forms as input for a computer-based information storage and retrieval system. These voluntary formula filings provide FDA with the best information available about cosmetic product formulations, ingredients and their frequency of use, businesses engaged in the manufacture and distribution of cosmetics, and approximate rates of product discontinuance and formula modifications. FDA's database also lists cosmetic products containing ingredients suspected to be carcinogenic or otherwise deleterious to the public health. The information provided under the Cosmetic Product Voluntary Reporting Program assists FDA scientists in evaluating reports of alleged injuries and adverse reactions to the use of cosmetics. The information also is utilized in defining and planning analytical and toxicological studies pertaining to cosmetics.

FDA shares nonconfidential information from its files on cosmetics with consumers, medical professionals, and industry. For example, by submitting a Freedom of Information Act request, consumers can obtain information about which products do or do not contain a specified ingredient and about the levels at which certain ingredients are typically used. Dermatologists use FDA files to cross-reference allergens found in patch test kits with cosmetic ingredients. The Cosmetic, Toiletry, and Fragrance Association, which is conducting a review of ingredients used in cosmetics, has relied on data provided by FDA in selecting ingredients to be reviewed based on frequency of use.

The Cosmetic Product Voluntary Reporting Program was suspended during fiscal year (FY) 1998 due to a lack of budgetary funding and was reinstated at the beginning of FY 1999. The estimated hour burden is 60 percent of the previous level reported in 1999. In general, the larger cosmetic companies have resumed participating in the program, whereas the smaller companies are lagging.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
720.1 through 720.4 (new submission)	FDA 2512 and FDA 2512a	54	35.6	1,920	0.5	960
720.4 and 720.6 (amendments)	FDA 2512 and FDA 2512a	54	1.4	75	0.33	25

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
720.3 and 720.6 (notices of discontinuance)	FDA 2514	54	0.4	20	0.1	2
720.8 (requests for confidentiality)	0	0	0	0	1.5	0
Total						987

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the number and frequency of submissions received in the past and on discussions between FDA staff and respondents during routine communications. The actual time required for each submission will vary in relation to the size of the company and the breadth of its marketing activities.

Dated: October 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–25642 Filed 10–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Maternal and Child Health Research Grants Review Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following advisory committee meeting. The meeting is open to the public on Wednesday, November 20, 2002, from 9 a.m. to 10 a.m. and closed for the remainder of the meeting.

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: November 20—22, 2002; 9 a.m. to 5 p.m.

Place: Embassy Suites Hotel, Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Purpose: To review research grant applications in the program areas of maternal and child health, administered by the Maternal and Child Health Bureau, Health Resources and Services Administration.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Research, Training and Education, who will report on program issues, congressional activities, and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on Wednesday, November 20, 2002, from 10 a.m., through the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write or contact Kishena C. Wadhwani, Ph.D., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2207.

Dated: October 2, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–25659 Filed 10–8–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to scientific research and enhancement of survival of endangered species.

DATES: Written comments on these requests for permits must be received by November 8, 2002.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; telephone 303–236–7400, facsimile 303–236–0027.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303–236–7400.

SUPPLEMENTARY INFORMATION: The following applicants have requested renewal of scientific research and enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

TE–051833

Applicant: J. Stephen McCusker, San Antonio Zoo, San Antonio, Texas

The applicant requests a permit to possess black-footed ferrets (*Mustela nigripes*) for public display in conjunction with recovery activities for the purpose of enhancing the species' survival and recovery.

TE–062348

Applicant: Craig Milewski, Dakota State University, Madison, South Dakota

The applicant requests a permit to take Topeka shiner (*Notropis topeka*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Dated: September 19, 2002.

Mary G. Henry,

Regional Director, Denver, Colorado.

[FR Doc. 02–25653 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Kneeland Prairie Penny-Cress (*Thlaspi californicum*), for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability for public review of the Draft Recovery Plan for the Kneeland Prairie Penny-cress (*Thlaspi californicum*). The draft plan includes specific recovery criteria and measures to be taken in order to delist the Kneeland Prairie penny-cress. We solicit review and comment from local, State, and Federal agencies, and the public on this draft recovery plan.

DATE:S Comments on the draft recovery plan must be received on or before December 9, 2002, to receive consideration by us.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California 95521 (phone: 707–822–7201). Requests for copies of the draft recovery plan, and written comments and materials regarding this plan should be addressed to Bruce Halstead, Project Leader, at the above Arcata address.

FOR FURTHER INFORMATION CONTACT: David Imper, Fish and Wildlife Ecologist, at the above Arcata address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended in 1988 (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

Kneeland Prairie penny-cress (*Thlaspi californicum*; penny-cress) is a perennial member of the mustard family (Brassicaceae), restricted to outcrops of serpentine substrate located in Kneeland Prairie, Humboldt County, California. Historical loss of the serpentine habitat, combined with the potential for future loss of habitat is the primary current threat to the species.

The draft recovery plan includes conservation measures designed to ensure that a self-sustaining population of penny-cress will continue to exist, distributed throughout its extant and historic range. Specific recovery actions focus on protection of the serpentine outcrops and surrounding oak woodland and grasslands. The draft plan also seeks to re-establish multiple sexually reproducing colonies of the penny-cress within the native serpentine plant community present in Kneeland Prairie. The ultimate objective of this recovery plan is to delist penny-cress through implementation of a variety of recovery measures including: (1) Protection of the extant population and its habitat, involving acquisition or other legal protective mechanisms, monitoring, and coordination with the landowners; (2) research on the species biology and habitat requirements; (3) augmentation of existing colonies and establishment of new colonies; and (4) ex-situ conservation measures including artificial rearing and seed banking.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 26, 2002.

Steve Thompson,

Manager, California/Nevada Operations Office, Region 1, Fish and Wildlife Service.

[FR Doc. 02–25457 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Final Stock Assessment Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of final marine mammal stock assessment reports for Pacific walrus, polar bear, and sea otter in Alaska; response to comments.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), the Fish and Wildlife Service (FWS) has incorporated public comments into revisions of marine mammal stock assessment reports (SARs) for Pacific walrus, polar bear, and sea otter in Alaska. The 2002 final SARs are now complete and available to the public.

ADDRESSES: Send requests for printed copies of the final stock assessment reports to: Chief, U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503, (800) 362–5148.

Electronic Access

Copies of the final stock assessment reports are available on the Internet in Adobe Acrobat format at *http://www.r7.fws.gov/mmm/SAR.*

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the MMPA (16 U.S.C. 1361–1407) requires the FWS and the National Marine Fisheries Service (NMFS) to prepare stock assessment reports for each marine mammal stock that occurs in waters under the jurisdiction of the United States. Section 117 of the MMPA also requires the FWS and the NMFS to review the stock assessment reports: (a) At least annually for stocks that are specified as strategic stocks; (b) at least annually for stocks for which significant new information is available; and (c) at least once every three years for all other stocks. If the review indicates that the status of the stock has changed or can be more accurately determined, the agencies are directed to revise the SARs. We published the initial SARs in 1995 and revised SARs for Pacific walrus and polar bears in 1998.

Draft 2002 SARs were made available for a 90-day public review and comment period on March 28, 2002 (67 FR 14959). Prior to releasing them for public review and comment, FWS subjected the draft reports to internal technical review and to scientific review

by the Alaska Regional Scientific Review Group (ASRG) established under the MMPA. Following the close of the comment period, FWS revised the stock assessments and prepared the final 2002 SARs.

Previous stock assessments covered a single stock of Pacific walrus, two stocks of polar bears (Chukchi/Bering seas and Southern Beaufort Sea), and a single stock of sea otters in Alaska. There are no changes in stock identification for Pacific walrus and polar bear, however three stocks of sea otters (southwest Alaska, southcentral Alaska, and southeast Alaska) have now been identified.

A strategic stock is defined in the MMPA as a marine mammal stock (A) for which the level of direct human-caused mortality exceeds the potential biological removal level; (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future; or (C) which is listed as a threatened or endangered species under the Endangered Species Act of 1973, or is designated as depleted under the MMPA.

Only the southwest Alaska stock of sea otters was classified as strategic. All other stocks were classified as non-strategic. Based on the best available scientific information, sea otter numbers across southwest Alaska are declining. In April 2000, an aerial survey of sea otters in the Aleutian Islands indicated the population had declined by 70% during the period from 1992–2000. In August 2000 FWS designated the northern sea otter in the Aleutian Islands as a candidate species under the Endangered Species Act. Additional surveys in 2000 and 2001 along the Alaska Peninsula and Kodiak archipelago also showed population declines in these areas. As a result, the southwest Alaska stock is classified as strategic in the final report and is under review for possible listing under the Endangered Species Act.

A summary of the final revised stock assessment reports is presented in Table 1. The table lists each marine mammal stock, estimated abundance (N_{EST}), minimum abundance estimate (N_{MIN}), maximum theoretical growth rate (R_{MAX}), recovery factor (F_R), Potential Biological Removal (PBR), annual estimated average human-caused mortality, and the status of each stock.

TABLE 1.—SUMMARY OF FINAL STOCK ASSESSMENT REPORTS FOR PACIFIC WALRUS, POLAR BEAR, AND SEA OTTER IN ALASKA

Species	Stock	N_{EST}	N_{MIN}	R_{MAX}	E_R	PBR	Mortality causes (5 yr. average)			Stock status
							Subsistence	Fishery	Other	
Pacific Walrus.	Alaska	—	—	0.08	—	—	5,789	1	4	Non-strategic.
Polar Bear	Alaska Chukchi/Bering Seas.	—	—	0.06	0.5	—	45 (Alaska) 100+ (Russia).	0	0 (Alaska) — (Russia)	Non-strategic.
Polar Bear	Alaska Southern Beaufort Sea.	2,272	1,971	0.06	1.0	88	34 (Alaska) 20 (Canada)	0	<1 (Alaska) 0 (Canada)	Non-strategic.
Sea Otter	Southeast Alaska	12,632	9,266	0.20	1.0	927	301	0	0	Non-strategic.
Sea Otter	Southcentral Alaska.	16,552	13,955	0.20	1.0	1,396	297	0	0	Non-strategic.
Sea Otter	Southwest Alaska	41,474	33,203	0.20	0.25	830	97	<1	0	Strategic.

Dash(—)indicates unknown value.

Comments and Responses

FWS received 4 letters containing comments for sea otters, 3 letters for Pacific walrus, and two letters for polar bears. The comments and responses are separated below by species.

Sea Otter Stock Assessment Reports

Comment 1: One commenter noted that the calculation of N_{min} for some sea otter surveys does not incorporate available estimates of sampling variance.

Response: We revised our approach to estimating N_{min} for surveys that are uncorrected for sea otters not detected by observers by applying generic correction factors appropriate for the type of survey. This approach is consistent with our finding on a recent petition to list sea otters in Alaska as depleted under the MMPA (66 FR 55693, November 2, 2001)

Comment 2: Several commenters noted that the population estimates for the Cook Inlet and Kenai Fiords areas are outdated, do not conform to the established stock boundaries, and include duplication of effort in Kachemak Bay.

Response: We have substituted recent population estimates for these areas that remedy these problems.

Comment 3: One commenter indicated that the population estimate for much of the southeast Alaska stock is outdated.

Response: The survey in question is 7 years old. Stock Assessment guidelines state that abundance estimates older than 8 years are not reliable. Although it is still acceptable for use in the current stock assessment, we recognize the limitations of the existing data and have requested the U.S. Geological Survey, Division of Biological Resources, to conduct an aerial survey of sea otters in southeast Alaska. This survey is currently underway, and will be completed in sections over the next 2–3 years.

Comment 4: One commenter recommended that sea otter population estimates would be clearer if they were presented in tabular form.

Response: Tables of survey results have been included in the final stock assessment reports for sea otters.

Comment 5: Several commenters noted that sea otter population estimates included unpublished data.

Response: Typically peer-reviewed journals follow a 1–2 year cycle from manuscript preparation to submission to acceptance to publication. We believe that presentation of recent unpublished survey results, from surveys we conducted, is preferable than using older published estimates, and more appropriately meets the standard of ''the best scientific information available.''

Comment 6: One commenter stated that the observed sea otter population growth rate of 12% for the Cross Sound/

Icy Strait region may not be representatives of the entire southeast Alaska stock.

Response: We agree and have added text to clarify this point.

Comment 7: One commenter was concerned the fisheries information does not include information about fisheries that have the potential to interact with sea otters.

Response: Section 117(a)(4) of the Act states that stock assessment shall ''deserve commercial fisheries that interact with the stock.'' We interpret this to mean those fisheries for which we have information about interactions, not fisheries with the *potential* for interaction as suggested above. We see little value in speculating as to which fisheries *might* interact with sea otters. For a detailed list of fisheries and marine mammal interactions, the reader is directed to NMFS Continuing List of Fisheries [67 FR 2410, January 17, 2002]. The FWS relies on NMFS to provide us with estimates of fishery interactions. For further details on the limitations of these data, the reader is directed to the most recent NMFS Notice of Availability of Final Stock Assessment Reports [67 FR 10671, March 8, 2002].

Comment 8: Several commenters noted harvest estimates from the marine mammal Marking, Tagging, and Reporting Program may be biased low to an unknown degree due to incomplete hunter compliance.

Response: We believe this potential source of bias is extremely small for the following reason. Sea otters are hunted for their pelts, which must be tanned before they can be fashioned into handicrafts, and commercial tanneries will not accept untagged pelts. For accuracy, we have inserted the word ''Estimated'' into figure legends for subsistence harvest.

Comment 9: One commenter noted that information about the number of sea otters captured and released for scientific research was not quantified.

Response: Statistics on capture and release for scientific research have been included.

Pacific Walrus Stock Assessment Report

Comment 10: One commenter noted that the section ''Current and maximum net productivity rates'' referred to a study by University of Alaska researchers to investigate the reproductive rates of free-ranging walrus herds. The commenter recommended that the reproductive rates and/or juvenile survival rates observed in these studies be reported in the SAR.

Response: The FWS has concluded that these data are too preliminary for inclusion in the 2001 SAR and has removed all references to this study. The FWS will reconsider including this information in future SAR's once the study is complete.

Comment 11: Two commenters recommended making changes to the section ''Conservation issues and habitat concerns'' in reference to the issue of global warming and its potential impacts to the Pacific walrus population.

Response: At the present time there are no data available to make reliable predictions of the net impacts that changing climate conditions might have on the status and trend of the Pacific walrus population. The text of the SAR has been modified to clarify this point.

Comment 12: One commenter noted that the SAR underestimated struck-and-lost rates for subsistence-harvested animals and questioned the accuracy of the sex-ratio reported for the walrus harvest in Alaska. The commenter refers to recent FWS harvest monitoring field reports, describing harvest monitoring activities in the Bering Strait region, that suggest that self-reporting of struck-and-lost rates are likely to be negatively biased and describe a harvest with a skewed sex-ratio favoring females and dependent calves.

Response: Due to potentially negative bias associated with self-reporting of struck-and-lost rates, the FWS did not include this data in the SAR. The struck-and-lost estimate reported in the SAR is based on a published study describing the number of walrus struck and lost during monitored subsistence hunts in Alaska (Fay *et al.* 1994), The annual field reports referred to by the commenter describe a subset of the annual subsistence walrus harvest in Alaska. Although the spring hunt in these Bering Strait communities is frequently characterized by a sex-ratio skewed towards females, the sex ratio of the state-wide harvest over the 5-year period described in the 2001 SAR (1996–2000) was near parity. The source of the sex-ratio information was the FWS Marking, Tagging, and Reporting Program, which is a State-wide, year-round program that requires subsistence hunters to report the age and gender of all harvested walrus to the FWS. The source of the sex-ratio information was referenced in the text for clarity.

Comment 13: One commenter noted that the 42% struck-and-lost rate described in the SAR was based on data at least eight years old and speculated that this rate may change over time due to changes in hunting conditions and practices. The commenter recommended that this assumption should be verified from time to time and modified accordingly if it is found to change.

Response: In the absence of more recent scientific data, the FWS has chosen to use the published 42% rate for struck-and-lost animals as the best available scientific information for calculation of total harvest levels. However, the FWS agrees with the commenter that it is important to update or verify this struck-and-lost information periodically. The FWS hopes to initiate cooperative studies with the Eskimo Walrus Commission to examine struck-and-lost rates in the near future.

Comment 14: One commenter recommended that the draft stock assessment should emphasize that the Pacific walrus population may be in decline, even as the subsistence hunt continues to take a very large number of animals.

Response: The current size and trend of the Pacific walrus population is unknown. In the absence of new survey information, it is not possible to make reliable predictions regarding population trend.

Comment 15: One commenter noted that Russian officials consider the level of fisheries interaction to the small. The commenter felt this statement could be reassuring or misleading and recommended that the statement that the level of take in Russian waters is undetermined.

Response: We agree and have changed the text in the SAR to indicate that there are no data available concerning the incidental catch of walrus in fisheries operating in Russian waters.

Comment 16: One commenter noted that the section on ''Fisheries information'' refers to trawl and longline fishery interactions, but does not distinguish the level of takes between two gear types or the multiple fisheries that they represent.

Response: The text was modified to clarify that the only fishery for which incidental kill or injury was reported was the domestic Bering Sea groundfish trawl fishery. For additional information regarding fisheries interactions, the SAR references a complete list of fisheries and marine mammal interactions published annually by NMFS [67 FR 2410, January 17, 2002].

Comment 17: One commenter noted that the observer coverage for fisheries observer data was not stated.

Response: The range of observer coverage over the 5-year period (1996–2000), as well as the annual observed and estimated mortalities, are included in Table 2 of the SAR.

Comment 18: One commenter noted that the SAR states that most of the interactions involve walruses dead from other causes and recommended that the report provide information to support this statement.

Response: The text was modified to clarify that most of the observed interactions were with decomposed walrus carcasses or skeleton remains suggesting that the animals died prior to their interaction with the fishing gear.

Comment 19: One commenter noted that the SAR states that the rate of mortality and injury is estimated at ''less than two animal [sic] per year,'' but the basis of that estimate is not clear from the data presented.

Response: The SAR identifies the NMFS observer program as the source of information regarding fisheries interactions in U.S. waters. The range of observer coverage over the 5-year period (1996–2000), as well as the annual observed and estimated mortalities are included in Table 2.

Comment 20: One commenter recommended that the SAR should identify the potential indirect impacts that bottom trawling may have on the Pacific walrus population through alteration of habitat.

Response; Section 117(a)(4) of the Marine Mammal Protection Act states that stock assessments shall ''describe commercial fisheries that interact with the stock.'' We interpret this to mean those fisheries for which we have information about direct interactions with walrus, not fisheries with potential secondary impacts as suggested above.

Polar Bear Stock Assessment Reports

Chukchi/Bering Sea

Comment 21: One commenter questioned whether the process of delineating stocks is based on political reasons such as management agreements or evidence of significant biological distinction.

Response: We clarified the stock assessments for the Chukchi/Bering Seas stock and the Southern Beaufort Sea stock assessment to indicate that past and present management regimes have consistently distinguished between the Southern Beaufort Sea and Chukchi/Bering Seas stocks based upon biological evidence presented in the stock assessments.

Comment 22: Two commenters noted that the evidence suggesting that the stock has grown since 1972 was not sufficient to support the claims made regarding the trends in this population. This section also states that it is realistic to infer that the Chukchi/Bering Seas stock mimicked the growth pattern and later stability of the Beaufort Seas stock since that stocks have experienced similar management and harvest histories. However, this inference could be reasonably questioned for several reasons. First, growth patterns are a function of multiple factors including, but not limited to, harvest and management histories. As harvest and management histories are not the only determinants of growth trends, and as other possible factors (e.g., disease, shifts in distribution or availability of prey) are not evaluated, this inference should be questioned.

Response: We agree that scientific evidence is scant regarding population trends for the Chukchi/Bering Seas stock. Most of the evidence cited in sub-points a–e are from previous data should have not been reaffirmed in recent years. We have revised this section to indicate that, while evidence or impressions of population growth were appropriate previously, current data to support this conclusion is not available. For reasons stated earlier, it appeared reasonable to believe that the Chukchi/Bering Seas stock experienced growth following a 50% reduction in harvest in the 1970's and that population growth likely continued up to the early 1990s, similar to the Beaufort Sea stock. The Beaufort Sea stock stabilized in the 1990's. It is possible that the same may have been true for the Chukchi/Bering Seas stock, although this population was subject to additive unknown harvest levels, starting around 1992, that may have affected its status. Supporting evidence is not available to confirm the status of the population, and recent information regarding increased Russian harvest and decreased Alaska harvest are cause for concern. Consequently, we have chosen to designate the status of the Chukchi/Bering Seas stock as unknown.

Comment 23: One commenter noted that the harvest patterns for the two stocks may not have been the same. Subsistence harvests are illustrated in Figure 2 of each SAR, but comparisons should be done carefully as the y–axis is not the same in the two figures, and it appears that the number of bears taken from the Chukchi/Bering Seas stock may have been on the order of two times the number taken from the Southern Beaufort Sea stock. The significance of that difference will depend in part on the respective size of the two populations, and since the size of the Chukchi/Bering Seas stock is undetermined, the effects of harvesting are not clear.

Response: Figure 2 illustrates that the trend of declining U.S. harvests, post MMPA, were similar for both stocks. We acknowledge that the respective size of the two populations is crucial to understanding the effect of any harvest regime. Recent decline in harvest levels from the Alaska Chukchi/Bering Seas during the period 1996–2001 and reports of substantial illegal harvest in Russia are of concern. Because of these concerns, we revised the status of this stock to unknown.

Comment 24: One commenter noted that the report does not provide a basis for confidence in the precision and reliability of harvest estimates for Russian harvests.

Response: We have changed the Figure 2 caption to ''Annual Alaska polar bear harvest from 1961–2001.'' We have added text in the SAR to clarify that harvest estimates for Chukotka are based on anecdotal information.

Comment 25: Two commenters suggested that data for this stock continue to be insufficient for establishing a population estimate and urge the FWS to prioritize its research needs to improve the data available on this stock.

Response: The FWS has placed an emphasis on the development of the US/Russia Bilateral Treaty for the conservation of this population stock. The bilateral treaty includes provisions for conducting research to monitor population trends and develop population estimates for the Chukchi/Bering Seas stock. The current polar bear research program does not have adequate personnel or funding to conduct operations in both the Southern Beaufort Sea and the Chukchi/Bering Seas. The FWS continues to support implementation of the Bilateral Treaty, unified harvest management programs in Russia and Alaska, and conducting an aggressive polar bear research program to more effectively monitor this population.

Comment 26: One commenter noted that factors which may affect growth rates, including potential effects of global climate change and persistent organic pollutants were not included in the Southern Beaufort Sea stock assessment.

Response: We have incorporated these references into the Southern Beaufort Sea stock assessment.

Comment 27: One commenter recommended including the basis for the statement that the number of unreported kills since 1980 to the present time is thought to be negligible.

Response: We consider the number of unreported kills since 1980 to be negligible for the following reasons. All harvested bears in Alaska are required to have the skull and skin tagged through FWS's Marking, Tagging, and

Reporting Program. Due to the relatively small number of bears taken; the high visibility, cultural importance, and sharing of the take within villages; the relatively large size and visible methods of handling polar bear hides; and repeated visits by biologists and reports from harvest monitors, we believe that the total harvest is accurately represented by the tagged and untagged bear harvest totals.

Comment 28: One commenter requested clarification on whether illegal hunting in Russia increased or became significant in 1992, and whether the occurrence of illegal hunting has been acknowledged since 1992.

Response: The text has been clarified to indicate that the occurrence and significance of illegal hunting was thought to have begun in 1992.

Comment 29: Two commenters noted that the basis for the statement that the ''stock appears to be stable despite a substantial annual harvest'' should be either justified with suitable evidence or deleted.

Response: For reasons previously stated, we have modified the text to acknowledge that the population status or trend of this population is unknown.

Comment 30: The draft stock assessment does not consider the impact of oil and gas development on polar bears as is done with the sea otter stocks.

Response: Oil and gas exploration or development projects have not been proposed in the Alaska Chukchi/Bering Seas during the past five years. If future oil and gas development projects are proposed, we will consider the potential effects to polar bears.

Southern Beaufort Sea

Comment 31: One commenter noted that it was not clear if estimates of the female, total, and minimum populations pertain to the entire period from 1986 to 1998, or perhaps only to the end of the period. Previous estimates by the same lead author suggested a doubling of size during the period from 1988 to 1998, although the report later suggests that the population is stable.

Response: We have condensed and clarified this information to indicate that Amstrup (unpublished data) estimated the total population to be 2,272. This population estimate for the period 1986–98 was based on an estimate of 1,250 females (CV = 0.17) and a sex ratio of 55% female from the best model (Amstrup *et al.* 2001). N_{min} is 1,973 bears for a population size of 2,272 anc CV of 0.17.

Comment 32: In addition, it was not clear that the estimate of the minimum population is calculated correctly. The female population is estimated as 1,250 with a CV of 0.17. The total population is estimated by 1,250/0.55 and, based on the estimated minimum population, it appears that 0.55 was treated as a constant. Presumably, however, 0.55 is a correction factor that is also estimated with some degree of error, and that error should be included in the calculation of the CV for the total population estimate.

Response: A variance was not calculated for the 55% female sex composition and thus the ration is used as a constant for the abundance estimate. The N_{min} estimate is correct, and typographic errors in the formula have been corrected.

Comment 33: One commenter suggested that the basis for the arguments that the population may have approached carrying capacity (K) was not evident based on the information provided. The report states that ''the indication that the population was stable, births approximated deaths, is noteworthy.'' It is unlikely that the data are available to confirm that births approximated deaths, so that statement appears to be a supposition. It is not clear what is meant by the statement that this supposition seems ''noteworthy.'' Clarification would be useful.

Response: The text has been revised to emphasize that the most recent population modeling exercise (Amstrup *et al.* 2001) suggests that the population grew during the late 1970's and 1980's and stablized in the 1990's. Inferences to the population relationship with carrying capacity have been removed. The statement that modeling indicates that the population stablized in the 1990's (Amstrup *et al.* 2001) is supported and has been retained as noteworthy since it indicates a change in status.

Comment 34: One commenter suggested that, without good juvenile survival estimates, life-history analysis and estimated growth rates may be inaccurate.

Response: Juvenile survival rates are not known for this population, nor well known for any polar bear population. We have good information on survival estimates of yearlings and two-year-old bears. Recently weaned two-year-old bears were assigned survival estimates of the two-year-old bears, and the three-year-old bears were given survival estimates of yearlings. We believe that these estimates are conservative.

Comment 35: The stock assessment for the Southern Beaufort Sea stock of polar bears notes that the potential biological removal level for this stock has been adjusted upward from 59 to 88 to account for the male harvest bias. For this stock, such an adjustment may be consistent with the purpose of PBR as set forth in the first sentence of the statutory definition (section 3 (20)), but is not consistent with the second part of the definition setting forth the formula for calculating PBR.

Response: In the narrative, PBR levels are calculated with and without a sex-biased harvest adjustment. We have chosen the adjusted PBR since it more accurately reflects what we would consider as a safe biological removal level. This is an issue of perception more than substance, since there is no application beyond taking of polar bears incidental to commercial fishing, and no incidental take of polar bears by commercial fisheries has occurred.

Comment 36: One found that the reported numbers of polar bear kills in the section on ''Sport and native Subsistence Harvest'' was confusing. A table of annual bear harvests by stock, time period, country, and type of hunt (sport versus subsistence) would help to clarify the history of harvest from this stock.

Response: We have reorganized and revised the text in this section and Figure 2 caption to clarify the harvest information. Figure 2 is included to illustrate a decline in the Alaska harvest after passage of the MMPA in 1972. The last five years of the Canada harvest data for the Southern Beaufort Sea stock have been summarized in the text.

Comment 37: One commenter noted that it was unclear as to whether the reference to industry pertains to the oil and gas industry specifically or all industry in general.

Response: The use of industry in the generic sense is correct in this sentence. While the incidental take regulations apply to the oil and gas industry, the statute allows U.S. citizens, including any industry, to petition for the development of incidental take regulations.

Literature Cited

Amstrup, S.C., T.L. McDonald, and I. Stirling. 2001. Polar bears in the Beaufort sea: A 30-year mark-recapture case history. Journal of Agricultural, Biological and Environmental Statistics. Vol 6(2):221–234.

Fay, F.H. J.J. Burns, S.W. Stoker, and J.S. Grundy. 1984. The struck-and-lost factor in Alaskan walrus harvests. Arctic 47(4):368–373.

Dated: August 29, 2002.

David B. Allen,

Regional Director.

[FR Doc. 02–25679 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–090–5900 GP2–0103]

Notice of Intent to Prepare an Environmental Impact Statement Within the Upper Siuslaw River Sub-Unit of a Late-Successional Reserve on Lands Administered by the Eugene District in Lane and Douglas Counties, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Eugene District of the Bureau of Land Management (BLM), with the U.S. Fish and Wildlife Service as a Cooperating Agency, is developing a plan for forest and aquatic ecosystem restoration within a Late-Successional Reserve (LSR) in the Coast Range Mountains west of Eugene, Oregon (LSR–267). The purpose of the plan will be to design a long-term management approach and specific actions needed to achieve the LSR goals and Aquatic Conservation Strategy objectives set out in the Northwest Forest Plan. BLM will develop a restoration plan for the Upper Siuslaw River sub-unit of LSR–267, and will analyze the impacts of the proposed plan and alternatives in an EIS.

BLM invites written comments on the scope of the analysis for a restoration plan for the Upper Siuslaw River sub-unit of LSR–267. BLM will give notice of the availability of the environmental impact statement and decision-making process that will occur so that interested and affected people will be aware of how they may participate and contribute to the final decision. These notices will be published in local newspapers and mailed to known persons or groups of interest in the local area.

The Upper Siuslaw LSR Restoration plan is intended to be developed in conformance with the 1995 Eugene District Resource Management Plan (RMP). This plan is not expected to require any amendment or revision of the RMP, and therefore the provisions of 43 CFR 1610.5–5 and 1610.6 do not apply.

DATES: Comments concerning the scope of the analysis should be received in writing by November 8, 2002, to ensure timely consideration. Comments, including names and street addresses of respondents, will be available for public review at the Eugene District office during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays, and may be published as part of the environmental analysis or other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

ADDRESSES: Send written comments to: Rick Colvin, P.O. Box 10226, Eugene, OR, 97440; or e-mail to: *or090mb@or.blm.gov* Attn: Rick Colvin.

FOR FURTHER INFORMATION CONTACT: Rick Colvin at (541) 683–6600 or 1–888–442–3061.

SUPPLEMENTARY INFORMATION: The 1994 Northwest Forest Plan established a network of Late-Successional Reserves (LSRs) designed to protect and enhance late-successional and old-growth forest ecosystems on Federal forests within the range of the northern spotted owl. The Northwest Forest Plan allows certain activities within LSRs if they are neutral or beneficial to late-successional habitat characteristics. The Northwest Forest Plan requires preparation of an LSR Assessment prior to most management actions. The LSR Assessment for the planning area was completed in 1997.

Silvicultural treatments, including thinning and underplanting, may speed the development of late-successional forest structural characteristics and may improve habitat conditions for threatened and endangered species, including the northern spotted owl and marbled murrelet. Aquatic restoration may be accelerated by creation of in-stream habitat structures, riparian thinning to restore large conifers, and improved road management, including culvert replacement. Additional information on the role of active management in restoring late-successional forest characteristics and healthy aquatic ecosystems is available in the Northwest Forest Plan and supporting documents and in the watershed analysis and LSR Assessment for this planning area.

The Upper Siuslaw LSR Restoration plan will address management of the approximately 25,000 acres of BLM-managed lands within LSR 267 in the upper portion of the Siuslaw River fifth-field watershed. Intermingled with these federal lands are privately-owned lands.

In preparing the EIS, BLM will identify and consider a range of management actions including commercial and non-commercial forest thinning, snag and coarse woody debris creation, road decommissioning, culvert replacement, and in-stream habitat restoration. A No Action alternative which would involve no active management will be analyzed in detail. Other preliminary alternatives include: Continuation of the current management approach; restoration limited to forest plantations and road management, with no commercial timber harvest; restoration focused on recovery of threatened and endangered species; restoration that would reduce forest stand densities as quickly as possible; restoration based on multi-entry and multi-trajectory thinning.

Preliminary issues identified include:

—How would thinning affect development of late-successional forest habitat characteristics?
—What are the effects of restoration activities on the northern spotted owl, marbled murrelet, and coho salmon habitat?
—What level of risk to existing late-successional forest would result from restoration activities?
—How would actions meet the objectives of the Aquatic Conservation Strategy?
—How much new road construction would be needed to implement restoration actions?
—How would road decommissioning and road management actions alter public access to BLM lands?
—How would restoration actions affect the presence and spread of noxious weeds?
—What would be the economic effects of restoration activities?
—What would the restoration program cost?

Input from the scoping process will be used to determine the scope of the analysis, consistent with the requirements of 40 CFR 1501.7 and 1508.22. The scoping process includes:

—Defining the scope of the analysis and nature of the decision to be made;
—identifying the issues for consideration within the environmental impact statement;
—exploring possible alternatives;
—identifying potential environmental effects;
—identifying groups or individuals that would be interested in or affected by the proposed plan.

BLM is also interested in suggestions from the public about how they would like to be involved in the environmental analysis and decision-making process.

BLM will seek information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations interested in or affected by the proposed plan.

In August 2000, BLM mailed preliminary information to known persons or groups of interest in the local area. Since that time, BLM has also solicited public participation through a series of public meetings and field trips and plans to hold more meetings and field trips. BLM has also mailed a periodic newsletter about this LSR Restoration Project to known persons or groups of interest in the local area. In response to these efforts, BLM has received comments on the scope of the environmental analysis, possible alternatives, and issues for consideration. BLM will use those comments received prior to this notice together with comments received in response to this notice in determining the scope of the analysis.

The responsible official for this proposal is: Steven Calish, Field Manager, South Valley and Coast Range Resource Areas, Eugene District, BLM.

Julia Dougan,

District Manager.

[FR Doc. 02–25662 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EU; N–66188]

Notice of Realty Action: Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale of Public Lands in Eureka County, Nevada.

SUMMARY: The following described lands near the town of Eureka, Eureka County, Nevada, have been examined and found suitable for disposal by direct sale, at the appraised fair market value, to Homestake Mining Company of Eureka, Nevada. Authority for the sale is in Sections 203 and 209 of the Federal Land Policy and Management Act of October 21,1976 (43 U.S.C. 1701,1713, 1719).

Mount Diablo Principal Meridian, Nevada

T. 19 N., R. 53 E.,
Sec. 03, Lots 1–4, S½S½
Sec. 04, SE¼SE¼
Sec. 09, E½E½, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼
Sec. 10, Lots 1–4, N½, W½SW¼, E½SE¼, NW¼SE¼
Sec. 11, W½SW¼
Sec. 14, NW¼NW¼
Sec. 15, Lots 1–6
Sec. 16, NE¼NE¼
Totaling 1644.94 acres.

The above-described lands are hereby classified for disposal in accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, Act of June 28, 1934, as amended and Executive Order 6910.

DATES: Comments must be submitted within 45 days of the date this Notice is published in the **Federal Register**.

ADDRESSES: Bureau of Land Management, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820.

FOR FURTHER INFORMATION CONTACT: Chuck Lahr, Realty Specialist, at the above address or at (775) 635–4000.

SUPPLEMENTARY INFORMATION: This parcel of land near Eureka, Nevada, is being offered by direct sale to Homestake Mining Company. The land is not required for Federal purposes. The proposed action is consistent with the objectives, goals, and decisions of the Shoshone/Eureka Resource Management Plan.

The United States will retain the subsurface mineral estate associated with the subject parcel. The parcel is currently utilized by Homestake for surface operations, including mining and ore processing, at their Ruby Hill Mine. The parcel is covered in its entirety by federal mining claims controlled by Homestake. The Ruby Hill Mine is an active gold mine. Surface ownership of the subject parcel will allow Homestake to optimize mining operations and better manage closure and reclamation issues associated with mine operations. The potential exists for the discovery of additional locatable minerals, primarily gold, on the subject parcel.

The proponent will have 30 days from the date of receiving the sale offer to accept the offer and to submit a deposit of 30 percent of the purchase price and money for publication costs. The purchaser must submit the rest of the purchase price, within 90 days from the date the sale offer is received. Payments may be by certified check, postal money order, bank draft, or cashier's check made payable to the U.S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale and any money received for the sale will be forfeited.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way for ditches and canals constructed by authority of the United States, Act of August 30, 1890, (43 U.S.C. 945);

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits under applicable laws and regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Right-of-way N–48618 for a buried water pipeline held by the County of Eureka.

2. All other valid existing rights.

Publication of this Notice in the **Federal Register** segregates the subject lands from all appropriations under the public land laws, except sale under the Federal Land Policy and Management Act of 1976. The segregation will terminate upon issuance of the patent or 270 days from date of publication, whichever occurs first.

For a period of 45 days from the date this Notice is published in the **Federal Register**, interested parties may submit comments to the Battle Mountain Field Manager at the above address. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections this realty action will become the final determination of the Department of the Interior. The land will not be offered for sale until at least sixty days after the date this notice was published in the **Federal Register**.

Dated: August 28, 2002.

Joshua Alpert,

Acting Assistant Field Manager, Nonrenewable Resources.

[FR Doc. 02–25661 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0136).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled ''30 CFR part 206, Subpart C, Federal Oil Valuation'.

DATES: Submit written comments on or before December 9, 2002.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385 or e-mail sharron.gebhardt@mms.gov.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 206, Subpart C, Federal Oil Valuation.

OMB Control Number: 1010–0136.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. MMS assists the Secretary in performing the royalty management functions.

Section 101(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), as amended, requires that the Secretary ''establish a comprehensive inspection, collection, and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner.'' In order to accomplish these tasks, MMS developed valuation regulations for Federal leases at 30 CFR part 206, subpart C. Market value is a basic principle underlying royalty valuation. Consequently, these regulations include methods to capture the true market value of crude oil produced from Federal leases, both onshore and offshore.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to assure that the royalties are paid appropriately. The valuation regulations at 30 CFR part 206, subpart C, require companies to collect and/or submit information used to value their Federal oil.

Frequency: Annually.

Estimated Number and Description of Respondents: 61 Federal lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The annual reporting burden for this information collection is 12,431 hours. At an hourly rate of $50, we estimate the total annual cost to industry is $621,550. See the table below for a breakdown of the burden by CFR section and paragraph.

30 CFR 206 section	Reporting requirements	Burden hours per response	Annual number of responses	Annual burden hours
206.103(a), (b), (c) & (e)	Calculate value of oil not solid at arm's-length	Category 1 = 222.50 [1]	13	2,892
		Category 2 = 116.00 [2]	4	464
		Category 3 = 31.25 [3]	28	875
	Obtain MMS approval for tendering program	400	2	800
	Obtain MMS approval for alternative valuation methodology.	400	2	800
	Obtain MMS approval to use value determined at refinery.	330	1	330
206.107(a)	Request a value determination from MMS	330	8	2,640
206.110(b), (c) and (e)	Propose transportation cost allocation method to MMS when transporting more than one liquid product under an arm's-length contract.	330	1	330
	Propose transportation cost allocation method to MMS when transporting gaseous and liquid products under an arm's-length contract.	330	1	330
	You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product.	330	1	330
206.111(g), (k) and (l)	Propose change of depreciation method for non-arm's-length transportation allowances to MMS.	330	1	330
	Propose transportation cost allocation method to MMS when transporting more than one liquid product under a non-arm's-length contract.	330	1	330
	Propose transportation cost allocation method to MMS when transporting gaeous and liquid product under a non-arm's-length contract.	330	1	330
206.112(b) and (f)	Request MMS approval for location/quality adjustment under non-arm's-length exchange agreements.	330	1	330
	Request MMS for location/quality adjustment when information is not available.	330	4	1,320

30 CFR 206 section	Reporting requirements	Burden hours per response	Annual number of responses	Annual burden hours
Total			61	12,431

[1] Category 1 lessees are companies with over 30 million barrels of domestice production.
[2] Category 2 lessees are companies with between 10 and 30 million barrels of annual domestic production.
[3] Category 3 lessees are companies with less than 10 million barrels of annual domestic production.

MMS is requesting OMB's approval to continue to collect this information. Not collecting the information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour'' cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides 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. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: October 2, 2002.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–25705 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Request for Nominations for Public Members to the Royalty Policy Committee of the Minerals Management Advisory Board

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for nomination.

SUMMARY: The Secretary of the Department of the Interior has established a Royalty Policy Committee (RPC), on the Minerals Management Advisory Board, to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals related policies. RPC membership includes representatives from States, Indian Tribes and allottee organizations, minerals industry associations, other governmental agencies, and the interested public. Members serve 2-year terms without pay but will be reimbursed for travel expenses incurred when attending official RPC meetings. Reimbursements will be calculated in accordance with the Federal travel regulations as implemented by the Department. The RPC currently has one vacant public position and another due to expire at the beginning of next year. The Director, MMS, is requesting nominations to complete the RPC's public membership that allows up to four representatives. These nominations may originate from State and local governments, universities, other public organizations or individuals, and may include self-nominations. Nominees should have knowledge of the mineral and energy industry to assure sound representation of the public interest. The nomination package must include a nomination letter from an interested organization, or a self-nomination letter from an individual, outlining the candidate's qualifications including an

updated biography with mailing and email addresses. All nomination packages received will be subject to the Department's diversity policies.

DATES: Submit nominations on or before January 31, 2003.

ADDRESSES: Submit nominations to Gary Fields, Minerals Revenue Management, MMS, P.O. Box 25165, MS 300B3, Denver, CO 80225–0165, telephone number (303) 231–3102, fax number (303) 231–3780, e-mail: *gary.fields@mms.gov.*

FOR FURTHER INFORMATION CONTACT: Gary Fields, Minerals Revenue Management, MMS, P.O. Box 25165, MS 300B3, Denver, CO 80225–0165, telephone number (303) 231–3102, fax number (303) 231–3780.

SUPPLEMENTARY INFORMATION: The location and dates of future Committee meetings will be published in the **Federal Register** and posted on the Internet at *http://www.rmp.mms.gov/Laws_R_D/RoyPC.htm.* Meetings are open to the public without advanced registration on a space available basis. The public may make statements during the meetings, to the extent time permits, and file written statements with the Committee for its consideration. Copies of these written statements should be submitted to Gary Fields.

Committee meetings are conducted under the authority of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. appendix 1, and Office of Management and Budget Circular No. A–63, revised.

Dated: October 2, 2002.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–25704 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of availability of final Information Quality Guidelines.

SUMMARY: The Office of Management and Budget (OMB) issued guidelines in the **Federal Register** on February 22, 2002 (67 FR 8452), that directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public. In compliance with OMB's guidelines, MMS announces the availability of its final Information Quality Guidelines on its Web site.

ADDRESSES: You may access MMS's Information Quality Guidelines on its Web site at: *http://www.mms.gov/qualityinfo.* Our mailing address is: Department of the Interior, Minerals Management Service, (Attn: AD/PMI), Mail Stop 4230, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION: Jo Ann Lauterbach, Office of Policy and Management Improvement; telephone (202) 208–7744; Fax (202) 208–4891; e-mail: *Jo.Ann.Lauterbach@mms.gov.*

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554) directed 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.'' OMB complied by issuing guidelines that directed each Federal agency to: (a) Issue its own guidelines; (b) establish administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with OMB's 515 guidelines; and (c) report periodically to the Director of OMB on the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency and how such complaints were handled by the agency.

In compliance with OMB's directives, the Department of the Interior (DOI) issued draft Information Quality Guidelines in the **Federal Register** on May 24, 2002 (65 FR 26642), that instructed each bureau to prepare its own guidelines. In response to DOI's **Federal Register** Notice, MMS developed and issued draft guidelines for comment on its Web site on August 1, 2002. We received comments from one private organization. We considered their comments, and where applicable or appropriate, we incorporated them into our final guidelines.

We have now finalized our guidelines and posted them on our Web site. These guidelines are a living document and may be revised periodically to reflect changes in DOI's or MMS's policy, or as best practices emerge, about how best to address, ensure, and maximize information quality. MMS welcomes comments on these guidelines at any time and will consider those comments in any future revisions.

Dated: October 1, 2002.

Walter D. Cruickshank,

Acting Director, Minerals Management Service.

[FR Doc. 02–25690 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The following Water Management Plans are available for review:

- Colusa County Water District
- Westlands Water District

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria).

Note: For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above entities have developed a Plan, which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to comment on the preliminary determinations. Public comment to Reclamation's preliminary (*i.e.*, draft) determination is invited at this time.

DATES: All public comments must be received by November 8, 2002.

ADDRESSES: Please mail comments to Bryce White, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, or contact at 916–978–5208 (TDD 978–5608), or e-mail at *bwhite@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Bryce White at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (*i.e.*, draft) determination of Plan adequacy. Section 3405(e) of the CVPIA (Title 34 Public Law 102–575) requires the ''Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices

that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to section 3405(e)(1), these criteria must be developed ''* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.'' These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District
2. Inventory of Water Resources
3. Best Management Practices (BMPs) for Agricultural Contractors
4. BMPs for Urban Contractors
5. Plan Implementation
6. Exemption Process
7. Regional Criteria
8. Five-Year Revisions

Reclamation will evaluate Plans based on these criteria. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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 disclosure in their entity.

A copy of these Plans will be available for review at Reclamation's Mid-Pacific Regional Office located in Sacramento, California, and the local Area Office. If you wish to review a copy of these Plans, please contact Mr. White at the email address or telephone number above.

Dated: September 30, 2002.

Donna E. Tegelman,

Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 02–25652 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: Proposed collection; comment request.

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Commission has submitted an emergency request for approval of questionnaires to the Office of Management and Budget (OMB) for review. The Commission has requested OMB approval by October 25, 2002.

EFFECTIVE DATE: October 3, 2002.

Purpose of Information Collection: The forms are for use by the Commission in connection with investigation No. 332–445, Conditions of Competition in the U.S. Market for Wood Structural Building Components, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the Senate Committee on Finance. The Commission expects to deliver the results of its investigation to the Committee by April 30, 2003.

Summary of Proposal

(1) *Number of forms submitted:* two.

(2) *Title of form:* Conditions of Competition in the U.S. Market for Wood Structural Building Components—Questionnaires for U.S. Producers and Purchasers.

(3) *Type of request:* new.

(4) *Frequency of use:* Producer and Purchaser questionnaire, single data gathering, scheduled for November 1–December 6, 2002.

(5) *Description of respondents:* U.S. firms which produce or purchase wood structural building components.

(6) *Estimated number of respondents:* 339 (Producer questionnaire), 325 (Purchaser questionnaire).

(7) *Estimated total number of hours to complete the forms:* 5,312.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the forms and supporting documents may be obtained from Alfred Forstall (USITC, telephone no. (202) 205–3443). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, Attention: Desk Officer for International Trade Commission. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Dates: To be assured of consideration, written comments must be submitted to OMB and to the Commission by October 21, 2002. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

By order of the Commission.

Issued: October 4, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–25708 Filed 10–8–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the

Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 18, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 18, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC, 20210.

Signed at Washington, DC, this 9th day of September, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 9/9/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,069	Aerus, LLC (Co.)	Piney Flats, TN	09/03/2002	Handheld Vacuum Power Nozzle Wands.
42,070	Athens Products (Co.)	Athens, TN	08/09/2002	Hermetic Stators and Rotors.
42,071	Marconi (Co.)	Toccoa, GA	08/15/2002	Connection Equipment.
42,072	Federal Mogul Corporation (Co.)	Brighton, MA	08/21/2002	Friction Products, Automotive Brakes.
42,073	Wilson Sporting Goods (Co.)	Tullahoma, TN	08/15/2002	Golf Clubs.
42,074	Gerson and Gerson (Co.)	Middlesex, NC	08/08/2002	Infants', Toddlers' and Girls' Dresses.
42,075	LaCrosse Footwear (Co.)	Hillsboro, WI	08/06/2002	Neoprene Waders, Nylon Waders, PAC Boots.
42,076	Weyerhaeuser (Co.)	Albany, OR	08/27/2002	Tree Harvesting.
42,077	Bijur Lubricating Corp. (Co.)	Bennington, VT	08/20/2002	Centralized Lubricating Systems.
42,078	Americal Corporation (Co.)	Goldsboro, NC	08/19/2002	Knitted Sheer Hosiery.
42,079	Nabors Alaska Drilling (Co.)	Anchorage, AK	08/20/2002	Oil Exploration.
42,080	Johnstown Knitting Mill (Co.)	Johnstown, NY	08/20/2002	T-Shirts, Sweatshirts, Underwear, etc.
42,081	Nordic Gear (Co.)	Millersburg, PA	08/28/2002	Sewn Fleece Accessories.
42,082	Nordic Gear (Co.)	Newport, PA	08/28/2002	Sewn Fleece Accessories.
42,083	Bausch and Lomb (Co.)	Rochester, NY	09/03/2002	Contact Lenses.
42,084	Laurel Mould Inc. (Wkrs)	Greensburg, PA	08/22/2002	Moulds for Glass Industry.
42,085	Sterling Dula Architectur (Wkrs)	Erie, PA	03/11/2002	Metal Railings.
42,086	Potlatch (Wkrs)	Warren, AR	08/01/2002	Lumber.
42,087	Milwaukee Electric Tool (Wkrs)	Brookfield, WI	06/19/2002	Tools.
42,088	Lucent (Wkrs)	Mount Olive, NJ	08/22/2002	Wireless Base Stations for Cell Phones.
42,089	U.S. Manufacturing Corp. (Wkrs)	Bad Axe, MI	08/06/2002	Automotive Parts.
42,090	Ames True Temper (USWA)	Parkersburg, WV	08/26/2002	Shovels, Rakes, Hoes, Pitchforks.
42,091	George Fisher Foundry (Wkrs)	Holly, MI	08/16/2002	Mold Lines, Core Machines, Grinders.
42,092	JTM Group (Wkrs)	Jamestown, NY	08/11/2002	Plastic Injection Molds.
42,093	Ames True Temper (Wkrs)	Kane, PA	06/03/2002	Wooden Handles.
42,094	Spectrum Control Inc. (Wkrs)	Erie, PA	08/15/2002	AC Power Distribution Unit.
42,095	K.T. Mold and Mfg. (Co.)	Woodstock, IL	08/18/2002	Plastic Injection Molds.
42,096	Ralph Lauren Womenswear (Co.)	Carlstadt, NJ	08/26/2002	Women's Sportswear.
42,097	Jones Apparel Group USA (Wkrs)	El Paso, TX	08/21/2002	Ladies Suits, Pants, and Jackets.
42,098	Pliant Solutions (PACE)	Fort Edward, NY	08/28/2002	Printed Pattern Vinyl.
42,099	Agilent Technologies (Wkrs)	Everett, WA	08/17/2002	Digital Analyzers.
42,100	Savane International (Wkrs)	El Paso, TX	08/02/2002	Fabric Cutting.
42,101	Carmet Co. (Wkrs)	Duncan, SC	08/21/2002	Spray Nozzles, Drill Bits, Saw Blades.
42,102	Northern Engraving (Wkrs)	Lansing, IA	08/15/2002	Decorative Metals and Plastics.
42,103	Kodak Polychrome Graphics (Wkrs)	Holyoke, MA	08/09/2002	Lithographic Printing Plates.
42,104	Motor Products (Wkrs)	Barberton, OH	08/14/2002	Magnet DC Motors.
42,105	Hershey Food (Wkrs)	Pennsburg, PA	08/21/2002	Chocolate.
42,106	Pyramid Industries (Wkrs)	Erie, PA	06/21/2002	Plastic Conduit, Plastic Waterpipes.
42,107	Bath Unlimited, Inc (Wkrs)	Passaic, NJ	08/28/2002	Shower Heads, Flappers, Ballcocks.
42,108	Harvard Industries (UAW)	Jackson, MI	10/23/2001	Automotive Cooling Fans.

[FR Doc. 02–25666 Filed 10–8–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the

determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 18, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 18, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 3rd day of September, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 09/03/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,036	EDS Corp (Wrks)	Fairborn, OH	08/19/2002	Information technology.
42,037	Black Diamond Equipment (Comp)	Salt Lake City, UT	08/15/2002	Rock climbing equipment.
42,038	Corning, Inc. (Comp)	Concord, NC	08/12/2002	Single mode optical fiber, canes, blanks.
42,039	Wisconsin Pattern Co (Wrks)	Racine, WI	08/12/2002	Core boxes.
42,040	Lockheed Martin (Wrks)	Tulsa, OK	08/19/2002	Letter sorting—mail sorter.
42,041	Mo-Tech Corp (Wrks)	Oakdale, MN	08/20/2002	Injection molds.
42,042	Plastic Products Co., Inc (Wrks)	Moline, IL	08/20/2002	Microwave ovens.
42,043	Eureka Co. (The) (Wrks)	El Paso, TX	08/02/2002	Upright and canister vacuum cleaners.
42,044	Siemens VDO Automotive (UAW)	Lima, OH	08/21/2002	Manifolds and induction modules.
42,045	Regal Manufacturing, Inc. (UNITE)	New York, NY	08/21/2002	Women's apparel.
42,046	B–W Specialty Mfg. (Wrks)	Seattle, WA	08/12/2002	Wood cores.
42,047	Holloway Sportswear (Comp)	Olla, LA	08/15/2002	Cutting athletic wear patterns.
42,048	Fashion Tanning Co, Inc (UNITE)	Glovesville, NY	08/12/2002	Embossed and colored leather.
42,049	Boeing Co (The) (Wrks)	Tulsa, OK	07/17/2002	Commercial plane components.
42,050	CommScope, Inc. (Comp)	Catawba, NC	08/19/2002	Coaxial and fiber optic cable products.
42,051	Citation Corp (Wrks)	Milwaukee, WI	08/15/2002	Steel forged parts.
42,052	Forem USA (Wrks)	Sparks, NV	08/15/2002	Filters, duplexes, amplifiers, etc.
42,053	Arnold Tool and Die (Comp)	Council Bluffs, IA	08/16/2002	Cast iron plates and shafts.
42,054	Treesource (Wrks)	Tacoma, WA	08/21/2002	Lumber.
42,055	Plymouth, Inc. (Wrks)	Radford, VA	07/18/2002	School and paper products.
42,056	Kadant Black Clawson (Wrks)	Mason, OH	07/30/2002	Paper recycling machinery, paper screens.
42,057	International Ceramic (Comp)	Demotte, IN	08/02/2002	Brick refractory.
42,058	MDN, Inc T/A Crosswire (Comp)	Bellmawr, NJ	08/23/2002	Wire cloth fabricated parts.
42,059	Isaac Hazan and Co. (Wrks)	Secaucus, NJ	08/22/2002	Jackets, pants, skirts, blouses.
42,060	United Sweater Mills Corp (Comp)	Jersey City, NJ	08/20/2002	Ladies sweaters.
42,061	Metropolitan Steel Ind. (Wrks)	Sinking Springs, PA	08/20/2002	Beams, columns, girders and trusses.
42,062	Sam Fashion Inc (Wrks)	North Bergen, NJ	08/15/2002	Ladies coats.
42,063	Acco Chain and Lifting (USWA)	York, PA	08/15/2002	Chains.
42,064	SMTC Manufacturing Corp (Comp)	Austin, TX	08/16/2002	Computer printed circuit boards.
42,065	Cray, Inc. (Wrks)	Chippewa Falls, WI	08/06/2002	Sell computer products.
42,066	Leatherworks, LLC (UAW)	Detroit, MI	08/19/2002	Leather seat covers.
42,067	Huntsman Petrochemicals (Wrks)	Odessa, TX	02/13/2002	Polymer plastics and ethylene liquid.
42,068	Motorola, SPS (Wrks)	Chandler, AZ	08/16/2002	Semiconductors, IC's microprocessors.

[FR Doc. 02–25665 Filed 10–8–02; 8:45 am]

BILLING CODE 4510–30–M

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 collection: ''Provider Enrollment Form'' (OWCP–1168). 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 **ADDRESSES** section below on or before December 9, 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, Email *pforkel@fenix2.dol-esa.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act; the Black Lung Benefits Act, the Energy Employees Occupational Illness Compensation Act, and the Longshore and Harbor Workers Compensation Act. These programs pay for medical services rendered for the diagnosis and treatment of injured workers for conditions compensable under the Acts. The Provider Enrollment Form (OWCP–1168) is currently used in the Black Lung and Energy programs to obtain profile information on medical providers which is necessary to process payments, apply fee schedules, and conduct checks to identify duplicate and other erroneous billing. This information collection is currently approved for use through February 2005.

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 to expand the use of the OWCP 1168 to two additional programs, the Division of Longshore and Harbor Workers Compensation and the Division of Federal Employees' Compensation, as part of the development of a Centralized Medical Bill System for the processing of medical bills in each of OWCP's four programs. This centralization will result in an increase in efficiency of processing medical bills, reduction of administrative costs, and improvement of the efficiency of benefits and service provision. This collection request seeks approval of revisions to the current form to accommodate its use by The Division of Federal Employees' Compensation and the Division of Longshore and Harbor Worker's Compensation. In addition, this revision will facilitate the centralization of bill processing for all four programs under a Federal contractor. Providers must be enrolled in the new system prior to implementation to ensure the continuity of services to both the claimant and provider communities.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: Provider Enrollment Form.

OMB Number: 1215–0137.

Affected Public: Business or other for-profit.

Total Respondents/Responses: 20,100.

Frequency: On occasion.

Estimated Total Burden Hours: 2,497.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $8,040.

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: October 3, 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. 02–25664 Filed 10–8–02; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL LABOR RELATIONS BOARD

NLRB Organization and Functions

AGENCY: National Labor Relations Board.

ACTION: Amendment of delegation of administrative authority to General Counsel under section 3(d) of National Labor Relations Act.

SUMMARY: The National Labor Relations Board is amending the memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board with respect to administrative functions. The revisions are being adopted in order to reestablish lines of authority within the administrative structure of the Agency.

EFFECTIVE DATE: October 1, 2002.

ADDRESSES: National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, DC 20570.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, DC 20570. Telephone: (202) 273–1936.

SUPPLEMENTARY INFORMATION: The Board amended memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board with respect to administrative functions is effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), August 12, 1959 (effective August 3, 1959), and April 28, 1961 (effective May 15, 1961) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666 and 26 FR 3911, respectively).

Dated: October 4, 2002.

John J. Toner,

Executive Secretary.

National Labor Relations Board

General Counsel

Further Amendment to Memorandum Describing Authority and Assigned Responsibilities

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the **Federal Register** the following further amendment to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board (effective October 1, 2002).

Dated, Washington, DC, October 4, 2002.

By direction of the Board.

Executive Secretary.

The Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), August 12, 1959 (effective August 3, 1959), and April 28, 1961 (effective May 15, 1961) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666 and 26 FR 3911, respectively), is hereby further amended as follows:

1. Strike the text of paragraphs 1 and 4 of section VII of the amendment dated August 12, 1959 (effective August 3, 1959), strike the text of paragraph 2 of section VII of the amendment dated April 28, 1961 (effective May 15, 1961), and substitute the following:

1. In order more fully to release the Board to the expeditious performance of its primary function and responsibility of deciding cases, the authority and responsibility for all administrative functions of the Agency shall be vested in the General Counsel, except as provided below. This authority shall be exercised subject to the limitations contained in paragraphs 2, 5 and 6, and shall be exercised in conformity with the requirements for joint determination as described in paragraph 4.

2. Subject to the limitations contained in paragraphs 5 and 6, the General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge, and in all other respects, of all personnel engaged in the field, except that personnel action with respect to Regional Directors and Officers-in Charge of Subregional offices will be conducted as hereinafter provided, and in the Washington Office (other than personnel in the Board Members' Offices, the Division of Judges, the Division of Information, the Security Office, the Office of the Solicitor, the Office of the Executive Secretary and the Office of Inspector General): provided, however, that the establishment, transfer or elimination of any Regional or Subregional Office shall require the approval of the Board.

The appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge of a Subregional office shall be made by the General Counsel only upon the approval of the Board.

4. In connection with and in order to effectuate the foregoing, the General Counsel is authorized to formulate and execute such necessary requests, certifications, and other related documents on behalf of the Agency, as may be needed from time to time to meet the requirements of the Office of Personnel Management, the Office of Management and Budget or any other Governmental Agency; provided, however, that the total amount of any annual budget requests submitted by the Agency, the apportionment and allocation of funds and/or the establishment of personnel ceilings within the Agency shall be determined jointly by the Board and the General Counsel.

2. Add the following paragraphs 5 and 6 to the text of section VII of the amendment dated April 28, 1961 (effective May 15, 1961):

5. The Information Technology Branch shall be realigned under the authority of the Chief Information Officer (''CIO'') (who will jointly report to the General Counsel and the Chairman of the Board with respect to those matters covered by the responsibilities of the CIO), and placed with the Office of Inspector General, Office of Equal Employment Opportunity and the Office of Employee Development outside the Division of Administration. The Editorial and Publications Services Section of the Library and Administrative Services Branch, Division of Administration, shall be transferred to the Office of the Executive Secretary.

6. The Chairman of the Board shall have full and final authority over the selection, retention, transfer, promotion, demotion, discipline, discharge and evaluation of those persons holding Senior Executive Service positions in the Division of Administration, the senior management official in the Office of Employee Development, the Chief Information Officer and the Inspector General.

[FR Doc. 02–25698 Filed 10–8–02; 8:45 am]

BILLING CODE 7545–01–P

POSTAL RATE COMMISSION

[Docket No. MC2002–3; Order No. 1347]

Experimental Mail Classification Case

AGENCY: Postal Rate Commission.

ACTION: Notice and order on new experimental docket.

SUMMARY: This document establishes a docket for consideration of a proposed two-year experiment. The experiment entails two new discounts for certain co-palletized Periodicals mail that is dropshipped to designated destination entry facilities. This document briefly reviews the proposal, sets initial procedural dates, authorizes settlement discussions, and identifies other pertinent Commission actions.

DATES: 1. *September 26, 2002:* Postal Service's request filed with the Commission.

2. *October 2, 2002:* issuance of Commission notice and order (no. 1347).

3. *October 18, 2002:* deadline for notices of intervention, response to motion for waiver, comments on appropriateness of experimental status and use of expedited procedures.

4. *October 22, 2002:* settlement conference (10 a.m.).

5. *October 23, 2002:* prehearing conference (2 p.m.).

ADDRESSES: Send correspondence to the attention of Steven W. Williams, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6815.

SUPPLEMENTARY INFORMATION: On September 26, 2002, the United States Postal Service filed a request seeking a recommended decision from the Postal Rate Commission approving an experimental mail classification, along with two related discounts, for certain Outside County Periodicals mail that is co-palletized and dropshipped to specified destination facilities.[1] Request of the United States Postal Service for a Recommended Decision on Experimental Periodicals Co-Palletization Dropship Discounts (request). The request, which includes six attachments, was filed pursuant to chapter 36 of the Postal Reorganization Act, 39 U.S.C. 3601 *et seq.*[2]

In contemporaneous filings, the Service asks for waiver of certain standard filing requirements (if the Commission deems such waiver is required), and seeks expedited consideration of its proposal, including establishment of procedures for settlement. The Service's request for expedition is in addition to that generally available under the Commission's experimental rules [39 CFR 3001.67–3001.67d]. United States Postal Service Request for Expedition and Establishment of Settlement Procedures (request for expedition), September 26, 2002; Motion of United States Postal Service for Waiver (motion for waiver), September 26, 2002. The Service's request, the accompanying testimony of witness Taufique (USPS–T–1), and other related material are available for inspection in the Commission's docket section during regular business hours. They also can be accessed electronically, via the Internet, on the Commission's Web site (*http://www.prc.gov*).

I. The Service Characterizes Its Proposal as a Limited Initiative With the Potential To Improve Operational Efficiency and Control Costs

The Postal Service proposes conducting a two-year experiment

[1] The request also includes a proposal to delete a reference to an outdated ''ride-along'' rate in DMCS section 443.1a. USPS–T–1 at 1–2.

[2] Attachments A and B to the request contain proposed classification schedule provisions (or revisions to existing provisions); attachment C incorporates by reference the certified financial statement provided in docket no. MC2002–2; attachment D is the certification required by Commission rule 54(p); attachment E is an index of testimony and exhibits; and attachment F is a compliance statement addressing satisfaction of various filing requirements.

testing two discounts for qualifying Outside County Periodicals mail that is co-palletized and dropshipped to either an area distribution center (ADC) or a sectional center facility (SCF).[3] The proposed ADC discount is 0.7 cent per piece; the proposed SCF discount is 1.0 cent per piece. USPS–T–1 at 10. Both discounts were developed using the cost base, advertising pound rates, and test year that underlie the Commission's Periodicals rate recommendations in docket no. R2001–1. Request at 2; USPS–T–1 at 10. The ADC discount reflects passthrough of 95 percent of the underlying cost avoidance estimates; the SCF discount reflects 80 percent passthrough. USPS–T–1 at 13. The proposed discounts leave existing Periodicals classifications and rates otherwise unchanged. Request at 2.

In support of the experiment, the Service states that 70 percent of Periodicals mail is already prepared on pallets, but the remainder is not because it lacks the volume and/or density, as individual publications, to reach the requisite pallet minimum of 250 pounds. Since preparing co-pallets is typically more onerous than preparing single-publication pallets, the Service believes these discounts may encourage mailer participation in worksharing behavior that benefits both customers and the Postal Service. *Id.* at 1–2. In particular, it says the discounts are designed to provide an additional incentive for publishers, printers and consolidators to combine different publications or print runs on pallets, so that Periodicals mail can be prepared on pallets, rather than in sacks, and dropshipped to destination facilities. *Id.* at 1.

The Service proposes extending the new discounts only to Periodicals mail that lacks the density to prepare single-publication pallets; however, both smaller circulation publications and smaller portions of larger circulation publications will be able to participate and receive the proposed discounts under applicable rules. Request at 2 and 6. Qualifying co-palletized mail must be prepared either on ADC or SCF pallets of 250 or more pounds. To limit the scope of the experiment and simplify administration, mail that is co-palletized on 5-digit or 3-digit pallets will not be eligible for the new discounts. USPS–T–1 at 8.

[3] The Service defines co-palletization as the practice of combining bundles of different publications going to the same destination ADC or SCF, on the same pallet. It defines co-mailing as the combination of different publications in the same bundles, with the bundles then combined on pallets. Request at 3.

Experimental designation. The Service seeks consideration of its proposal under the Commission's experimental rules (rules 67–67d). In support of this approach, it notes that it currently lacks data about how much response there will be to a rate incentive for co-palletization, but intends to gather more complete data during the proposed term of the experiment. It says this effort may support a request for a permanent classification. *Id.* at 3–4. The Service proposes that the experimental classification be in effect for two years, but also seeks approval of a provision that would allow for a brief extension if permanent classification authority is sought while the experiment is pending.

The Service says the expedition allowed under the experimental rules is appropriate in light of the interest in controlling Periodicals costs as soon as possible. It also says flexibility is required because the detailed, conventional data necessary to support a request for a permanent classification are currently unavailable. *Id.* at 5. The Service says it believes that this proposal will be attractive to mailers, contribute to the long-term viability of the postal system, and further the general policies of efficient postal operations and reasonable rates and fees enunciated in the Postal Reorganization Act, including 39 U.S.C. 3622(b) and 3623(c). *Id.* at 4–5.

II. The Service Seeks Waiver of Certain Filing Requirements, if Deemed Necessary

The Service maintains that its filing satisfies applicable Commission filing requirements, but seeks waiver of pertinent provisions of rules 54, 64 and 67 to the extent the Commission concludes otherwise. In support of its primary position, the Service says its compliance statement (attachment F to the request) addresses each filing requirement and indicates which parts of the filing satisfy each rule. It also notes that it has incorporated by reference pertinent documentation from the recent omnibus rate case (docket no. R2001–1). Motion for waiver at 1. The Service contends, among other things, that the rate case documentation satisfies most filing requirements because the proposed discounts will not materially alter the rates, fees and classifications established in that docket, and therefore will have only a limited impact on overall postal costs, volumes and revenues. *Id.* at 1. It also asserts that there is substantial overlap between information sought in the general filing requirements and the materials provided in docket no. R2001–1. *Id.* at 2.

However, if the Commission concludes that the materials from the omnibus case are not sufficient to satisfy the requirements, the Service contends strict compliance is not warranted, and seeks waiver. It cites the reasons expressed in support of its general position on the adequacy of its filing; the nature of the proposed experiment; and the small impact on total costs and revenues and on the costs, volumes and revenues of mail categories. *Id.* at 5. Responses to the Service's motion for waiver are due by October 18, 2002.

III. The Service Seeks Expedition and Suggests Several Specific Procedures, Including Prompt Establishment of Settlement Procedures

In support of expedition, the Service asserts that the proposed change is straightforward; limited in scope and duration; and insignificant in terms of its effect on overall volumes, revenues and costs. It also states that the proposal is a candidate for settlement, given widespread support for it within the Periodicals industry, and the lack of adverse effect on competitors or other mailers. Request for expedition at 1–2.

The Service does not propose a specific schedule, but identifies four procedures the Commission could employ to facilitate a quick resolution of this case. These include setting a relatively short intervention period and requiring participants to identify, in their notices of intervention, whether they intend to seek a hearing and to identify any genuine issues of material fact that would warrant such a hearing. They also include scheduling a settlement conference as quickly as possible following the deadline for intervention; dispensing with discovery if there is no hearing or no genuine issues of material fact; or, should discovery be necessary, shortening various time limits. *Id.* at 2–3.

IV. Commission Response

Appropriateness of proceeding under the experimental rules. For administrative purposes, the Commission has docketed the instant filing as an experimental case. Formal status as an experiment under Commission rules 67–67d is based on an evaluation of factors such as the proposal's novelty, magnitude, ease or difficulty of data collection, and duration. A final determination regarding the appropriateness of the experimental designation and application of Commission rules 67–67d will not be made until participants have had an adequate opportunity to comment. Participants are invited to file

comments on this matter by October 18, 2002.

Appropriateness of establishing other expedited procedures. The Commission grants the Service's request for expedition to the extent of authorizing settlement procedures; allowing a shorter-than-usual period for intervention; and requiring participants, in their notices of intervention, to state whether they intend to seek a hearing and to identify with particularity any genuine issues of material fact that would warrant a hearing. Decisions on other expedited procedures, such as limiting discovery time limits, will be made at a later time.

Settlement. The Commission authorizes settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, counsel for the Service shall file periodic reports on the status of settlement discussions. The Commission authorizes the settlement coordinator to hold a settlement conference on October 22, 2002, at 10 a.m. in the Commission's hearing room. Authorization of settlement discussion does not constitute a finding on the proposal's experimental status or on the need for a hearing.

Representation of the general public. In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's office of the consumer advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and at the same time as, service on the Commission of the 24 copies required by Commission rule 10(d) (39 CFR 3001.10(d)).

Intervention; need for hearing. Those wishing to be heard in this matter are directed to file a written notice of intervention with Steven W. Williams, secretary of the Commission, 1333 H Street, NW., suite 300, Washington, DC 20268–0001, on or before October 18, 2002. Notices should indicate whether participation will be on a full or limited basis. See 39 CFR 3001–20 and 3001–20a. No decision has been made at this point on whether a hearing will be held in this case. To assist the Commission in making this decision, participants are directed to indicate, in their notices of intervention, whether they seek a hearing and, if so, to identify with particularity any genuine issues of material facts believed to warrant such a hearing.

Experimental status. Participants may comment on whether the Service's request should be evaluated under Commission rules 67–67d. Comments are due by October 18, 2002. Participants should be prepared to discuss relevant issues at the prehearing conference.

Prehearing conference. A prehearing conference will be held October 23, 2002, at 2 p.m. in the Commission's hearing room. Participants shall be prepared to address matters referred to in this ruling.

Ordering Paragraphs

It is ordered:

1. The Commission establishes docket no. MC2002–3, experimental periodicals co-palletization dropship discounts, to consider the Postal Service request referred to in the body of this order.
2. The Commission will sit en banc in this proceeding.
3. The deadline for filing notices of intervention is October 18, 2002.
4. Notices of intervention shall indicate whether the participant seeks a hearing and identify with particularity any genuine issues of material fact that warrant a hearing.
5. The deadline for answers to the motion of United States Postal Service for waiver is October 18, 2002.
6. The deadline for comments on United States Postal Service request for expedition and establishment of settlement procedures is October 18, 2002.
7. The Commission will make its hearing room available for a settlement conference on Tuesday, October 22, 2002, at 10 a.m., and at such other times deemed necessary by the settlement coordinator.
8. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding.
9. The Postal Service's request for expedition is granted to the extent of allowing a shorter-than-usual intervention period, allowing settlement discussions, and requiring participants' interest in a hearing to be identified in the notice of intervention.
10. A prehearing conference will be held Wednesday, October 23, 2002 at 2 p.m. in the Commission's hearing room.
11. Shelley S. Dreifuss, director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public.
12. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Garry J. Sikora,

Acting Secretary.

[FR Doc. 02–25668 Filed 10–8–02; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25762; 812–12682]

The Charles Schwab Family of Funds, et al.; Notice of Application

October 3, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

APPLICANTS: The Charles Schwab Family of Funds, Schwab Investments, Schwab Capital Trust, and Schwab Annuity Portfolios (collectively, the ''Trusts'') and Charles Schwab Investment Management, Inc. (''CSIM'').

SUMMARY OF THE APPLICATION: Applicants request an order to permit them to enter into and materially amend sub-advisory agreements without shareholder approval and to grant relief from certain disclosure requirements.

FILING DATES: The application was filed on November 14, 2001, and amended on October 1, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 28, 2002, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 101 Montgomery Street, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel,

at (202) 942–0581, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Each Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. Each Trust currently offers multiple series, each with its own investment objectives, policies and restrictions. CSIM, registered under the Investment Advisers Act of 1940 (''Advisers Act''), serves as the investment adviser to certain series of the Trusts that use or may use the multi-manager structure described in the application (together, the ''Funds,'' and each a ''Fund''). CSIM has entered into an investment advisory agreement with each Trust (each an ''Advisory Agreement'' and collectively, the ''Advisory Agreements'') that was approved by the board of trustees of each Trust (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and the sole shareholder or shareholders of each Fund.[1]

2. Under the terms of the Advisory Agreement, CSIM serves as investment adviser to each Fund and provides investment sub-adviser selection, monitoring and asset allocation services to the Funds and may hire one or more sub-advisers (''Sub-Advisers'') to exercise day-to-day investment discretion over all or a portion of the assets of a Fund pursuant to separate investment sub-advisory agreements. Each Sub-Adviser is or will be either registered or exempt from registration under the Advisers Act. Sub-Advisers are recommended to the Board by CSIM and selected and approved by the Board, including a majority of the Independent Trustees. Each Sub-Adviser's fee is paid by CSIM out of the management fee received by CSIM from the respective Fund.

3. Applicants request relief to permit CSIM, subject to the Board's approval, to enter into and materially amend sub-advisory agreements without shareholder approval. The requested relief will not extend to a Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or CSIM, other than by reason of serving as a Sub-Adviser to one or more of the Funds (an ''Affiliated Sub-Adviser'').

4. Applicants also request an exemption from the various disclosure provisions described below that may require the Funds to disclose the fees paid by CSIM to the Sub-Advisers. An exemption is requested to permit a Fund to disclose (as both a dollar amount and as a percentage of a Fund's net assets): (a) Aggregate fees paid to CSIM and any Affiliated Sub-Adviser; and (b) aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (''Aggregate Fees''). If a Fund employs an Affiliated Sub-Adviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the ''Exchange Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of ''the terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

7. Applicants assert that by investing in a Fund, shareholders, in effect, will hire CSIM to manage the Fund's assets by selecting and monitoring Sub-Advisers rather than by hiring its own employees to manage assets directly. Applicants state that investors will purchase Fund shares to gain access to CSIM's expertise in overseeing Sub-Advisers. Applicants further assert that the requested relief will reduce Fund expenses and permit the Funds to operate more efficiently. Applicants note that the Advisory Agreement will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that many Sub-Advisers charge their customers for advisory services according to a ''posted'' rate schedule. Applicants state that while Sub-Advisers are willing to negotiate fees lower than those posted in the schedule, particularly with large institutional clients, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the relief will encourage Sub-Advisers to negotiate lower advisory fees with

[1] Applicants also request relief with respect to future Funds, and any other registered open-end management investment companies or series thereof (a) that are advised by CSIM or any entity controlling, controlled by, or under common control with CSIM, and (b) use the multi-manager structure described in the application (''Future Funds,'' and together with the Funds, the ''Funds''). Any Fund that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. The Trusts are the only existing investment companies that currently intend to rely on the order. If the name of any Fund contains the name of a Sub-Adviser (as defined below), the name Schwab, CSIM, or the name of the entity controlling, controlled by, or under common control with CSIM that serves as the primary adviser to such Fund will precede the name of the Sub-Adviser.

CSIM, the benefits of which are likely to be passed on to Fund shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole shareholder prior to offering shares of the Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to this application. In addition, each Fund will hold itself out to the public as employing the ''manager of managers'' approach described in this application. The prospectus will prominently disclose that CSIM has ultimate responsibility (subject to oversight by the Board) for the investment performance of a Fund due to its responsibility to oversee Sub-Advisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of any new Sub-Adviser, CSIM will furnish shareholders of the affected Fund with all of the information about the new Sub-Adviser that would be contained in a proxy statement, except as modified by the order to permit the disclosure of Aggregate Fees. This information will include the disclosure of Aggregate Fees and any change in such disclosure caused by the addition of a new Sub-Adviser. CSIM will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit the disclosure of Aggregate Fees.

4. CSIM will not enter into a sub-advisory agreement with any Affiliated Sub-Adviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the Fund.

5. At all times, a majority of the Board will be Independent Trustees and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a change of Sub-Adviser is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which CSIM or an Affiliated Sub-Adviser derives an inappropriate advantage.

7. CSIM will provide general management services to each Fund, and, subject to review and approval by the Board, will: (a) Set the Fund's overall investment strategies; (b) evaluate, select and recommend Sub-Advisers to manage all or a part of the Fund's assets; (c) when appropriate, allocate and reallocate the Fund's assets among multiple Sub-Advisers; (d) monitor and evaluate the Sub-Advisers' investment performance; and (e) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the Fund's investment objective, policies, and restrictions.

8. No trustee or officer of the Trusts, or director or officer of CSIM will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in a Sub-Adviser except for (a) ownership of interests in CSIM or an entity that controls, is controlled by or is under common control with CSIM; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

9. Each Fund will disclose in its registration statement the Aggregate Fees.

10. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

11. CSIM will provide the Board, no less frequently than quarterly, with information about CSIM's profitability on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

12. Whenever a Sub-Adviser is hired or terminated, CSIM will provide the Board information showing the expected impact on CSIM's profitability.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25676 Filed 10–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 7, 2002: a closed meeting will be held on Thursday, October 10, 2002, at 2:30 p.m.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the Closed Meeting scheduled for Thursday, October 10, 2002 will be:

Institution and settlement of injunctive actions; and

Institution of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 4, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25739 Filed 10–4–02; 4:53 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46588; File No. SR–Amex–2002–77]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Amend the Account Type Codes Under Exchange Rule 719

October 2, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 20, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the account type codes under Exchange Rule 719. The text of the proposed rule change appears below. New text is in italics.

Comparison of Exchange Transactions

Rule 719

(a) through (d) No change.

Commentary

.01 No change.

.02 Regardless of whether or not a registered clearing agency is being used for comparison and/or settlement, each clearing member organization shall submit the following trade data and audit trail information with respect to contracts for securities entered into on the Exchange to a registered clearing agency in such form and within such time periods as may be described by the registered clearing agency or the Exchange:

(1) Name or identifying symbol of the security,

(2) The clearing firm's number or alpha symbol as may be used from time to time, in regard to its side of the contract,

(3) The executing broker's badge number or alpha symbol as may be used from time to time, in regard to its side of the contract,

(4) Trade date,

(5) The time the trade was executed,

(6) Number of shares or quantity of security,

(7) Transaction price,

(8) The clearing firm's number or alpha symbol as may be used from time to time, in regard to the contra side of the contract,

(9) The executing broker badge number or alpha symbol as may be used from time to time, in regard to the contra side of the contract,

(10) The terms of settlement,

(11) Specialist, registered trader, and market maker acronyms in regards to options transactions,

(12) Account type code—equities only. The current account type codes for equity transactions are as follows. Members should use the most restrictive account type code available. Thus, for example, members only should use the ''A'' account type code for an agency transaction when no other account type code accurately describes the trade. These codes may be changed from time to time as the Exchange may determine:

S—Specialist principal transaction in a specialty security (regardless of the account or clearing member).

G—Registered Equity Trader, Registered Equity Market Maker and Registered Option Trader market maker transactions in the equities and ETFs in which they are registered as a market maker regardless of the clearing member, and Registered Option Trader and option specialist transactions in an underlying Paired Security if the underlying Paired Security is an equity other than an ETF (*e.g.*, SPY, DIA, QQQ, HOLDRS, Sector SPDRs).

P—Amex Option Specialist or Market Maker transaction *in the underlying of* an Amex ''paired security'' if the underlying of the Paired Security is an ETF (*e.g.*, SPY, DIA, QQQ, HOLDRS, Sector SPDRs) (regardless of the clearing member).

O—Proprietary transactions cleared for a competing market maker that is affiliated with the clearing member.

T—Transactions cleared for the account of an unaffiliated member's competing market maker.

R—Transactions cleared for the account of a non-member competing market maker.

I—Transactions cleared for the account of an individual investor.

E—Short exempt transactions cleared for the proprietary account of a clearing member organization or affiliated member/member organization.

F—Short exempt transactions cleared for the proprietary account of an unaffiliated member/member organization.

H—Short exempt transactions cleared for an individual customer account.

B—Short exempt transactions cleared for all agency customer accounts.

L—Short exempt transaction cleared for a competing market maker that is affiliated with the clearing member.

X—Short exempt transaction cleared for the account of an unaffiliated member competing market maker.

Z—Short exempt transaction cleared for the account of a non-member competing market maker.

W—Proprietary transactions not specified above and cleared for the account of an unaffiliated member/member organization.

A—Transactions cleared for all agency customer accounts.

P—Transactions not specified above and cleared for the proprietary account of a clearing member organization or affiliated member/member organization.

V—Proprietary transactions cleared for the account of a non-member broker dealer that is not a competing market maker.

3—Transactions cleared for a Nasdaq market maker that is affiliated with the clearing member that resulted from telephone access to the specialist.

4—Transactions cleared for a member's Nasdaq market maker that is not affiliated with the clearing member that resulted from telephone access to the specialist.

5—Transactions cleared for a non-member Nasdaq market maker that is not affiliated with the clearing member that resulted from telephone access to the specialist.

New York Stock Exchange program trade audit trail account type codes as used from time to time also are acceptable.

(13) Account type code—options only. The current account type codes for option transactions are as follows. Members should use the most restrictive account type code available. These codes may be changed from time to time as the Exchange may determine:

S—Specialist principal transaction in a specialty security (regardless of the account or clearing member)

C—Transactions cleared for the account of an individual investor

F—Transactions cleared for the account of a broker-dealer that is not a registered market maker in the security

P—Registered trader market maker transaction regardless of the clearing member

N—Transactions cleared for the account of a non-member market maker

(14) Such other information as the Exchange may from time to time require. Clearing members may not ''summarize'' multiple trades in the same security, executed at the same price with the same contra clearing firm as this results in degradation of the audit trail.

* * * * *

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange's rules require clearing members to submit to comparison different types of information for each transaction that they clear. These requirements are set forth in Exchange Rule 719. Among the different data that clearing firms must submit for each trade is an account type code. These codes identify the type of account for which the trade was effected (*e.g.*, a customer, market maker or specialist). The Exchange uses these codes for purposes of market oversight and transaction fee billing.

The Exchange is proposing three modifications to the account type codes. Going forward, the number ''3'' would be used to identify transactions that resulted from telephone access to the Amex specialist effected for a Nasdaq market maker that is affiliated with the clearing member. The number ''4'' would be used to identify transactions that resulted from telephone access to the specialist effected for a Nasdaq market maker that is an Amex member but is not affiliated with the member clearing the trade. Finally, the number ''5'' would be used to identify transactions that resulted from telephone access to the specialist effected for a Nasdaq market maker that is not an Amex member and is not affiliated with the clearing member. The Exchange is making these changes to identify the trades that result from telephone access to the specialist so that these trades will not be charged a transaction fee.[3] No other change would be made to Rule 719.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[4] in general and furthers the objectives of section 6(b)(5),[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[6] and paragraph (f)(1) and (3) of Rule 19b–4[7] thereunder because it constitutes a states policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule and is concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–77 and should be submitted by October 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25671 Filed 10–8–02; 8:45 am]

BILLING CODE 8010–01–P

[3] The Exchange states that Section IX of the Nasdaq Unlisted Trading Privileges Plan (''Plan'') provides in part that no Plan Participant can impose any fee or charge with respect to transactions in Nasdaq securities effected with Nasdaq market makers which are communicated to the floor by telephone pursuant to the Plan. *See* Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b-4(f)(1) and (3).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46592; File No. SR–CHX–2002–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Incorporated To Amend the CHX Membership Dues and Fees Schedule to Reduce Tape A and Tape B Specialist Credits, Reduce Floor Broker Earned Credits, and Increase the OTC Specialist Fixed Fees

October 2, 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 September 3, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 30, 2002, the CHX amended the proposal.[3] The Exchange has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* September 27, 2002 letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Division of Market Regulation, Commission (''Amendment No. 1'') Amendment No. 1 completely replaces and supersedes the original filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on September 30, 2002, the date the CHX filed Amendment No. 1.

designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (''Schedule'') for the period from September through December 2002, to (1) reduce the Tape A and Tape B specialist credits; (2) reduce the floor broker earned credits; and (3) increase the OTC specialist fixed fees. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Membership Dues and Fees

* * * * *

E. Specialist Fixed Fees

Except in the case of Exemption Eligible Securities (as defined above in Section D), which shall be exempt from assessment of fixed fees, specialists will be assigned a fixed fee per assigned stock on a monthly basis, to be calculated as follows:

Fixed Fee Per Dual Trading System Security	=	No change to text
Fixed Fee For *Specialist* [Member] Firms Trading Nasdaq/NMS Securities	=	The lowest monthly fixed fee charged each member firm for period from January through June 2002, less the market data rebate earned by the firm in June, 2002. (Effective July 2002) *For each month from September 2002 through December 2002, each specialist firm shall be charged a Fixed Fee Charge equal to that specialist firm's pro rata share of an additional $10,000 monthly fee. A specialist firm's pro rata share shall be based on the firm's percentage participation in the total market data rebates paid to specialist firms trading Nasdaq/NMS Securities in June 2002.*

* * * * *

M. Credits

1. Specialist Credits

Total monthly fees owed by a specialist to the Exchange will be reduced (and specialists will be paid each month for any unused credits by the application of the following credits):

a. Effective July 1, 2002 for transactions in Tape A Securities:

CHX monthly CTA trade volume by stock (percent)	Transaction credit (percent)
< 7	18
7–12	45
>12	70

''Tape A Securities'' are securities reported on Tape A of the Consolidated Tape Association.

''Transaction Credit'' when used in connection with Tape A Securities means the applicable percentage of monthly CHX tape revenue from the Consolidated Tape Association generated by a particular stock. To the extent that CHX tape revenue is subject to a year end adjustment, specialist credits may be adjusted accordingly.

For each month from September 2002 through December 2002, the Transaction Credit calculated above for each specialist firm shall be decreased by an amount equal to that specialist firm's ''Credit Reduction Charge,'' which shall be calculated as follows:

(Total CHX Monthly Tape A Transaction Credits ÷ Total CHX Monthly Tape A & B Transaction Credits) × $40,000 = Tape A Pro Rata Share

(Specialist's Monthly Tape A Transaction Credits ÷ Total CHX Monthly Tape A Transaction Credits) × Tape A Pro Rata Share = Specialist's Credit Reduction Charge

b. Effective July 1, 2002 for transactions in Tape B Securities:

CHX monthly CTA trade volume by stock (percent)	Transaction credit (percent)
≤5.75%	18
>5.75%	50%

''Transaction Credit'' when used in connection with Tape B Securities means the applicable percentage of monthly CHX tape revenue from the Consolidated Tape Association generated by a particular stock. To the extent that CHX tape revenue is subject to a year end adjustment, specialist credits may be adjusted accordingly.

''Tape B Securities'' are securities reported on Tape B of the Consolidated Tape Association.

For each month from September 2002 through December 2002, the Transaction Credit calculated above for each specialist firm shall be decreased by an amount equal to that specialist firm's ''Credit Reduction Charge,'' which shall be calculated as follows:

(Total CHX Monthly Tape B Transaction Credits ÷ Total CHX Monthly Tape A & B Transaction Credits) × $40,000 = Tape B Pro Rata Share (Specialist's Monthly Tape B Transaction Credits ÷ Total CHX Monthly Tape B Transaction Credits) × Tape B Pro Rata Share = Specialist's Credit Reduction Charge

2. Floor Broker Credits

a. Earned Credits.

Effective January 1, 2001, total monthly fees owed by a floor broker to the Exchange will be reduced by the application of the following Earned Credit (and floor brokers will be paid each month for any unused credits):

* * * * *

For each month from September 2002 through December 2002, the Earned Credit calculated above for each floor broker shall be decreased by an amount equal to that floor broker's ''Credit Reduction Charge,'' which shall be calculated as follows:

(Floor Broker's Monthly Earned Credit ÷ Total CHX Monthly Earned Credits) × $50,000 = Floor Broker's Credit Reduction Charge

* * * * *

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

3. Credits for Qualified Market Makers Registered in Cabinet Securities

No change to text.

* * * * *

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 CHX proposes to amend the Schedule by (1) reducing the Tape A and Tape B credits provided to Exchange specialists; (2) reducing the earned credits available to Exchange floor brokers; and (3) increasing the fixed fees charged to specialists who trade OTC securities. These changes apply for the period from September through December 2002.

The Exchange, like other business entities, sets financial goals for its operations, and attempts, throughout the year, to make decisions that permit it to meet or exceed those goals. To help meet the Exchange's goals for 2002, the Exchange has decided to temporarily reduce certain credit programs and to increase certain fees.

In doing so, the CHX has designed the proposed changes to the credit and fee arrangements to have an equal effect on the Exchange's specialist firms, as a group, and its floor broker firms, as a group. Within each of these two groups, the fee changes are designed to impact specific firms based on the level of their current participation in the credit and/or fee programs.[5] The Exchange believes that its member firms are in agreement with this proposal.

The changes in the credit section of the Schedule (Section M) decrease the credits from the levels that were set in July 2002 as a result of discussions with Commission staff.[6] Among other things, the Tape B transaction credits outlined in the Schedule continue to be 50% or less.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

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)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

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–CHX–2002–28, and should be submitted by October 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25670 Filed 10–8–02; 8:45 am]

BILLING CODE 8010–01–P

[5] For example, for each of the months from September to December 2002, the Exchange's specialists that trade securities reported on Tape A of the Consolidated Tape Association, will be assessed a credit reduction charge that is based on their share of the total Tape A transaction credit for those months.

[6] *See* Securities Exchange Act Release No. 46231 (July 19, 2002), 67 FR 48687 (July 25, 2002)(SR–CHX–2002–22).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] *See* footnote 3, *supra.*

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46589; File No. SR–NASD–2002–130]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Extension of the Nasdaq International Service Pilot Program

October 2, 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 September 26, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to extend for one year: (1) The pilot term of the Nasdaq International Service (''Service''); and (2) the effectiveness of certain rules (''International Rules'') that are unique to the Service. This rule change does not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

entail any modification of the International Rules. The present authorization for the Service and the International Rules expires on October 9, 2002. With this filing, the pilot period for the Service and the International Rules would be extended until October 9, 2003.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD proposes to extend for an additional year, until October 9, 2003, the pilot operation of the Service and the effectiveness of the International Rules governing broker-dealers' access to and use of the Service. The Commission originally approved the existing pilot operation of the Service and the International Rules in October 1991.[3] The Service was launched on January 20, 1992. The pilot has since been extended and is currently set to expire on October 9, 2002.[4]

The Service supports an early trading session running from 3:30 a.m. to 9 a.m. E.T. on each U.S. business day (''European Session'') that overlaps the business hours of the London financial markets. Participation in the Service is voluntary and is open to any authorized NASD member firm or its approved broker-dealer affiliate in the U.K. A member participates as a Service market maker either by staffing its trading facilities in the U.S. or the facilities of its approved affiliate during the European Session. The Service also has a variable opening feature that permits Service market makers to elect to participate starting from 3:30 a.m., 5:30 a.m. or 7:30 a.m., Eastern Time. The election is required to be made on a security-by-security basis at the time a firm registers with the NASD as a Service market maker.[5] At present, there are no Service market makers participating in the Service.

As noted above, the NASD is seeking to extend the pilot term for one year. During this period, the NASD will continue to reevaluate the Service's operation and consider possible enhancements to the Service to broaden market-maker participation. The NASD continues to view the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by Nasdaq. Accordingly, the NASD believes that this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility and attractiveness to the investment community. The NASD maintains its belief that it is extremely important to preserve this facility and the opportunities it provides, especially in light of the increasingly global nature of the securities markets and the trend of cross-border transactions generally.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of sections 11A(a)(1)(B) and (C) and 15A(b)(6) of the Act.[6] Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communications techniques. Section 15A(b)(6) requires, among other things, that the NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The NASD believes that the proposed extension of the Service and the International Rules is fully consistent with these statutory provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–130 and should be submitted by October 30, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with sections 11A(a)(1)(B) and (C) and 15A(b)(6) of the Act.[7] The Commission believes that, in connection with the globalization of securities markets, the Service provides an opportunity to advance the statutory goals of (1) achieving more efficient and effective market operations; (2) broader availability of information with respect to quotations for securities; (3) the execution of investor orders in the best market through the use of advanced data processing and communications techniques; and (4) fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing, information with

[3] *See* Securities Exchange Act Release No. 29812 (October 11, 1991), 56 FR 52082 (October 17, 1991) (File No. SR–NASD–90–33).

[4] *See* Securities Exchange Act Release No. 44915 (Oct. 9, 2001), 66 FR 52650 (Oct. 16, 2001) (File No. SR–NASD–01–65).

[5] Regardless of the opening time chosen by the Service market maker, the Service market maker is required to fulfill all the obligations of a Service market maker from that time (*i.e.*, either 3:30 a.m., 5:30 a.m. or 7:30 a.m.) until the European Session closes at 9 a.m., Eastern Time. *See* Securities Exchange Act Release No. 32471 (June 16, 1993), 58 FR 33965 (June 22, 1993) (File No. SR–NASD–92–54).

[6] 15 U.S.C. 78k–1(a)(1)(B), (C); 78o–3(b)(6).

[7] 15 U.S.C. 78k–1(a)(1)(B), (C); 78o–3(b)(6). In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

respect to, and facilitating transactions in securities.

The Commission views the Service as providing potential opportunities for international trading via a system operated by Nasdaq. The Service is intended to promote additional commitments of member firms' capital to market making and to attract commitments from firms based in Europe that currently do not function as Nasdaq market makers. Although there are no Service market makers participating in the Service, the NASD plans to reevaluate the Service's operation and consider possible enhancements to the Service to broaden market maker participation. Accordingly, the Commission believes that this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility and attractiveness to the investment community. Any changes to the operation of the Service will be filed pursuant to section 19(b)(2) of the Act.[8]

Pursuant to Section 19(b)(2) of the Act,[9] the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** The Commission believes that it is appropriate to approve on an accelerated basis the one-year extension of the Service, until October 9, 2003, to ensure the continuous operation of the Service, which is otherwise set to expire on October 9, 2002.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2002–130) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25673 Filed 10–8–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(2).

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46559; File No. SR–NASD–2002–125]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. To Extend a Pilot Amendment to NASD Rule 4120 Regarding Nasdaq's Authority To Initiate and Continue Trading Halts

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 September 20, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to extend a pilot amendment to NASD Rule 4120, which clarified Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq. The purpose of this filing is to extend the pilot until November 15, 2002.[6] Accordingly, there is no new proposed rule language.

[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)(6).

[5] Nasdaq asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] Nasdaq confirmed that this proposed rule change only extends the operation of the pilot, and does not change the pilot substantively. Telephone converation between John Yetter, Assistant General Counsel, Office of the General Counsel, Nasdaq, and Joseph Morra, Special Counsel, and Marc McKayle, Special Counsel, Division of Market Regulation (''Division''), Commission on September 25, 2002.

Nasdaq will implement the proposed rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and 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

On May 11, 2001, Nasdaq filed with the Commission a proposed rule change to clarify Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq.[7] On July 27, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change, which requested that the Commission approve the proposed rule change on a three-month pilot basis expiring on October 27, 2001.[8] Also on July 27, 2001, the Commission approved the proposed rule change and Amendment No. 1 on a pilot basis[9] after finding that the proposed rule change was consistent with the requirements of the Act, including Section 15A of the Act.[10] Since that time, the pilot period for the rule has been extended on several occasions.[11]

According to Nasdaq, as a result of the decentralized and electronic nature of

[7] See Securities Exchange Act Release No. 44307 (May 15, 2001), 66 FR 28209 (May 22, 2001) (Notice for SR–NASD–2001–37).

[8] See Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Alton Harvey, Office Head of MarketWatch, Division, Commission dated July 27, 2001. (Amendment No. 1 to SR-NASD–2001–37).

[9] See Securities Exchange Act Release No. 44609 (July 27, 2001), 66 FR 40761 (Aug. 3, 2001) (Order granting approval of SR–NASD–2001–37 on a pilot basis).

[10] 15 U.S.C. 78o–3.

[11] See Securities Exchange Act Release No. 44870 (Sept. 28, 2001), 66 FR 50701 (Oct. 4, 2001); Securities Exchange Act Release No. 45344 (Jan. 28, 2002), 67 FR 5022 (Feb. 3, 2002); Securities Exchange Act Release No. 45851 (Apr. 30, 2002), 67 FR 31858 (May 10, 2002).

the market operated by Nasdaq, the price and volume of transactions in a Nasdaq-listed security may be affected by the misuse or malfunction of electronic systems, including systems that are linked to, but not operated by, Nasdaq. In circumstances where misuse or malfunction results in extraordinary market activity, Nasdaq believes that it may be appropriate to halt trading in an affected security until the system problem can be rectified. In the period during which the rule change has been in effect, Nasdaq has not had occasion to initiate a trading halt under the rule. Nevertheless, Nasdaq believes that the rule is an important component of its authority to maintain the fairness and orderly structure of the Nasdaq market. Accordingly, Nasdaq believes that the rule should remain in effect on an uninterrupted basis.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[12] including Section 15A(b)(6) of the Act,[13] which requires, among other things, that a registered national securities association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change provides Nasdaq with clearer authority to respond to and alleviate market disruptions and thereby protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In a letter dated July 27, 2001, Instinet Corporation (''Instinet'') commented on the proposed rule change as originally proposed and currently in effect.[14] Nasdaq has filed a proposed rule change—SR–NASD–2001–75—to modify the rule in certain respects and to make the rule permanent, and has received no comments on that proposal.[15] Nasdaq believes that the amendments to the rule proposed in SR–NASD–2001–75 respond to the concerns expressed by Instinet without impairing the flexibility that the rule must retain in order for the rule to assist Nasdaq in meeting its overarching responsibility to maintain the fairness and orderly structure of the Nasdaq market. Pending Commission action on SR–NASD–2001–75, Nasdaq believes that the pilot period of the current rule should be extended to allow the rule to remain in effect on an uninterrupted basis.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[16] of the Act and Rule 19b–4(f)(6) thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to operate continuously through November 15, 2002, while the Commission considers Nasdaq's request for permanent approval. For these reasons, the Commission waives both the 5-day pre-filing requirement and the 30-day operative waiting period.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–125 should be submitted by October 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25675 Filed 10–8–02; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78o–3.

[13] 15 U.S.C. 78o–3(b)(6).

[14] *See* Letter from Jon Kroeper, First Vice President—Regulatory Policy/Strategy, Instinet to Jonathan G. Katz, Secretary, Commission dated July 27, 2001.

[15] *See* Securities Exchange Act Release No. 45355 (Jan. 29, 2002), 67 FR 5351 (Feb. 5, 2002) (File No. SR–NASD–2001–75).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46579; File No. SR–NYSE–2002–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Codification of New York Stock Exchange Policies Previously Approved by the Commission and the Reordering of Other Rules

October 1, 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 12, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been prepared by the Exchange. The proposed rule change has been filed by the NYSE as a ''non-controversial'' rule change under Rule 19b–4(f)(6) of the Securities Exchange Act of 1934 (''Act'').[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the formal codification of several Exchange policies previously approved by the Commission and the reordering of several other Exchange rules. The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 NYSE 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

According to the NYSE, the purpose of this filing is to formally codify in the NYSE Rule Book several policies which have been previously filed with, and approved by, the Commission pursuant to Rule 19b–4 and to rearrange the placement of several other rules. The NYSE represents that the material filed herein does not constitute a substantive change to any NYSE rule or policy, and is responsive to recommendations made by an Independent Consultant retained by the Exchange. *See In the Matter of New York Stock Exchange,* 70 S.E.C. Docket 106, Release No. 34–41574, 1999 WL 430863 (June 29, 1999).

Rule 90

Exchange Rule 90 prohibits member proprietary transactions on the Exchange in accordance with the principles of Section 11(a) of the Act and the Commission's rules thereunder. The Exchange is proposing to add, as Supplementary Material to Rule 90, the text of Section 11(a) and the text of the Commission's rules thereunder.

Rules 110, 111 and 112

Exchange Rules 110, 111 and 112 are primarily addressed to Competitive Traders, although several provisions of these Rules relate to other matters. The Exchange is proposing to reorganize these rules so that all material directly relating to activities of Competitive Traders will be codified in Rule 110. This involves placing certain material currently codified in Rule 111 and Rule 112 into Rule 110. After the reorganization, Rule 111 would contain material currently codified in Supplementary Material to Rule 112 concerning reporting requirements for Competitive Traders and certain other traders. In addition, Rule 112 would consist of material currently codified in paragraphs .10 and .20 of Supplementary Material to Rule 112 dealing with orders initiated off the Floor, and what constitutes ''on Floor'' and ''off Floor'' for purposes of Exchange rules.

No new material is being added. The Exchange is simply reorganizing the existing material for ease of reference.

The specific reorganization is as follows. Paragraphs (a), (b), and (c) of current Rule 111 would become paragraphs (a), (b), and (c) of new Rule 110. Paragraphs (a), (b), (c), and (d) of current Rule 112 would become paragraphs (d), (e), (f), and (g) of new Rule 110. Paragraphs (d), (e), (f), (g) and Supplementary Material .10 of current Rule 111 would become paragraphs (h), (i), (j), (k), and (l) of new Rule 110. The text of current Rule 110 would become paragraph (m) of new Rule 110. Supplementary Material paragraphs .21 and .22 of current Rule 112 would become new paragraphs (n), (o), and (p) of new Rule 110.

Supplementary Material paragraph .30 of current Rule 112 would become paragraph (a) of new Rule 111. Supplementary Material paragraphs .40, .50, and .50A of current Rule 112 would become paragraphs (b), (c) and (d) of new Rule 111.

Supplementary Material paragraph .10(a) of Rule 112 would become paragraph (a) of new Rule 112. Supplementary Material paragraphs .20(a), (b), (c), and (d) would become paragraphs (b), (c), (d), and (e) of new Rule 112.

Three paragraphs are proposed to be deleted. Current Rule 112(e) contains exemptions from restrictions on Competitive Traders for specialists in securities in which they are registered. Current Rule 111(c), however, contains similar exemptions. Accordingly, the Exchange is proposing to rescind Rule 112(e) as redundant and unnecessary, and this paragraph would not appear in proposed new Rule 110.

Rule 112.23 refers to the ability of the specialist to establish priority, but not parity or precedence based on size, in certain market situations. This paragraph is similar to restrictions contained in Rule 108, and the Exchange is proposing to delete it as redundant.

Rule 112.24 provides that specialists should state the full size of the offer except in instances in which they believe the proper exercise of the brokerage function makes it inadvisable to do so. This Rule has been superseded by the Commission's limit order display rule, Rule 11Ac1–4, and NYSE Rule 79A.15, and is therefore proposed to be rescinded.

Codification of Exchange Policies

The Exchange is proposing to add its specialist stock allocation policy to Rule 103B.[4] This Rule currently provides that securities listing on the Exchange will be allocated to specialist units according to such policies as the Exchange shall establish. The Exchange's Allocation Policy has been previously filed with the Commission but has not been codified in the Rule Book. The Exchange is simply proposing to add the text of the current Allocation Policy to the text of Rule 103B.

The Exchange is also proposing to codify three other policies which have been previously approved by the Commission. The Exchange's policies and interpretations regarding market-on-close and limit-on-close orders would be codified in new Exchange Rule 123C.[5] Included in this Rule would be interpretive material, previously disseminated to the Exchange's membership, which is reasonably and fairly implied by these policies. The Exchange is not proposing to adopt any new substantive requirements.

The Exchange is proposing to codify its policies and interpretations regarding trading halts and delayed openings in

[3] 17 CFR 240.19b–4(f)(6).

[4] This policy was last amended in SR–NYSE–2001–10 (Allocation Policy for Exchange-Traded Funds), approved by Securities Exchange Act Release No. 44306 (May 15, 2001), 66 FR 28008 (May 21, 2001), and in SR–NYSE–2001–17 (Interview Pool for Exchange's Allocation Policy and Procedures), approved by Securities Exchange Act Release No. 44975 (October 24, 2001), 66 FR 55037 (October 31, 2001).

[5] This policy was last amended in SR–NYSE–99–26, approved by Securities Exchange Act Release No. 41726 (August 11, 1999), 64 FR 44985 (August 18, 1999).

new Rule 123D.[6] No new substantive requirements are proposed to be adopted.

The Exchange is also proposing to codify its Specialist Combination Review Policy in new Rule 123E.[7] No new substantive requirements are proposed to be adopted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(5) of the Act,[9] in particular. Section 6(b)(5) of the Act requires, among other things, that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, and the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)(iii)[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day pre-operative waiting period, which will allow the proposed administrative rule changes and codification of Exchange policies to take effect immediately. According to the NYSE, the proposed filing consists of formal codification of several Exchange policies previously approved by the Commission and the reordering of several other Exchange rules. Therefore, the Exchange believes that the proposed rule change is non-controversial, addresses the administration of Exchange rules, and should take effect immediately. In light of these considerations, the Commission, consistent with the protection of investors and the public interest, has determined to designate the proposed rule change as operative immediately.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at 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 the File No. SR–NYSE–2002–31 and should be submitted by October 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25672 Filed 10–8–02; 8:45 am]

BILLING CODE 8010–01–P

[6] This policy was last amended in SR–NYSE–93–19, approved by Securities Exchange Act Release No. 32890 (September 14, 1993), 58 FR 48916 (September 20, 1993).

[7] This policy was last approved in SR–NYSE–94–46, Securities Exchange Act Release No. 35343 (Feb. 8, 1995), 60 FR 8437 (Feb. 14, 1995). The last proposed amendment to this policy was made in SR–NYSE–2000–11 (March 2, 2000) (not yet approved).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46593; File No. SR–OCC–2002–23]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Physically-Settled Futures on Narrow-Based Stock Indexes

October 2, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 30, 2002, The Options Clearing Corporation (''OCC'') 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 primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's by-laws and rules to provide for the clearance and settlement of transactions in physically-settled futures on narrow-based stock indexes.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Introduction

The proposed amendments would provide for the clearance and settlement of physically-settled futures on narrow-based stock indexes under the same basic rules and procedures recently approved by the Commission for the clearance and settlement of other security futures contracts.[3] Delivery of the constituent securities of an underlying narrow-based index would be effected pursuant to the same rules and procedures currently applicable to the clearance and settlement of stock options and physically-settled stock futures.

Background and Brief Product Description

As amended by the Commodity Futures Modernization Act of 2000 (''CFMA''), section 3(a)(55) of the Act defines the term ''security future'' to include ''a contract of sale for future delivery of * * * a narrow-based security index, including any interest therein or based on the value thereof.'' CFMA does not specify or restrict the means by which a narrow-based security index future can be settled. OneChicago LLC (''ONE'') has proposed to include physically-settled index futures among the contracts listed for trading through its facilities and has asked OCC to provide clearing and settlement services for those contracts. OCC's existing rules for clearing security futures contracts, which were approved by the Commission in 2001, provide for the clearance of cash-settled stock futures and index futures and for the clearance of physically-settled stock futures. They do not, however, provide for physically-settled index futures.[4] The purpose of the present rule change is to amend those rules as necessary to provide for clearance and settlement of this additional type of security future.

ONE proposes to trade physically-settled narrow-based index futures that would allow a participant to take a position in defined economic sectors such as airlines, computers, investment banking, and semiconductors. These futures contracts will require the seller at maturity of the contract to deliver to the buyer a specified number of shares (to be set initially at 100 shares or multiples thereof, subject to adjustments to reflect certain corporate events such as stock splits) of each of the constituent securities in the index. The number of deliverable shares of each security will essentially define the index.

ONE intends that the constituent stocks will be represented in an index under an approximate equal-dollar weighting formula. OneChicago will rebalance the index periodically to account for relative price changes of the constituent securities. ONE may also change constituent securities from time to time so that the index better reflects the particular industry sector. New classes of contracts will be opened after each rebalancing or change in the composition of the index. Existing contracts will be unaffected by these rebalancing changes and will continue trading until expiration.

Overview of OCC's Proposed Rule Changes

OCC has determined that physically-settled index futures may be readily settled in a manner similar to physically-settled stock futures. As is the case with stock futures and stock options, delivery of the underlying would ordinarily be made through the National Securities Clearing Corporation (''NSCC'') with OCC's broker-to-broker settlement procedures as a fallback in the event that a deliverable security is ineligible to be settled through NSCC. ONE has determined to set the final settlement price against which delivery will be made based on the price of the future rather than using the cash prices of the constituent stocks. The prices that OCC would provide to NSCC with respect to each underlying constituent security would be determined by allocating the final futures settlement price to each constituent security in proportion to its weighting in the index. This would be essentially the same way that OCC currently handles the settlement of equity options that have multiple deliverables as a result of corporate events.

The following discussion describes revisions to particular by-laws or rules that are of particular significance or appear to require explanation. Where special provisions for physically-settled narrow-based index futures are needed, they are proposed to be added primarily in either the basic rules in Articles VI of the By-Laws, Clearance of Exchange Transactions, or to the rules governing security futures generally, which are in Article XII of the By-Laws, Futures and Futures Options, and Chapter XIII of the Rules, Futures and Futures Options. Chapter IX of the Rules, Delivery of Underlying Securities and Payments, governing settlement of delivery obligations with respect to underlying stocks also would be amended slightly. Many other proposed changes are not discussed individually because they are merely conforming changes, constitute minor, nonsubstantive changes to existing by-laws and rules, or are otherwise self-explanatory.

New and Amended Definitions

OCC proposes to define several additional terms applicable to physically-settled narrow-based index futures and to include those terms in Article I of the By-Laws, Definitions, because they are used throughout the by-laws and rules. The new definitions are mostly self-explanatory, but a few terms that are of particular significance are described below.

The term ''aggregate purchase price'' would be amended to identify the total price against which all of the deliverable securities would be delivered at maturity of a physically-settled narrow-based index future. For purposes of settlement, that aggregate purchase price will then be apportioned among the constituent securities of the underlying index (as described in ''Amendments to Chapter IX of the Rules'' below).

The amendment to the definition of ''final settlement price'' would provide that the final settlement price of a futures contract could be determined by reference to the value of the underlying or, as ONE proposes in the case of physically-settled narrow-based index futures, by reference to the final settlement price of the futures contract itself.

The term ''class'' would be amended to clarify that only physically-settled narrow-based index futures that have identical constituent securities and identical weightings of such securities in the index underlying such future belong to the same ''class.'' This amendment reflects OCC's intention to

[2] The Commission has modified parts of these statements.

[3] *E.g.,* Securities Exchange Act Releases No. 44434 (June 15, 2001), 66 FR 33283 [File No. SR–OCC–2001–05 and 44727 (August 20, 2001), 66 FR 45351 [File No. SR–OCC–2001–07].

[4] *Id.*

treat a class of physically-settled narrow-based index futures contracts that has been rebalanced as a separate class of futures contracts.

The new term ''deliverable security'' would be defined broadly to include any security that might be deliverable with respect to any physically-settled cleared contract. This term would be created primarily to avoid possible confusion from use of the term ''underlying security'' to mean a particular constituent security in an underlying index. Similarly, the term ''deliverable amount'' is used to refer to the number of shares or other units of a particular constituent security that is deliverable with respect to a single contract.

The term ''physically-settled narrow-based index future'' would be added to distinguish these products from cash-settled narrow-based index futures. The definition of ''narrow-based index future'' would be amended to encompass both cash- and physically-settled narrow-based index futures, and the definition of ''security future'' would be amended to include a specific reference to stock futures and narrow-based index futures.

Amendments to Article VI of the By-Laws

Article VI, Clearance of Exchange Transactions, sets out the basic terms of option contracts and the general rules for the clearance of exchange transactions. These basic rules apply to stock options, and except where they are replaced or modified by the by-laws in later articles specifically applicable to other products, they apply to those other OCC cleared products. An amendment to section 10(d) would be added to clarify the mechanism for determination of the deliverable amount with respect to each constituent security in a series of physically-settled narrow-based index futures. Section 19 previously addressed shortages of ''underlying'' securities. The title would be modified to refer to the new term ''deliverable securities.'' Section 19 would be modified generally to provide for contracts, including but not limited to physically-settled narrow-based index futures, which may call for delivery of multiple securities. This could also be the case, for example, where a stock option or stock future has been adjusted as the result of a special distribution or other corporate event. As proposed, section 19 would provide for the partial settlement of contracts that may have multiple deliverable securities, not all of which are affected by the shortage. Various conforming changes would be made in the remainder of the section and in the interpretations and policies following the section. Subparagraphs (2)–(4) of section 19(a), which are substantively identical but dealt with different types of contracts, would be consolidated into new subparagraph (2). Section 19(c) would be redrafted for clarity and would not effect substantive changes to the treatment of contracts previously addressed by that section. Item 7 under Interpretation and Policy .02 to section 19 would no longer be necessary and would be deleted in its entirety.

Amendments to Article XII of the By-Laws

Article XII, Futures and Futures Options, sets out the basic provisions for futures and futures options. Section 2(a), which sets forth the general rights and obligations of buyers and sellers of futures and futures options, would be amended to set out the general rights and obligations of buyers and sellers of physically-settled narrow-based index futures. A new sentence would be added to section 3(a) clarifying that determinations of adjustments required to reflect certain events with respect to the constituent securities of the index underlying a physically-settled narrow-based index futures contact would be made by the exchange or security futures market on which such futures are traded. It is anticipated that the exchange or security futures market on which such futures are traded would determine the deliverable amount for each constituent security in the index, and that this would effectively define the index. Accordingly, OCC believes that adjustments should be made by the market (as the source of the index) rather than by OCC.

Amendments to Chapter IX of the Rules

As noted above, the Rules in Chapter IX, Delivery of Underlying Securities and Payment relating to delivery of and payment for underlying securities would be modified to apply to the constituent securities in an index underlying a physically-settled narrow-based security future. The proposed changes have been drafted more generally, however, to cover other situations where there may be multiple deliverables as in the case of certain adjustments to options and futures on single stocks as referred to above. The allocation of an aggregate purchase price among multiple deliverables is necessary so that each security can be settled against its own purchase price in case delivery of all the deliverable securities is not simultaneous. The price would be allocated in proportion to recent market prices for the deliverable securities. This allocation would be made by OCC in consultation with ONE in the case of physically-settled narrow-based index futures traded on that market. In the adjustment situation, the allocation is made solely by OCC. The precise allocation among the deliverable securities is ordinarily not material because any overpayment for one deliverable will result in an underpayment for another.

Amendments to Chapter XIII of the Rules

Chapter XIII of the Rules, Futures and Futures Options, governs, *inter alia*, variation payments and delivery obligations for futures and futures options. Variation payments for physically-settled narrow-based index futures would be determined under the existing rules with no change except to the definition of ''final settlement price'' as described above. Rule 1302, Delivery of Deliverable Securities, would be amended by adding a new subparagraph (b) to provide that at maturity of a physically-settled narrow-based index future, the seller and buyer of such a future would be obligated, respectively, to deliver and receive the deliverable amount of each constituent security of the index underlying the future.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it provides for the efficient clearance and settlement of physically-settled narrow-based index futures by adapting existing OCC rules that have been approved as effective in promoting the prompt and accurate clearance and settlement of both single stock futures and cash-settled narrow-based index futures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five 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 ninety days of such date if it finds such

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–23 and should be submitted by October 24, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25674 Filed 10–8–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3450]

State of Georgia

Fulton County and the contiguous counties of Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth and Gwinnett in the State of Georgia constitute a disaster area due to damages caused by heavy rains and localized flooding that occurred on September 21 and 22, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 2, 2002, and for economic injury until the close of business on July 3, 2003, at the address listed below or other locally announced locations:

U.S. 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 Co-operatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 345006 for Georgia and for economic injury is 9R8700.

Dated: October 3, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Hector V. Barreto,

Administrator.

[FR Doc. 02–25687 Filed 10–8–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3451]

State of Mississippi

As a result of the President's major disaster declaration on October 1, 2002, I find that Amite, Hancock, Harrison, Jackson, Pearl River, Pike and Stone Counties in the State of Mississippi constitute a disaster area due to damages caused by Tropical Storm Isidore occurring on September 23, 2002, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 2, 2002 and for economic injury until the close of business on July 1, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Forrest, Franklin, George, Lamar, Lincoln, Marion, Perry, Walthall and Wilkinson in the State of Mississippi; Mobile County in the State of Alabama; and East Feliciana, St. Helena, St. Tammany, Tangipahoa and Washington Parishes in the State of Louisiana.

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 Co-operatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 345111. For economic injury the number is 9R8800 for Mississippi; 9R8900 for Alabama; and 9R9000 for Louisiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 2, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–25689 Filed 10–8–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3448; Amendment #1]

State of Texas

In accordance with a notice received from the Federal Emergency Management Agency, dated September 30, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 6, 2002, and continuing through September 30, 2002.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is November 25, 2002, and for economic injury the deadline is June 26, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 3, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–25688 Filed 10–8–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements (ICRs) for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than December 9, 2002.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0505, or OMB control number 2130–0548.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov,* or to Ms. Debra Steward at *debra.steward@fra.dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved ICRs that FRA will submit for clearance by OMB as required under the PRA:

Title: Inspection and Maintenance Standards for Steam Locomotives.

OMB Control Number: 2130–0505.

Abstract: The Locomotive Boiler Inspection Act (LBIA) of 1911 required each railroad subject to the Act to file copies of its rules and instructions for the inspection of locomotives. The original LBIA was expanded to cover the entire steam locomotive and tender and all its parts and appurtenances. This Act then requires carriers to make inspections and to repair defects to ensure the safe operation of steam locomotives. The collection of information is used by tourist or historic railroads and by locomotive owners/operators to provide a record for each day a steam locomotive is placed in service, as well as a record that the required steam locomotive inspections are completed. The collection of information is also used by FRA Federal inspectors to verify that necessary safety inspections and tests have been completed and to ensure that steam locomotives are indeed ''safe and suitable'' for service and are properly operated and maintained.

Affected Public: Businesses.

Respondent Universe: 82 owners/operators.

Frequency of Submission: On occasion; annually.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
230.6—Waivers	82 owners	2 waiver letters	1 hour	2	$68
230.12—Conditions for movement—Non-Complying Locomotives.	82 owners/operators	10 tags	6 minutes	1	30
230.14—31 Service Day Inspection	82 owners/operators	100 reports	20 minutes	33	990
—Notifications	82 owners/operators	2 notifications	5 minutes	.17	6

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
230.15—92 Service Day Inspection	82 owners/operators	100 reports	20 minutes	33	990
230.16—Annual Inspection	82 owners/operators	100 reports	30 minutes	50	1,500
—Notifications	82 owners/operators	100 notifications	5 minutes	8	272
230.17—1,472 Service Day Inspection.	82 owners/operators	10 forms	30 minutes	5	150
230.20—Alteration Reports for Steam Locomotive Boilers.	82 owners/operators	5 reports	1 hour	5	150
230.21—Steam Locomotive Number Change.	82 owners/operators	1 document	2 minutes	.033	1
230.33—Welded Repairs/Alterations	82 owners/operators	5 letters	10 minutes	1	34
—Written Request to FRA for Approval—Unstayed Surfaces.	82 owners/operators	5 letters	10 minutes	1	34
230.34—Riveted Repairs/Alterations	82 owners/operators	10 requests	5 minutes	1	34
230.49—Setting of Safety Relief Valves.	82 owners/operators	38 tags	2 minutes	1. 25	38
230.96—Main, Side, and Valve Motion Rods.	82 owners/operators	1 letter	10 minutes	.17	5
Record Keeping Requirements:					
230.13—Daily Inspection Reports	82 owners/oper.	3,650 reports	2 minutes	122	3,660
230.17—1,472 Service Day Inspection.	82 owners/operators	10 reports	15 minutes	3	90
230.18—Service Day Report	82 owners/operators	150 reports	15 minutes	38	1,140
230.19—Posting of Copy	82 owners/operators	300 forms	1 minute	5	15
230.41—Flexible Stay Bolts with Caps.	82 owners/operators	10 entries	1 minute	.17	5
230.46—Badge Plates	82 owners/operators	3 reports	30 minutes	2	60
230.47—Boiler Number	82 owners/operators	1 report	15 minutes	.25	8
230.75—Stenciling Dates of Tests and Cleaning.	82 owners/operators	50 tests	15 minute	1	30
230.98—Driving, Trailing, and Engine Truck Axles—Journal Diameter Stamped.	82 owners/operators	1 stamp	15 minutes	.25	8
230.116—Oil Tanks	82 owners/operators	10 signs	1 minute	.17	5

Total Responses: 4,674.

Estimated Total Annual Burden: 313 hours.

Status: Extension of a Currently Approved Collection.

Title: Railroad Rehabilitation and Improvement Financing Program.

OMB Control Number: 2130–0548.

Abstract: Prior to the enactment of the Transportation Equity Act for the 21st Century (''TEA 21''), Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (the ''Act''), 45 U.S.C. 821 *et seq.*, authorized FRA to provide railroad financial assistance through the purchase of preference shares (45 U.S.C. 825), and the issuance of loan guarantees (45 U.S.C. 831). The FRA regulations implementing the preference share program were eliminated on February 9, 1996, due to the fact that the authorization for the program expired (28 FR 4937). The FRA regulations implementing the loan guarantee provisions of Title V of the Act are contained in 49 CFR Part 260. Section 7203 of TEA 21, Public Law 105–178 (June 9, 1998), replaces the existing Title V financing programs. The collection of information is used by FRA staff to determine the financial eligibility of applicants for a loan or loan guarantee regarding eligible projects for the improvement/rehabilitation of rail equipment or facilities, the refinancing of outstanding debt for these purposes, or the development of new intermodal or railroad facilities. The aggregate unpaid principal amounts of obligations can not exceed $3.5 billion at any one time and not less than $1 billion is to be available solely for projects benefitting freight railroads other than Class I carriers.

Affected Public: State and local governments, governments sponsored authorities and corporations, railroads (including Amtrak), and joint ventures that include at least one railroad.

Respondent Universe: 21,956 potential applicants.

Frequency of Submission: Annual.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response (in hours)	Total annual burden hours	Total annual burden cost
260.23—Form and content of application generally.	21,956 potential applicants	20 applications	20	400	$16,036
260.25—Additional information for applicants without credit ratings.	555 applicants	18 financial document pkgs	40	720	27,936
260.31—Execution and filing of application:					
—Certificate of President	21,956 pot. applicants	20 certificates	.6	12	526
—Certificate of Chief Financial Officer.	21,956 pot. applicants	20 certificates	.6	12	519

CFR section	Respondent universe	Total annual responses	Average time per response (in hours)	Total annual burden hours	Total annual burden cost
—Transmittal letter	21,956 pot. applicants	20 letters	.6	12	519
—Copy/mail app. pkg	21,956 pot. applicants	20 app. pkgs	1.5	30	912
260.33—Information Request	21,956 pot. applicants	20 statements	1	20	851
260.35—Environmental Assessment	21,956 pot. applicants	1 envir. Doc	4,475	4,475	537,000
260.43—Inspection and Reporting	21,956 pot. applicants	20 Docs	10	200	8,510

Total Responses: 159.

Estimated Total Annual Burden: 5,881 hours.

Status: Extension of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on October 3, 2002.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 02–25645 Filed 10–8–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on June 25, 2002 (67 FR 42844–42846).

DATES: Comments must be submitted on or before November 8, 2002.

FOR FURTHER INFORMATION CONTACT: George Person, National Highway Traffic Safety Administration, Office of Defects Investigation, 202–366–5210. 400 Seventh Street, SW., Room 5326, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Reporting of Information and Documents About Potential Defects—Retention of Records 49 CFR part 579.

OMB Number: 2127–0616.

Type of Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Abstract: The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act was enacted on November 1, 2000, Public Law 106–414. This Act includes a requirement that the National Highway Traffic Safety Administration (NHTSA) conduct Early Warning Reporting (EWR) rulemaking to require manufacturers of motor vehicles and motor vehicle equipment to submit information, periodically or upon NHTSA's request, that includes claims for deaths and serious injuries, property damage data, communications to customers and others, information on incidents resulting in fatalities or serious injuries from possible defects in vehicles or equipment in the United States or in identical or substantially similar vehicles or equipment in a foreign country, and other information that would assist NHTSA in identifying potential safety-related defects. The intent of this legislation is to provide early warning of such potential safety-related defects.

Estimated Burden Hours: 240,284.

Number of Respondents: 444.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's 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.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 4, 2002.

Delmas Maxwell Johnson,

Associate Administrator for Administration.

[FR Doc. 02–25706 Filed 10–8–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974; System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Proposed New Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Treasury Department, Departmental Offices, gives notice of a newly proposed system of records, ''Treasury/DO .214–DC Pensions Retirement Records.''

DATES: Comments must be received no later than November 8, 2002. The proposed new system of records will become effective November 18, 2002 unless comments are received which would result in a contrary determination.

ADDRESSES: Send written comments to Department of the Treasury, ATTN: Marc Rigrodsky, Office of the General Counsel, 1500 Pennsylvania Avenue NW., Room 1410, Washington, DC 20220, or to *marc.rigrodsky@do.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Marc Rigrodsky, (202) 622–0450.

SUPPLEMENTARY INFORMATION: The Department of the Treasury (Department) is establishing the DC Pensions Retirement Records system to assist the Department in carrying out its responsibilities under Title XI of the Balanced Budget Act of 1997, Pub. L. 105–33, as amended (the Act), for

administering and paying retirement benefits for certain teachers, police officers, firefighters, and judges who were or are employed by the government of the District of Columbia (District). The Federal Government is responsible for paying police officers,'' firefighters', and teachers' retirement benefits based upon service accrued through June 30, 1997. The District is responsible for paying benefits based upon service accrued after June 30, 1997. The Federal Government is responsible for paying judges' retirement benefits regardless of when they accrued. All benefit payments that are the responsibility of the Federal Government under the three District retirement programs (police-firefighters, teachers, and judges) are referred to herein as ''Federal benefit payments.'' Benefit payments for service accrued after June 30, 1997, to which an individual is entitled under the District's Replacement Plan for police officers, firefighters and teachers, are the responsibility of the District.

This system of records will consist of information furnished by the subjects of the records, the District and other entities or persons that will enable the Department to calculate and verify eligibility for, and calculate amounts of, Federal benefit payments payable by the Department under the Act. The records in this system will be maintained indefinitely. Because records in the system are retrieved by individual identifier, including by name, social security number and an automatically assigned, system generated number, the Privacy Act of 1974, as amended, requires a general notice of the existence of this system of records to the public.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The proposed system of records, ''Treasury/DO .214–D.C. Pensions Retirement Records,'' is published in its entirety below.

Dated: October 2, 2002.

W. Earl Wright, Jr.,

Chief, Management and Administrative Programs Officer.

TREASURY/DO .214.

SYSTEM NAME:

D.C. Pensions Retirement Records.

SYSTEM LOCATION:

Director, Office of D.C. Pensions, Department of the Treasury, Metropolitan Square, Washington, DC 20220. Certain records pertaining to Federal benefit payments are located with contractors engaged by the Department of the Treasury (Department), bureaus of the Department, and the government of the District of Columbia (District).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Former District teachers, police officers and firefighters who performed service subject to the District's retirement plans for teachers, and police officers and firefighters, on or before June 30, 1997.

b. Former District judges, regardless of their dates of service.

c. Current District teachers, police officers, firefighters, who have performed service prior to July 1, 1997:

(1) that may make them eligible to receive Federal benefit payments;

(2) who have filed a designation of beneficiary for Federal benefit payments; or

(3) who have filed a service credit application in connection with former Federal service; or

(4) who have filed an application for disability retirement with the District or the Secretary of the Treasury (Secretary) and who are waiting for a final decision, whose disability retirement application has been approved by the District or the Secretary, or whose disability retirement application has been disapproved by the District or the Secretary, and who will receive or would have received Federal benefit payments if their applications are or had been approved.

d. Current District judges;

e. Former District teachers, police officers, firefighters, and judges who died entitled to or while receiving Federal benefit payments, or their surviving spouses, and/or children and/or dependent parents.

f. Former spouses of District teachers, police officers, firefighters, and judges, who have received or are receiving Federal benefit payments, or who have filed a court order awarding future benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system comprises retirement service history records of employee service in the District, the Federal Government, and other entities upon which Federal benefit payments may be based. Also included in the system are current personnel data pertaining to active District teachers, police officers, firefighters, and judges who, by virtue of the Act, may be eligible for Federal benefit payments. It also contains information concerning health benefit and group life insurance enrollment/change in enrollment. Also included are medical records and supporting evidence for disability retirement applications, and documentation regarding their acceptance or rejection. Consent forms and other records related to the withholding of State income tax from annuitant payments, whether physically maintained by the State or the Department, are included in this system.

These records contain the following information:

a. Documentation of District service subject to the retirement plans for District teachers, police officers, firefighters, and judges.

b. Documentation of service credit and refund claims made by District teachers, police officers, firefighters, and judges under their retirement plans who are potentially eligible for Federal benefit payments.

c. Documentation of retirement contributions made by eligible teachers, police officers, firefighters, and judges.

d. Retirement and death claims files applicable to Federal benefit payments, including documents supporting the retirement application, health benefits, and life insurance eligibility, medical records supporting disability claims, and designations of beneficiary.

e. Enrollment and change in enrollment information under the Federal Employees Health Benefits Program, the employee health benefits program for District employees, the Federal Employee Group Life Insurance Program and the employee group life insurance program for District employees.

f. Court orders submitted by former spouses of District teachers, police officers, firefighters, and judges in support of claims for Federal benefit payments.

g. Records relating to overpayments of Federal benefit payments and other debts arising from the Federal Government's responsibility to administer the retirement plans for District judges, police officers, firefighters, and teachers, and records relating to other Federal debts owed by recipients of Federal benefit payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title XI, Subtitle A, chapters 1 through 9, and Subtitle C, chapter 4, subchapter B of the Balanced Budget Act of 1997, Pub. L. 105–33.

PURPOSE(S):

These records provide information on which to base determinations of:

eligibility for, and computation of, Federal benefit payments; eligibility and premiums for health insurance and group life insurance; and withholding of State income taxes from annuities. These records also may be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

1. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Department becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

2. To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

3. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

5. To disclose information to the National Archives and Records Administration for use in records management inspections.

6. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when:

(A) The Department, or any component thereof;

(B) Any employee of the Department in his or her official capacity;

(C) Any employee of the Department in his or her individual capacity where the Department of Justice or the Department has agreed to represent the employee;

(D) The United States, when the Department determines that litigation is likely to affect the Department or any of its components; or

(E) The Federal funds established by the Act to pay Federal benefit payments; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Department is deemed by the Department of Justice or the Department to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which records were collected.

7. To disclose information to contractors, subcontractors, financial agents, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Department, including the District.

8. To disclose, to the following recipients, information needed to adjudicate a claim for Federal benefit payments under the retirement plans for District teachers, police officers, firefighters, and judges, or information needed to conduct an analytical study of benefits being paid under such programs as: Social Security Administration's Old Age, Survivor and Disability Insurance and Medical Programs, military retired pay programs; and Federal civilian employee retirement programs (Civil Service Retirement System, Federal Employees Retirement System, and other Federal retirement systems).

9. To disclose to the U.S. Office of Personnel Management (OPM) and to the District information necessary to verify the election, declination, or waiver of regular and/or optional life insurance coverage.

10. To disclose to health insurance carriers contracting with OPM to provide a health benefits plan under the Federal Employees Health Benefits Program or health insurance carriers contracting with the District to provide a health benefits plan under the health benefits program for District employees, Social Security Numbers and other information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts.

11. To disclose to any inquirer, if sufficient information is provided to assure positive identification of an individual on whom the Department maintains records, the fact that an individual is or is not on the retirement rolls, and if so, the type of annuity (employment or survivor, but not retirement on disability) being paid, or if not, whether a refund has been paid.

12. When an individual to whom a record pertains dies, to disclose to any person possibly entitled in the applicable order of precedence for lump-sum benefits, information in the individual's record that might properly be disclosed to the individual, and the name and relationship of any other person whose claim for benefits takes precedence or who is entitled to share the benefits payable.

13. To disclose information to any person who is legally responsible for the care of an individual to whom a record pertains, or who otherwise has an existing, facially-valid Power of Attorney, information necessary to assure payment of Federal benefit payments to which the individual is entitled.

14. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of a Federal benefit payments annuitant or survivor, or a former employee entitled to deferred Federal benefit payments, for enforcing child support obligations of such individual.

15. In connection with an examination ordered by the District or the Secretary of the Treasury under

(A) Medical examination procedures; or

(B) Involuntary disability retirement procedures to disclose to the representative of an employee, notices, decisions, other written communications, or any other pertinent medical evidence other than medical evidence about which a prudent physician would hesitate to inform the individual; such medical evidence will be disclosed only to a licensed physician, designated in writing for that purpose by the individual or his or her representative. The physician must be capable of explaining the contents of the medical record(s) to the individual and be willing to provide the entire record(s) to the individual.

16. To disclose information to any source from which the Department seeks additional information that is relevant to a determination of an individual's eligibility for, or entitlement to, coverage under the applicable retirement, life insurance, and health benefits program, to the extent necessary to obtain the information requested.

17. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

18. To disclose to a Federal agency, in response to its request, the address of an annuitant or applicant for refund of retirement deductions, if the agency requires that information in connection with the collection of a debt due the United States.

19. To disclose to a State agency responsible for the collection of State income taxes the information required by an agreement authorized by law to implement voluntary State income tax withholdings from Federal benefit payments.

20. To disclose to the Social Security Administration the names and Social Security Numbers of Federal benefit payment annuitants when necessary to determine: (1) Their vital status as shown in the Social Security Master Records; and (2) whether retirees receiving Federal benefit payments under the District's retirement plan for police officers and firefighters with post-1956 military service credit are eligible for or are receiving old age or survivors benefits under section 202 of the Social Security Act based upon their wages and self-employment income.

21. To disclose to Federal, State, and local government agencies information about retirees and survivors under the retirement plans administered by the Department pursuant to the Act, including name, Social Security Number, date of birth, sex, health benefit enrollment code, retirement date, retirement code (type of retirement), annuity rate, pay status of case, correspondence address, and ZIP code, to help eliminate fraud and abuse in a benefits program administered by a requesting Federal, State, or local government agency, to ensure compliance with Federal, State, and local government tax obligations by persons receiving Federal benefits payments under such retirement plans, and to collect debts and overpayments owed to the requesting Federal, State, or local government agency.

22. To disclose to a Federal agency, or a person or an organization under contract with a Federal agency to render collection services for a Federal agency as permitted by law, in response to a written request from the head of the agency or his designee, or from the debt collection contractor, the following data concerning an individual owing a debt to the Federal Government: (A) The debtor's name, address, Social Security Number, and other information necessary to establish the identity of the individual; and (B) the amount, status, and history of the debtor's Federal benefit payments.

23. To disclose, as permitted by law, information to a State court or administrative agency in connection with a garnishment, attachment, or similar proceeding to enforce an alimony or a child support obligation.

24. To disclose to a former spouse information necessary to explain how that former spouse's benefit was computed.

25. To disclose information necessary to locate individuals who are owed money or property by a Federal, State or local government agency, or by a financial institution or similar institution, to the government agency owing or otherwise responsible for the money or property (or its agent).

26. To disclose information necessary in connection with the review of a disputed claim for health benefits to a health plan provider participating in the Federal Employees Health Benefits Program or the health benefits program for employees of the District, and to a program enrollee or covered family member or an enrollee or covered family member's authorized representative.

27. To disclose to an agency of a State or local government, or a private individual or association engaged in volunteer work, identifying and address information and other pertinent facts, for the purpose of developing an application by such an entity or person to serve as a representative payee for a person who is mentally incompetent or under other legal disability and who is or may be eligible for Federal benefit payments.

28. To disclose information to another Federal agency for the purpose of effecting administrative or salary offset against a person employed by that agency or receiving or eligible to receive benefit payments from the agency when the Department as a creditor has a claim against that person relating to Federal benefit payments.

29. To disclose information concerning delinquent debts relating to Federal benefit payments to other Federal agencies for the purpose of barring delinquent debtors from obtaining Federal loans or loan insurance guarantees pursuant to 31 U.S.C. 3720B.

30. To disclose information concerning delinquent debts relating to Federal benefit payments to State and local governments, for the purpose of collecting such debts.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic tapes, disks, microfiche, and in paper folders.

RETRIEVABILITY:

These records are retrieved by the name and/or Social Security Number and/or an automatically assigned, system generated number, of the individual to whom they pertain.

SAFEGUARDS:

Records are kept in lockable metal file cabinets or in a secured facility with access limited to those persons whose official duties require access. Data in electronic format may also be password protected. Personnel screening and training are employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

All records on a claim for retirement, including salary and service history, survivor annuity elections and tax and other withholdings are maintained permanently. Records not relevant to the calculation, administration, and payment of Federal benefit payments are disposed of in accordance with Department guidelines. Disposal of paper records and microfiche is by shredding or burning; magnetic tapes and discs are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of DC Pensions, U.S. Department of the Treasury, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its contents, should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.

b. Date of birth.

c. Social Security Number.

d. Name and address of office in which currently and/or formerly employed in the District.

e. Annuity, service credit, or voluntary contributions account number, if assigned.

f. Automatically assigned, system generated number, if known.

Individuals requesting amendment of their records must also follow the Department's Privacy Act regulations regarding verification of identity and amendment of records (31 CFR part 1 subpart C, appendix A).

RECORD ACCESS PROCEDURE:

See ''Notification procedure,'' above.

CONTESTING RECORD PROCEDURE:

See ''Notification procedure,'' above.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from:

a. The individual to whom the information pertains.

b. District pay, leave, and allowance records.

c. Health benefits and life insurance plan systems records maintained by the Office of Personnel Management and the District.

d. Federal civilian retirement systems.

e. Military retired pay system records.

f. Social Security Old Age, Survivor, and Disability Insurance and Medicare Programs.

g. Health insurance carriers and plans participating in the Federal Employee Health Benefits Program and the health benefits program for employees of the District.

h. Official personnel folders.

i. The individual's co-workers and supervisors.

j. Physicians who have examined or treated the individual.

k. Former spouses of the individual to whom the information pertains.

l. State courts or support enforcement agencies.

m. Credit bureaus.

n. The District Police and Firefighters' Retirement and Relief Board.

o. The District Board of Education.

p. The District Public Charter School Board.

q. District public charter schools.

r. The Executive Office of the District of Columbia Courts.

s. The General Services Administration National Payroll Center.

t. The District Retirement Board.

u. The District Office of Personnel.

v. The District Office of the Chief Financial Officer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–25693 Filed 10–8–02; 8:45 am]

BILLING CODE 4810–94–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—External Audit

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before December 9, 2002.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Christine Smith, (202) 906–5740, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS'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;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: External Audit.

OMB Number: 1550–0102.

Form Number: N/A.

Regulation requirement: N/A.

Description: The Federal Bank Regulatory Agencies issued the ''Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations.'' The Policy Statement recommends that institutions with less than $500 million in assets voluntarily have an external auditing program. The Policy Statement encourages the external auditing program to include an annual audit of their financial statements by an independent public accountant.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 1,000.

Estimated Frequency of Response: 3.

Estimated Burden Hours per Response: .25 hours.

Estimated Total Burden: 750 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: October 2, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–25647 Filed 10–8–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Release of Non-Public Information

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44

U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before December 9, 2002.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Thomas J. Segal, (202) 906–7230, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS'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;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Release of Non-Public Information.

OMB Number: 1550–0081.

Form Number: N/A.

Regulation requirement: 12 CFR 510.5.

Description: The information collection provides an orderly mechanism for expeditious processing of requests from the public (including litigants in lawsuits where OTS is not a party) for non-public or confidential OTS information (documents and testimony), while preserving OTS's need to maintain the confidentiality of such information.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 36.

Estimated Frequency of Response: On occasion.

Estimated Burden Hours per Response: 5 hours.

Estimated Total Burden: 180 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: October 2, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–25648 Filed 10–8–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Voluntary Dissolution

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before November 8, 2002.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, or e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Voluntary Dissolution.

OMB Number: 1550–0066.

Form Number: OTS Form 1499, also known as Form DV.

Regulation requirement: 12 CFR 546.4.

Description: 12 CFR 546.4 provides for federal associations to voluntarily dissolve through the submission of a statement of reasons and plan of dissolution. Approval is required by the board of directors, OTS, and the association's members. Plans for dissolution may be denied if OTS believes the plan is not in the best interests of concerned parties.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 4.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 80 hours plus 690 hours for third party requirements.

Estimated Total Burden: 3,080 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management

and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 3, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–25696 Filed 10–8–02; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 67, No. 196

Wednesday, October 9, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1942

Associations—Community Facilities Loans

Correction

In rule document 02–24621 beginning on page 60853 in the issue of Friday, Sepetmber 27, 2002, make the following correction:

§1942.5 [Corrected]

On page 60854, in the first column, in §1942.5, after paragraph (a)(2), in the next paragraph, in the first line, ''(1)'' should read ''(3)''.

[FR Doc. C2–24621 Filed 10–8–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

Correction

In notice document 02–25180 appearing on page 62038 in the issue of Thursday, October 3, 2002, make the following correction:

On page 62038, in the second column, under the heading ''*Date*'', ''November 18, 2002'' should read ''November 8, 2002''.

[FR Doc. C2–25180 Filed 10–8–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350 and 390

Motor Carrier Safety Regulations; Technical Amendments

Correction

In rule document 02–24728 beginning on page 61818 in the issue of Wednesday, October 2, 2002, make the following corrections:

§ 350.213 [Corrected]

1. On page 61820, in the third column, in § 350.213, in the second line, ''§ 350.201(1)'' should read, ''§ 350.201(q)''.

§ 390.27 [Corrected]

2. On page 61824, in the first column, in § 390.27, in ''**Note 1**'', in the third line, ''(State'' should read, ''(State)''.

[FR Doc. C2–24728 Filed 10–8–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
October 9, 2002

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 219, et al.

Conforming the Federal Railroad Administration's Accident/Incident Reporting Requirements to the Occupational Safety and Health Administration's Revised Reporting Requirements; Other Amendments; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 219, 225, and 240

[Docket No. FRA–2002–13221, Notice No. 1]

RIN 2130–AB51

Conforming the Federal Railroad Administration's Accident/Incident Reporting Requirements to the Occupational Safety and Health Administration's Revised Reporting Requirements; Other Amendments

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM) and request for comments.

SUMMARY: FRA proposes to conform, to the extent practicable, its regulations on accident/incident reporting to the revised reporting regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor. This action will permit the comparability of data on occupational fatalities, injuries, and illnesses in the railroad industry with such data for other industries, will allow the integration of these railroad industry data into national statistical databases, and will enhance the quality of information available for railroad casualty analysis. In addition, FRA proposes to make certain other amendments to its accident reporting regulations unrelated to conforming to OSHA's revised reporting regulations. Finally, FRA proposes minor changes to its alcohol and drug regulations and locomotive engineer qualifications regulations in those areas that incorporate concepts from its accident reporting regulations.

DATES: (1) Written Comments: Written comments on the proposed rule must be received by November 8, 2002. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) Public Hearing: If any person desires an opportunity for oral comment, he or she should notify FRA in writing and specify the basis for the request. FRA will schedule a public hearing in connection with this proceeding if the agency receives a written request for hearing by November 8, 2002.

ADDRESSES: Anyone wishing to file a comment or request a public hearing should refer to the FRA docket and notice numbers (Docket No. FRA–2002–13221, Notice No. 1) in such comment or request. You may submit your comments and related material, or request for a public hearing, by only one of the following methods:

By mail to the Docket Management System, Department of Transportation, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0001; or

Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.* For instructions on how to submit comments or a request for a public hearing electronically, visit the Docket Management System Web site and click on the ''help'' menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at Room PL–401 on the Plaza Level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at *http://dms.dot.gov.*

For more detailed information on OSHA's revised reporting regulations, *see http://safetydata.fra.dot.gov/OSHA-materials.*

FOR FURTHER INFORMATION CONTACT: For technical issues, Robert L. Finkelstein, Staff Director, Office of Safety Analysis, RRS–22, Mail Stop 17, Office of Safety, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6280). For legal issues, Anna L. Nassif, Trial Attorney, or David H. Kasminoff, Trial Attorney, Office of Chief Counsel, RCC–12, Mail Stop 12, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6166 or 202–493–6043, respectively).

SUPPLEMENTARY INFORMATION: Note that, for brevity, references to a section in part 225 will omit ''49 CFR''; *e.g.* § 225.5.

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I . Overview of OSHA's Revised Reporting Regulations and FRA's Proposal

On January 19, 2001, OSHA published revised regulations entitled, ''Occupational Injury and Illness Recording and Reporting Requirements; Final Rule,'' including a lengthy preamble that explains OSHA's rationale for these amendments. *See* 66 FR 5916, to be codified at 29 CFR parts 1904 and 1952; *see also* 66 FR 52031 (October 12, 2001) and 66 FR 66943 (December 27, 2001) (collectively, OSHA's Final Rule). A side-by-side comparison of OSHA's previous reporting and recordkeeping provisions with OSHA's new requirements appears at Appendix A of this NPRM. OSHA's Final Rule became effective, with the exception of three provisions, on January 1, 2002. *See* 66 FR 52031; *see also* 67 FR 44037 (July 1, 2002) and 67 FR 44124 (July 1, 2002).

FRA's railroad accident/incident reporting regulations, which are codified at 49 CFR part 225 (part 225), include, among other provisions, sections that pertain to railroad occupational fatalities, injuries, and illnesses; these sections are consistent with prior OSHA regulations, with minor exceptions. These sections of FRA's accident/incident regulations that concern railroad occupational casualties should be maintained, to the extent practicable, in general conformity with OSHA's recordkeeping and reporting regulations to permit comparability of data on occupational casualties between various industries, to allow integration of railroad industry data into national statistical databases, and to improve the quality of data available for analysis of casualties in railroad accidents/incidents. Accordingly, FRA proposes conforming amendments to its existing accident/incident reporting regulations and Guide. Further, FRA proposes minor amendments to its alcohol and drug regulations (49 CFR part 219) (part 219) and locomotive engineer qualifications regulations (49 CFR part 240) (part 240) in those areas that incorporate terms from part 225.

Note: Throughout this preamble to the proposed rule, excerpts from OSHA regulations are provided for the convenience of the reader. The official version of the OSHA regulations appears in 29 CFR part 104.

In addition, FRA proposes to draft a memorandum of understanding (MOU) between FRA and OSHA to address specific areas that are unique to the railroad industry, and where it may not be practical for FRA's regulations to be maintained in conformity with OSHA's Final Rule. Such divergence from OSHA's Final Rule is permitted under a provision of the rule:

> If you create records to comply with another government agency's injury and illness recordkeeping requirements, *OSHA will consider those records as meeting OSHA's Part 1904* recordkeeping requirements *if OSHA accepts the other agency's records under a memorandum of understanding* with that agency, *or if the other agency's records contain the same information* as this Part 1904 requires you to record.

Emphasis added. *See* 29 CFR 1904.3. Specific provisions of part 225 that do not or may not conform to OSHA's Final Rule are discussed in detail in the preamble.

Finally, FRA proposes other miscellaneous amendments to part 225 and the Guide, including revisions not solely related to railroad occupational casualties, such as the telephonic reporting of a train accident that fouls a main line track used for scheduled passenger service.

II. Proceedings to Date and Summary of Issues Addressed by the Working Group

FRA has developed this proposal through its Railroad Safety Advisory Committee (RSAC). RSAC was formed by FRA in March of 1996 to provide a forum for consensual rulemaking and program development. The Committee had representation from all of the agency's major interest groups, including railroad carriers, labor organizations, suppliers, manufacturers, and other interested parties. FRA typically proposes to assign a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. If a working group is unable to reach consensus on recommendations for action, FRA will move ahead to resolve the issue through traditional rulemaking proceedings.

On April 23, 2001, FRA presented task statement 2001–1, regarding accident/incident reporting conformity, to the full RSAC. When FRA presented the subject of revising its accident reporting regulations and Guide to RSAC, the agency stated that the purpose of the task was to bring FRA's regulations and Guide into conformity with OSHA's Final Rule, and to make certain other technical amendments. The task was accepted, and a working group was established to complete the task.

Members of the Working Group, in addition to FRA, include representatives of the following 26 entities: the American Public Transportation Association (APTA); the National Railroad Passenger Corporation (Amtrak); the Association of American Railroads (AAR); The American Short Line and Regional Railroad Association (ASLRRA); the Brotherhood of Locomotive Engineers (BLE); the Brotherhood of Railroad Signalmen (BRS); Transportation Communications International Union/Brotherhood Railway Carmen (TCIU/BRC); Canadian National Railway Company (CN) and Illinois Central Railroad Company (IC); the Sheet Metal Workers International Association; the Brotherhood of Maintenance of Way Employees (BMWE); The Burlington Northern and Santa Fe Railway Company (BNSF); Canadian Pacific Railway Company (CP); Consolidated Rail Corporation—Shared Assets (CR); CSX Transportation, Inc. (CSX); Norfolk Southern Railway Company (NS); Union Pacific Railroad Company (UP); The Long Island Rail Road (LIRR); Maryland Transit Administration (MARC); Southern California Regional Rail Authority (Metrolink); Virginia Railway Express (VRE); Trinity Rail (TR); North Carolina Department of Transportation (NCDOT); Northeast Illinois Regional Commuter Rail Corp. (Metra); the United Transportation Union (UTU); and Wisconsin Central Ltd. (WC).

The Working Group held a total of eight meetings related to this task statement. The first Working Group meeting occurred on May 21–23, 2001, in Washington, DC. A second meeting was held on July 1–3, 2001, in Washington, DC. A third meeting was held on August 7–8, 2001, in Denver, CO. A fourth meeting was held briefly on September 11, 2001, in Chicago, IL, but was cancelled due to the extraordinary events that occurred on that day. A fifth meeting was held on November 14–15, 2001, in St. Louis, MO. A sixth meeting was held on January 22–24, 2002, in Baltimore, MD. A seventh meeting was held on March 12–13, 2002, in New Orleans, LA. An eighth meeting was held on April 24–25, 2002, in Washington, DC.

As a result of these meetings, the Working Group developed consensus recommendations to propose to change the FRA regulations and Guide with respect to all issues presented except for one. Consensus could not be reached on whether railroads should be required to report deaths and injuries of the employees of railroad contractors who are killed or injured while off railroad property. Currently, FRA interprets part 225 as not requiring the reporting of such cases. Since the end of the last Working Group session, FRA has developed a compromise position and proposes that railroads not be required to report deaths or injuries to persons who are not railroad employees that occur while off railroad property unless they result from a train accident, a train incident, a highway-rail grade crossing accident/incident, or a release of a hazardous material or other dangerous commodity related to the railroad's rail transportation business. To accomplish this result, FRA proposes a three-tier definition of the term ''event or exposure arising from the operation of a railroad.'' *See* proposed § 225.5.

This NPRM is intended to reflect a Working Group consensus on all other issues, which are summarized in the following section of the preamble. With regard to part 225, the Working Group recommended amending § 225.5, which contains definitions; § 225.9, which pertains to telephonic reporting of certain accidents/incidents; and § 225.19(d), which pertains to reporting deaths, injuries, and occupational illnesses. To make certain other miscellaneous conforming changes, the Working Group recommended amending § 225.21, which pertains to forms; § 225.23(a), which pertains to joint operations; § 225.33, which pertains to internal control plans; and § 225.35, which pertains to access to records and reports. To address occupational illnesses and injuries that are privacy concern cases, claimed occupational illnesses, and other issues, the Working Group also recommended amending § 225.25, pertaining to recordkeeping. Finally, the Working Group recommended adding a new § 225.39, pertaining to FRA's policy on how FRA will maintain and make available to OSHA certain data FRA receives pertaining to cases that meet the criteria as recordable injuries or illnesses under OSHA's regulations and that are reportable to FRA, but that would not count towards the data in totals compiled for FRA's periodic reports on injuries and illnesses.

With regard to the Guide, the Working Group proposed to revise Chapter 1, pertaining to an overview of accident/incident reporting and recordkeeping requirements; Chapter 2, containing definitions; Chapter 4, pertaining to Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record'; Chapter 6, pertaining to Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet)'; and Chapter 7, pertaining to Form FRA F 6180.54, ''Rail Equipment Accident/Incident Report'; and to create a new Chapter 12, pertaining to reporting by commuter railroads, and a new Chapter 13, pertaining to new Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed to Be Work-Related.'' The Working Group also proposed to change various codes used in making accident/incident reports to FRA. These codes are listed in appendices of the Guide. The Working Group supported revising Appendix C, ''Train Accident Cause Codes'; Appendix E, ''Injury and Illness Codes,'' including revising codes related to the nature of the injury or illness, and the location of the injury; and Appendix F, ''Circumstance Codes.'' The latter included revising codes related to the physical act the person was doing when hurt; where the person was located when injured; what, if any, type of on-track equipment was involved when the person was injured or became ill; what event was involved that caused the person to be injured or become ill; what tools, machinery, appliances, structures, or surfaces were involved when the person was injured or became ill; and the probable reason for the injury or illness. Further, the Working Group advocated revising Appendix H, pertaining to accident/incident reporting forms, particularly Form FRA F 6180.78, ''Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor [and] Employee Statement Supplementing Railroad Accident Report,'' and Form FRA F 6180.81, ''Employee Human Factor Attachment.'' Finally, the Working Group recommended making additional conforming changes to the Guide.

With regard to part 219, FRA decided that two terms used in that part, ''reportable injury'' and ''accident or incident reportable under Part 225 of this chapter,'' should be given a slightly different meaning. In particular, the terms would be defined for purposes of part 219 as excluding accidents or incidents that are classified as ''covered data'' under proposed § 225.5 (*i.e.*, accidents or incidents that are reportable solely because a physician or other licensed health care professional recommended in writing that a railroad employee take one or more days away from work, that the employee's work activity be restricted for one or more days, or that the employee take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the medication was taken). In part 240, the term ''accidents or incidents reportable under part 225'' is used in § 240.117(e)(2). Instead of creating a separate definition of the term for purposes of part 240, an explicit exception for covered data would be added to § 240.117(e)(2) itself.

Each of these issues is described in greater detail in the next sections of the preamble. The full RSAC has accepted the recommendations of the Working Group as to the changes to be proposed for part 225 and the Guide on which consensus was reached. With regard to the one issue on which consensus was not reached, and with regard to the minor proposed revisions to parts 219 and 240, not presented to the Working Group, the full RSAC has accepted FRA staff recommendations. In turn, FRA's Administrator has adopted these recommendations, which are embodied in this NPRM.

III. Issues Addressed by the Working Group

A. Applicability of Part 225-§ 225.3

OSHA's Final Rule states, ''(1) If your company had ten (10) or fewer employees at all times during the last calendar year, you do not need to keep OSHA injury and illness records unless OSHA or the BLS informs you in writing that you must keep records under § 1904.41 or § 1904.42.'' 29 CFR 1904.1(a). FRA's accident reporting regulations do not have such an exemption from the central reporting requirements for railroads with ten or fewer employees at all times during the last calendar year. Rather, the extent and exercise of FRA's delegated statutory safety jurisdiction are addressed fully in 49 CFR part 209, Appendix A, and the applicability of part 225 in particular is addressed in § 225.3. Under § 225.3(a), the central provisions of part 225 apply to:

> all railroads except—
>
> (1) A railroad that operates freight trains only on track inside an installation which is not part of the general railroad system of transportation or that owns no track except for track that is inside an installation that is not part of the general railroad system of transportation and used for freight operations.
>
> (2) Rail mass transit operations in an urban area that are not connected with the general railroad system of transportation.

(3) A railroad that exclusively hauls passengers inside an installation that is insular or that owns no track except for track used exclusively for the hauling of passengers inside an installation that is insular. An operation is not considered insular if one or more of the following exists on its line:

(i) A public highway-rail grade crossing that is in use;

(ii) An at-grade rail crossing that is in use;

(iii) A bridge over a public road or waters used for commercial navigation; or

(iv) A common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad.

Section 20901 of title 49, U.S. Code (superseding 45 U.S.C. 38 and re-codifying provisions formerly contained in the Accident Reports Act, 36 Stat. 350 (1910), as amended), requires each railroad to file a monthly report of railroad accidents. *See* Pub. L. 103–272. Accordingly, FRA intends to apply its accident reporting regulations to all railroads under FRA's jurisdiction, unless the entity meets one of the exceptions noted in § 225.3. FRA intends to address the difference as to which entities are covered by the reporting requirements, in an MOU between FRA and OSHA.

B. Proposed Revisions and Additions to Definitions in the Regulatory Text—§ 225.5

FRA proposes to amend and add certain definitions to conform to OSHA's Final Rule or to achieve other objectives. Specifically, FRA proposes to revise the definitions of ''accident/incident,'' ''accountable injury or illness,'' ''day away from work,'' ''day of restricted work activity,'' ''medical treatment,'' and ''occupational illness.'' As previously mentioned, FRA proposes to remove the term ''arising from the operation of a railroad'' and its definition and add the term ''event or exposure arising from the operation of a railroad'' and its definition. FRA proposes to create definitions of ''covered data,'' ''general reportability criteria,'' ''medical removal,'' ''musculoskeletal disorder,'' ''needlestick or sharps injury,'' ''new case,'' ''occupational hearing loss,'' ''occupational tuberculosis,'' ''privacy concern case,'' ''significant change in the number of reportable days away from work,'' ''significant illness,'' and ''significant injury.'' Some of these changes are discussed in context later in the section-by-section analysis or elsewhere in the preamble.

C. Proposed Revisions to Provision on Telephonic Reporting—§ 225.9

The Working Group agreed to propose certain amendments to § 225.9, pertaining to telephonic reporting, and the corresponding instructions related to telephonic reporting in the Guide. Currently, FRA requires immediate telephonic reporting of accidents/incidents to FRA through the National Response Center (NRC) in only a limited set of circumstances, *i.e.*, the occurrence of an accident/incident arising from the operation of a railroad that results in the death of a rail passenger or employee or the death or injury of five or more persons. *See* § 225.9(a). Contrarily, under OSHA's Final Rule,

> Within eight (8) hours after the death of any employee from a work-related incident or the *in-patient hospitalization* of *three or more employees* as a result of a work-related incident, you must orally report the fatality/multiple hospitalization by telephone or in person to the Area Office of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, that is nearest to the site of the incident.

Emphasis added. 29 CFR 1904.39(a). Further, OSHA's Final Rule states,

> Do I have to report a fatality or hospitalization that occurs long after the incident? No, you must only report each fatality or multiple hospitalization incident that occurs *within (30) days of an incident.*

Emphasis added. 29 CFR 1904.39(b)(6). Finally, OSHA's Final Rule states,

> *Do I have to report a fatality or multiple hospitalization incident that occurs on a commercial or public transportation system? No*, you do not have to call OSHA to report a fatality or multiple hospitalization incident if it involves a commercial airplane, train, subway or bus accident. * * *

Emphasis added. 29 CFR 1904.39(b)(4). This provision would seem to exempt railroads from telephonically reporting to OSHA all but a very few railroad accidents/incidents. The extent of the exemption from OSHA's telephonic reporting requirement depends on how broadly ''commercial or public transportation system'' is interpreted.

As recommended by the Working Group, FRA proposes to broaden the set of circumstances under which a railroad would be required to report an accident/incident telephonically to the NRC, and to make certain other refinements to the rule. Specifically, FRA first proposes to add requirements for telephonic reporting when there is a death to any employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad. Railroads are increasingly using contractors to perform work previously performed by railroad employees. Often, those workers are exposed to hazards unique to the railroad environment or that otherwise involve conditions under FRA's responsibility. Receiving these reports will assist FRA in discharging its responsibility for monitoring the safety of railroad operations.

FRA also proposes to require the telephonic reporting of certain train accidents that are relevant to the safety of railroad passenger service, including otherwise reportable collisions and derailments on lines used for scheduled passenger service and train accidents that foul such lines. These events are potentially quite significant, since they may indicate risks which affect passenger service (*e.g.*, poor track maintenance or operating practices). Further, these events often cause disruption in intercity and commuter passenger service. Major delays in commuter trains, for instance, have direct economic effects on individuals and businesses.

FRA also proposes to incorporate provisions similar to the National Transportation Safety Board's (NTSB) requirements for telephonic reporting (49 CFR part 840) into its own regulations and Guide. The key provisions of NTSB's requirements, §§ 840.3 and 840.4, read as follows:

Note: Excerpts from NTSB requirements are provided for the convenience of the reader. The official version of the requirements appears at 49 CFR 840.3 and 840.4.

§ 840.3 Notification of railroad accidents.

The operator of a railroad shall notify the Board by telephoning the National Response Center at telephone 800–424–0201 at the earliest practicable time after the occurrence of any one of the following railroad accidents:

(a) No later than 2 hours after an accident which results in:

(1) A passenger or employee fatality or serious injury to two or more crewmembers or passengers requiring admission to a hospital;

(2) The evacuation of a passenger train;

(3) Damage to a tank car or container resulting in release of hazardous materials or involving evacuation of the general public; or

(4) A fatality at a grade crossing.

(b) No later than 4 hours after an accident which does not involve any of the circumstances enumerated in paragraph (a) of this section but which results in:

(1) Damage (based on a preliminary gross estimate) of $150,000 or more for repairs, or the current replacement cost, to railroad and nonrailroad property; or

(2) Damage of $25,000 or more to a passenger train and railroad and non-railroad property.

(c) Accidents involving joint operations must be reported by the railroad that controls the track and directs the movement of trains where the accident has occurred.

(d) Where an accident for which notification is required by paragraph (a) or (b) of this section occurs in a remote area, the time limits set forth in that paragraph shall commence from the time the first railroad employee who was not at the accident site at the time of its occurrence has received notice thereof.

§ 840.4 Information to be given in notification.

The notice required by § 840.3 shall include the following information:

(a) Name and title of person reporting.

(b) Name of railroad.

(c) Location of accident (relate to nearest city).

(d) Time and date of accident.

(e) Description of accident.

(f) Casualties:

(1) Fatalities.

(2) Injuries.

(g) Property damage (estimate).

(h) Name and telephone number of person from whom additional information may be obtained.

The reason FRA proposes to incorporate requirements similar to NTSB's standards for telephonic reporting into its own regulations and Guide is that, unlike NTSB, FRA can enforce these requirements through the use of civil penalties. FRA has long relied upon reports required to be made to NTSB as a means of alerting its own personnel who are required to respond to these events. Although most railroads are quite conscientious in making telephonic reports of significant events, including some not required to be reported, from time to time FRA does experience delays in reporting that adversely affect response times. In this regard, it should be noted that FRA conducts more investigations of railroad accidents and fatalities than any other public body, and even in the case of the relatively small number of accidents that NTSB selects for major investigations, FRA provides a substantial portion of the technical team participating from the public sector. Accordingly, it is appropriate that FRA take responsibility for ensuring that timely notification is provided. As can be seen by comparing the quoted NTSB regulations to proposed § 225.9, FRA has not adopted NTSB's standards wholesale, but extracted necessary additions to FRA's existing requirements (e.g., train accident requiring evacuation of passengers), used terminology from FRA regulations to describe the triggering events (*e.g.*, ''train accident'' as defined in § 225.5), and slightly modified the contents of the required report (*e.g.*, ''available estimates'' instead of ''estimate'').

Concern was expressed within the Working Group about joint operations as to which railroad should be responsible for making the telephonic report. The Working Group agreed that for purposes of telephonic reporting, the dispatching railroad, which controls the track involved, would be responsible for making the telephonic report.

There was much discussion in the Working Group regarding whether railroads should be required to telephonically report certain incidents to the NRC ''immediately.'' One suggestion was to set a fixed period, such as three or four hours, to report an accident/incident, or in any event, be given a reasonable amount of time to report. Prompt reporting permits FRA and (where applicable) NTSB to dispatch personnel quickly, in most cases making it possible for them to arrive on scene before re-railing operations and track reconstruction begin and key personnel become unavailable for interview. Decades of experience in accident investigation have taught FRA that the best information is often available only very early in the investigation, before physical evidence is disturbed and memories cloud.

In addition, there was a suggestion that railroads be permitted to immediately report certain incidents by several methods other than by a telephone call, including use of a facsimile, or notification by e-mail. Railroad representatives indicated that telephonic reporting is sometimes burdensome, particularly when a busy manager must wait to speak to an emergency responder for extended periods of time. FRA rejected this suggestion, and is proposing to require that immediate notification be done by telephone, and only by telephone, because FRA is concerned that if notification is given by other methods, such as facsimile or e-mail, it is possible that no one will be available to immediately receive the facsimile or e-mail message. Conversely, with a telephone call to an emergency response center, a railroad should be able to speak immediately to a person, or at the very least, should hear a recording that would immediately direct the caller to a person.

Concern was expressed within the Working Group that continued use of the term ''immediate'' in conjunction with a broadening of the events subject to the FRA rule might produce harsh results, due to the need to address emergency response requirements for the safety and health of those affected and to determine the facts that are predicates for reporting. The proposed rule addresses this concern by stating that,

> [t]o the extent the necessity to report an accident/incident depends upon a determination of fact or an estimate of property damage, a report would be considered immediate if made as soon as possible following the time that the determination or estimate is made, or could reasonably have been made, whichever comes first, taking into consideration the health and safety of those affected by the accident/incident, including actions to protect the environment.

Proposed § 225.9(d). Since FRA and the Working Group believe that immediate telephonic reporting raises issues related to emergency response unique to the railroad industry, the Working Group agreed not to conform in some respects to OSHA's oral or in-person reporting requirements. Accordingly, to the extent that OSHA's requirements regarding oral reports by telephone or in person apply to the railroad industry and that part 225 diverges from those requirements, FRA intends to include in the MOU with OSHA a provision specifying how and why FRA intends to depart from OSHA's requirements in this area.

D. Proposed Revisions to Criteria for Reporting Occupational Fatalities, Injuries, and Illnesses—§ 225.19(d)

1. FRA's Current and Proposed Reporting Criteria Applicable to Railroad Employees

Currently, § 225.19(d) reads as follows:

> Group III-Death, injury, or occupational illness. Each event arising from the operation of a railroad shall be reported on Form FRA F 6180.55a if it results in:
>
> (1) Death to any person;
>
> (2) Injury to any person that requires medical treatment;
>
> (3) Injury to a railroad employee that results in:
>
> (i) A day away from work;
>
> (ii) Restricted work activity or job transfer; or
>
> (iii) Loss of consciousness; or
>
> (4) Occupational illness of a railroad employee.
>
> * * * * *

The comparable provisions of OSHA's Final Rule are at §§ 1904.4(a) and 1904.7(b), which read as follows:

§ 1904.4 Recording criteria.

(a) Basic requirement. Each employer required by this Part to keep records of fatalities, injuries, and illnesses must

record each fatality, injury and illness that:

(1) Is work-related; and

(2) Is a new case; and

(3) Meets one or more of the general recording criteria of § 1904.7 or the application to specific cases of § 1904.8 through § 1904.12.

* * * * *

§ 1904.7 General recording criteria.

* * * * *

(b) Implementation. (1) How do I decide if a case meets one or more of the general recording criteria? A work-related injury or illness must be recorded if it results in one or more of the following:

(i) Death. See § 1904.7(b)(2).

(ii) Days away from work. See § 1904.7(b)(3).

(iii) Restricted work or transfer to another job. See § 1904.7(b)(4).

(iv) Medical treatment beyond first aid. See § 1904.7(b)(5).

(v) Loss of consciousness. See § 1904.7(b)(6).

(vi) A significant injury or illness diagnosed by a physician or other licensed health care professional. See § 1904.7(b)(7).

As indicated by the preceding rule text, OSHA's Final Rule has specific recording criteria for cases described in 29 CFR 1904.8 through 1904.12. These cases involve work-related needlestick and sharps injuries, medical removal, occupational hearing loss, work-related tuberculosis, and independently reportable work-related musculoskeletal disorders. See Web site for OSHA regulations located in the **ADDRESSES** section.

In response to several comments received after publication of the Final Rule, which was scheduled to take effect on January 1, 2002, OSHA delayed the effective date of three of the rule's provisions until January 1, 2003, so as to allow itself further time to evaluate § 1904.10, regarding occupational hearing loss, and §§ 1904.12 and 1904.29(b)(7)(vi),[1] regarding musculoskeletal disorders. *See* 66 FR 52031. On July 1, 2002, OSHA published a final rule establishing a new standard for the recording of occupational hearing loss cases for calendar year 2003. *See* 67 FR 44037. However, because OSHA was still uncertain about how to craft an appropriate definition for musculoskeletal disorders and whether or not it was necessary to include a separate column on the OSHA log for the recording of these cases and occupational hearing loss cases, OSHA simultaneously published a proposed delay of the effective dates of these provisions, from January 1, 2003, to January 1, 2004, and requested comment on the provisions. *See* 67 FR 44124.

Prior to OSHA's Final Rule, the recordkeeping rule had no specific threshold for recording hearing loss cases. See 67 FR 44038. The Final Rule established a new 10–dB standard at 29 CFR 1904.10:

> If an employee's hearing test (audiogram) reveals that a Standard Threshold Shift (STS) has occurred, you must record the case on the OSHA 300 Log by checking the ''hearing loss'' column. . . . A standard Threshold Shift, or STS, is defined in the occupational noise exposure standard at 29 CFR 1910.95(c)(10)(i) as a change in hearing threshold, relative to the most recent audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000, and 4000 hertz in one or both ears.

See 66 FR 6129 (January 19, 2001). On October 12, 2001, OSHA delayed the provision and instead adopted the standard set forth in OSHA's enforcement policy, which had been in effect since 1991, and which is FRA's current approach,[2] in order to seek comments on what should be the appropriate hearing loss threshold. *See* 66 FR 52031. The enforcement policy stated that OSHA would cite employers for failing to record work-related shifts in hearing of an average of 25 dB or more at 2000, 3000, and 4000 Hz in either ear. Thus, the hearing loss of an employee would be tested by measuring the difference, or shift, between the employee's current audiogram and the employee's original baseline audiogram. *See* 67 FR 44037, 44038. If the shift was 25 dB or more, OSHA required that it be recorded. The employee's original baseline audiogram is one of two starting points, or baselines, from which you can measure a Standard Threshold Shift (STS), the other being audiometric zero.

Audiometric zero represents the statistical average hearing threshold level of young adults with no history of aural pathology, thus it is not specific to the employee. This is the starting point from which the American Medical Association (AMA) measures a 25–dB permanent hearing impairment. The employee's original baseline audiogram, on the other hand, is taken at the time the worker was first placed in a hearing conservation program.[3] This starting point, which has been enforced by OSHA since 1991 and is the starting point currently used by FRA, fails to take into account any hearing loss that the employee has suffered in previous jobs and can present a problem if the employee has had several successive employers at high-noise jobs.

Thus, if an individual employee has experienced some hearing loss before being hired, a 25–dB shift from the employee's original baseline will be a larger hearing loss than the 25–dB shift from audiometric zero that the AMA recognizes as a hearing impairment and disabling condition. For example, if an employee experienced a 20–dB shift from audiometric zero prior to being hired in a job where he later suffered a 15–dB shift hearing loss from his original baseline audiogram, the AMA would count this as a 35–dB shift, a serious hearing impairment, but under OSHA's enforcement policy (and FRA's current approach), this would only have counted as a 15–dB shift that is not recordable under OSHA's enforcement policy or § 1904.10 for calendar year 2002. In order for it to become recordable, the employee would have had to suffer an additional 10–dB shift, which would mean that the employee would have suffered a 45–dB shift from audiometric zero—almost twice the amount that the AMA considers to be a permanent hearing impairment.

After considering several comments demonstrating that a 25–dB shift from an employee's original baseline audiogram was not protective enough and that a 10–dB shift from an employee's original baseline audiogram was overly protective (and more appropriate as an early warning mechanism that should trigger actions under the Occupational Noise Exposure Standard[4] to prevent impairment from

[1] The effective date of the second sentence of § 1904.29(b)(7)(vi), which states that musculoskeletal disorders are not considered privacy concern cases, was delayed until January 1, 2003 in OSHA's October 12, 2001, final rule. On July 1, 2002, OSHA proposed to delay the effective date of this same provision until January 1, 2004. *See* 67 FR 44124. This provision will be discussed in the context of privacy concern cases in the section-by-section analysis at ''III.G.1.'' of the preamble.

[2] *See* current *Guide* at Appendix E, p. 4. FRA's Occupational Illness Code #1151, concerning noise induced hearing loss, provides in part: ''An STS is a change in hearing threshold relative to a baseline audiogram that averages 10 dB or more at 2000, 3000, and 4000 hertz in either ear. Documentation of a 10 dB shift is not, of and by itself, reportable. There must be a determination by a physician . . . that environmental factors at work were a significant cause of the STS. However, if an employee has an overall shift of 25 dB or more above the original baseline audiogram, then an evaluation must be made to determine to what extent it resulted from exposure at work.''

[3] Not all employees are placed in a hearing conservation program. OSHA only requires such a program to be in place in general industry when the noise exposure exceeds an 8-hour time-weighted average of 85 dB.

[4] Under § 1910.95, employers must take protective measures (employee notification, providing hearing protectors or refitting of hearing protectors, referring employee for audiological evaluation where appropriate, etc.) to prevent further hearing loss for employees who have experienced a 10–dB shift from the employee's original baseline audiogram. *See* 67 FR at 44040–41.

occurring), OSHA adopted a compromise position that makes a 10–dB shift from an employee's original baseline audiogram recordable in those cases where this shift also represents a 25–dB shift from audiometric zero.

As OSHA's new approach to defining and recording occupational hearing loss cases was not presented to the Working Group, FRA seeks comment on whether FRA should adopt OSHA's new approach as FRA's fixed approach, beginning on the effective date of FRA's final rule, or whether FRA should diverge from OSHA and continue to enforce OSHA's current approach (which was approved by the Working Group and the RSAC and is the same as FRA's current approach) as a fixed approach beginning on the effective date of FRA's final rule. *See* proposed *Guide* at Ch. 6, pp. 27–28, and Appendix E, p. 4. If OSHA's current approach is permitted to continue in effect as FRA's approach, this divergence would need to be addressed in the MOU and approved by OSHA so as to avoid dual reporting on this issue. If OSHA's new approach for calendar year 2003 is adopted, the proposed *Guide* would be updated to reflect the new approach.

As noted above, OSHA may be reconsidering for calendar year 2003 the definition of musculoskeletal disorder (MSD) and the requirement of having a separate column on the OSHA 300 log for the recording of MSD and occupational hearing loss cases. As the issue of OSHA's proposed delays was not before the Working Group when consensus was reached, FRA seeks comment on whether or not the definition and column requirements should be adopted if OSHA's proposed January 1, 2004 delay takes effect. If FRA goes forth with the provisions as approved by the Working Group, FRA would be adopting these provisions in advance of OSHA, a result that may not have been contemplated by the Working Group when it agreed to follow OSHA on these issues prior to the issuance of the proposed delays.

Even if OSHA chooses not to delay the effective date of these provisions, FRA seeks comment on whether or not we should diverge from OSHA by not adopting the definition or column requirements, since FRA already has its own forms and methods in place to collect this data for OSHA's purposes. Instead of requiring railroads to record cases and check boxes on the OSHA 300 log, FRA requires railroads to report these cases using assigned injury codes on the FRA Form F 6180.55a. Code 1151, for example, is the code for occupational hearing loss cases, thus no additional column would be necessary. Similarly, the different kinds of injuries that could qualify as an MSD are given separate codes. Once OSHA decides what types of injuries are appropriate to include in the category or definition of an MSD, OSHA would be able to identify the MSD cases by their respective code numbers, thereby allowing OSHA to use FRA's data for national statistical purposes. Although it is not practical for FRA's injury codes to be as extensive as OSHA's codes, it would be possible to amend the Guide so as to reflect the major codes recognized by OSHA and to add a category such as ''Other MSDs, as defined by OSHA in § 1904.12.''

FRA also seeks comment on whether or not a definition of an MSD is necessary, since currently there are no special criteria beyond the general recording criteria for determining which MSDs to record, and because OSHA's definition appears to be used primarily as guidance for when to check the MSD column on the 300 Log. *See* 66 FR 6129–6130. If the definition of an MSD and the column requirements were to be omitted from the Final Rule, these differences would be discussed in the MOU.

FRA also seeks comment on whether its regulations should ''float,'' *i.e.*, change automatically anytime OSHA revises its regulations, since the main purpose of this rulemaking is to bring FRA's rule into general conformity with OSHA's regulations (which are developed after a full opportunity for notice and comment) or whether FRA's adoption of a fixed and certain approach can better serve FRA's safety objectives and the needs of the regulated community. This issue is particularly relevant for the proposed definition of medical removal. Because medical removal is such a complex issue, and one that is rarely, if at all, encountered in the railroad environment, FRA seeks comment on whether this definition should ''float'' with OSHA's. That is, should we word our definition so that it is tied to OSHA's standard anytime OSHA might change that standard? Since the proposed definition [5] references OSHA's standard without restating it within the rule text or preamble, this would reflect the intent of the Working Group.

Finally, OSHA added another category of reportable cases: ''significant injuries or illnesses.'' With regard to the reportability of illnesses and injuries of railroad employees, there are at least three primary differences between OSHA's reporting criteria and FRA's current reporting criteria, at least as stated in § 225.19(d). First, FRA requires that all occupational illnesses of railroad employees be reported. *See* §§ 225.5 and 225.19(d)(4). Contrarily, under OSHA's Final Rule, only certain occupational illnesses are to be reported, namely those that result in death, medical treatment, days away from work, or restricted work or job transfer; constitute a ''significant illness'; or meet the ''application to specific cases of [29 CFR] §§ 1904.8 through 1904.12.'' Second, for the reason that FRA's interpretation of part 225 is presently very inclusive, it does not use the term ''significant injuries,'' which is incorporated in the OSHA Final Rule. While FRA does not use the phrase ''significant injuries'' in the current rule text, the current Guide does require the reporting of conditions similar to OSHA's ''significant injuries.''

> The distinction between medical treatment and first aid depends not only on the treatment provided, but also on the severity of the injury being treated. First aid * * * [i]nvolves treatment of only *minor* injuries. * * * An injury is not minor if * * * [i]t impairs bodily function (*i.e.*, normal use of senses, limbs, etc.); * * * [or] [i]t results in damage to the physical structure of a nonsuperficial nature (*e.g.* fractures); * * *.

Guide, Ch. 6, p. 6. Accordingly, under the Guide, fractures are considered not to be minor injuries, and a punctured eardrum would likewise not be considered a minor injury because it would involve impairment of ''normal use of senses.'' *Id.* Third, FRA does not have ''specific cases'' reporting criteria for occupational injuries of railroad employees.

FRA proposes to conform part 225 to OSHA's Final Rule with regard to these three differences by amending its regulations at § 225.19(d) and related definitions at § 225.5. FRA would, however, distribute the specific conditions specified under OSHA's ''significant'' category (§ 1904.7(b)(7)) into injuries and illnesses, subcategories that OSHA could, of course, aggregate, and FRA would omit the note to OSHA's description of ''significant illnesses and injuries,'' which does not appear to be necessary for a proper understanding of the concept and which might be read as open-ended, a result

[5] The proposed definition currently reads: ''*Medical removal* means medical removal under the medical surveillance requirements of an Occupational Safety and Health Administration standard in 29 CFR part 1910, even if the case does not meet one of the general reporting criteria.''

FRA does not intend. The text of the note is excerpted below:

Note to § 1904.7: OSHA believes that most significant injuries and illnesses will result in one of the criteria listed in § 1904.7(a). * * * In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of the diagnosis but are likely to be recommended as the disease progresses. OSHA believes that cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses, and must be recorded at the initial diagnosis even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case.

29 CFR 1904.7(b)(7). FRA believes that the note is intended to reference a statutory issue not present in the case of FRA's reporting system and can be omitted from FRA's rule as not relevant and to avoid potential ambiguity. FRA also proposes to explain these new reporting requirements in the Guide. (See later discussion of proposed Chapter 6 of the Guide.)

2. FRA's Current and Proposed Reporting Criteria Applicable to Employees of a Contractor to a Railroad

As previously noted, under § 225.19(d), ''Each event arising from the operation of a railroad shall be reported * * * if it results in * * * (1) Death to any person; (2) Injury to any person that requires medical treatment. * * *'' Under the ''definitions'' section of the accident reporting regulations, ''person'' includes an independent contractor to a railroad. *See* § 225.5. Reading these regulatory provisions together, deaths to employees of railroad contractors that arise from the operation of a railroad, and injuries to employees of railroad contractors that arise from the operation of a railroad and require medical treatment would appear to be reportable to FRA. (The Guide, however, narrows the requirement through its reading of ''arising from the operation of a railroad.'') FRA does not require reporting of occupational illnesses of contractors; under § 225.19(d)(4), only the occupational illnesses of railroad employees must be reported.

Contrarily, under OSHA's Final Rule, the reporting entity is required to report work-related injuries and illnesses, including those events or exposures meeting the special recording criteria for employees of contractors, only if they are under the day-to-day supervision of the reporting entity.

If an employee in my establishment is a contractor's employee, must I record an injury or illness occurring to that employee? If the contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If you supervise the contractor employee's work on a day-to-day basis, you must record the injury or illness.

29 CFR 1904.31(b)(3).

In the Working Group meetings, APTA noted that it is difficult to comply with FRA's current rule, read literally, with respect to an employee of a contractor to a railroad while off railroad property. Many commuter railroads often do not know whether an employee of a contractor to the railroad is injured or sickened if the event occurred on property other than property owned, leased, or maintained by the commuter railroad; it is difficult to follow up on an injury or illness suffered by such an employee. For example, ABC Railroad contracts with XYZ Contractor to repair ABC's railcars at XYZ's facilities. An employee of XYZ Contractor, while repairing ABC's rail car at XYZ's facility, receives an injury resulting in medical treatment. ABC Railroad notes that it may not know about the injury and, therefore, could not report it. Furthermore, no information is lost in the national database since the contractor must report the injury to OSHA even if ABC Railroad does not report the injury. The Working Group could not reach consensus on whether to require reporting of injuries to employees of railroad contractors while off railroad property.

A similar difficulty with reporting occurs in the context of fatalities to employees of contractors to a railroad. With respect to whether to require that railroads report fatalities of employees of contractors that arise out of the operation of the railroad but occur off railroad property, the Working Group also could not reach consensus. AAR noted that for the reasons stated above related to injuries and illnesses, it is difficult for railroads to track fatalities of persons who are not employed by the railroad. Labor noted on the other hand, that fatalities are the most serious cases on the spectrum of reportable incidents and that it would be important that those cases be reported to FRA. In addition, labor representatives noted that railroads often contract for taxi services to deadhead railroad crews to their final release point and that if a driver died in a car accident transporting a railroad crew, FRA should know about those cases. FRA noted that as a practical matter, those types of cases occurred infrequently, that FRA data showed only two possible fatal car accidents occurring off railroad property that involved employees of contractors to a railroad. As a compromise, labor representatives proposed that only fatalities that involved transporting or deadheading railroad crews be reportable, but that all other fatalities to employees of contractors to a railroad that occur off railroad property, not be reportable, even if the incident arose out of the operation of the railroad.

Since the Working Group could not reach consensus on the issue of reporting injuries, illnesses, or fatalities of contractors to a railroad that arose out of the operation of the railroad but occurred off railroad property, FRA makes the following proposal based upon its reasoned consideration of the issue. In this regard, FRA has attempted to balance its need for comprehensive safety data concerning the railroad industry against the practical limitations of expecting railroads to be aware of all injuries suffered by contractors off of railroad property. FRA recognizes that certain types of accident/incidents occurring off of railroad property involve scenarios in which the fact that the contractor was performing work for a railroad is incidental to the accident or incident, and would offer no meaningful safety data to FRA, *e.g.*, ordinary highway accidents involving an on-duty contractor to a railroad.

The existing term ''arising from the operation of a railroad'' and its definition would be deleted from § 225.5. Currently, the definition reads as follows: ''*Arising from the operation of a railroad* includes all activities of a railroad that are related to the performance of its rail transportation business.'' The new term ''event or exposure arising from the operation of a railroad'' would be added to § 225.5's list of defined terms and given a three-tier definition. First, ''event or exposure arising from the operation of a railroad'' would be defined broadly with respect to any person on property owned, leased, or maintained by the railroad, to include any activity of the railroad that relates to its rail transportation business and any exposure related to that activity. Second, the term would be defined broadly in the same way with respect to an employee of the railroad, but without regard for whether the employee is on or off railroad property. Third, the term would be defined narrowly with respect to a person who is neither on the railroad's property nor an employee of the railroad, to include only certain enumerated events or exposures, *i.e.*, a train accident, a train incident, or a highway-rail crossing accident/incident involving the railroad; or a release of hazardous material from

a railcar in the railroad's possession or a release of another dangerous commodity if the release is related to the railroad's rail transportation business.

When read together with the rest of proposed § 225.19(d), the new definition of ''event or exposure arising from the operation of a railroad'' would mean that a railroad would not have to report to FRA the death or injury to an employee of a contractor to the railroad who is off railroad property (or deaths or injuries to any person who is not a railroad employee) unless the death or injury results from a train accident, train incident, or highway-rail grade crossing accident involving the railroad; or from a release of a hazardous material or some other dangerous commodity in the course of the railroad's rail transportation business. In addition, FRA would require railroads to report work-related illnesses only of railroad employees and under no circumstances the illness of employees of a railroad contractor. These proposed reporting requirements diverge from the OSHA standard, which would require the reporting of the work-related death, injury, or illness of an employee of a contractor to the reporting entity if the contractor employee is under the day-to-day supervision of the reporting entity. 29 CFR 1904.31(b)(3). If FRA adopts this proposal, FRA's divergence from OSHA would be addressed in the MOU.

3. Reporting Criteria Applicable to Illnesses

At a Working Group meeting, AAR proposed that major member railroads would file, with their FRA annual report, a list of claimed but denied occupational illnesses not included on the Form FRA F 6180.56, ''Annual Railroad Report of Employee Hours and Casualties by State,'' because the railroads found the illnesses not to be work-related. The list would be organized by State, and would include the name of the reporting contact person. *See also* the discussion of recording claimed illnesses, discussed later in the preamble under section ''III.G.2.,'' below. FRA and other Working Group members have expressed appreciation for this undertaking. It was agreed that this is appropriate for implementation on a voluntary basis, and no comment is sought on this matter.

E. Proposed Technical Revision to § 225.21, ''Forms''

The Working Group agreed to add a new subsection § 225.21(j) to create a new form (Form FRA F 6180.107), which would be labeled ''Alternative Record for Illnesses Claimed to Be Work-Related.'' This form would call for the same information that is included on the Form FRA F 6180.98 and would have to be completed to the extent that the information is reasonably available. A further discussion of the nature of this new form is discussed under the revisions to § 225.25, later in this preamble.

F. Proposed Technical Revision to § 225.23, ''Joint Operations''

The Working Group agreed to propose certain minor changes to the regulatory text; specifically, to § 225.23(a), concerning joint operations, simply to bring it into conformity with the other major changes to the regulatory text that are proposed. Note that for purposes of telephonic reporting in joint operations, the dispatching railroad would be required to make the telephonic report. *See* proposed § 225.9.

G. Proposed Revisions to § 225.25, ''Recordkeeping''

1. Privacy Concern Cases

The Working Group agreed to propose changes to the regulatory text under § 225.25, concerning recordkeeping, by revising § 225.25(h) to address a class of cases described by OSHA as ''privacy concern cases.'' OSHA requires an employer to give its employees and their representatives access to injury and illness records required by OSHA, such as the OSHA 300 Log, with some limitations that apply to privacy concern cases. 29 CFR 1904.35(b)(2), 1904.29(b). A ''privacy concern case'' is defined by OSHA in 29 CFR 1904.29(b)(7); one type of a privacy concern case is, *e.g.*, an injury or illness to an intimate body part. FRA would define the term similarly in proposed § 225.5. In privacy concern cases, OSHA prohibits recording the name of the injured or ill employee on the Log. The words ''privacy case'' must be entered in lieu of the employee's name. The employer must ''keep a separate, confidential list of the case numbers and employee names for your privacy concern cases so you can update the cases and provide the information to the government if asked to do so.'' 29 CFR 1904.29(b)(6). In addition, if the employer has a reasonable basis to believe that the information describing the privacy concern case may be personally identifiable even though the employee's name has been left out, the employer may use discretion in describing the injury or illness. The employer must, however, enter enough information to identify the cause of the incident and the general severity of the injury or illness, but need not include details, *e.g.*, a sexual assault case may be described as an injury from assault.

By contrast, FRA requires that an employee have access to information in the FRA-required Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) regarding his or her own injury or illness, not the FRA-required records regarding injuries or illnesses of other employees. § 225.25(a), (b), (c). This renders the FRA-required log of reportables and accountables with its information on the name and Social Security number of the employee, inaccessible to other employees or anyone else. *Id.* Additionally, FRA proposes to amend the requirement that the record contain an employee's Social Security Number, opting to allow a railroad to enter an employee's identification number instead. *See* proposed § 225.25(b)(6). Therefore, FRA considers this difference a sufficient reason not to adopt OSHA's privacy requirements with regard to the reportable and accountable log. This proposed variation from OSHA will be discussed in the MOU.

Although FRA does not allow wide access to the reportable and accountable log, FRA does require, however, the posting in a conspicuous place in each of the employer's establishments, certain limited information on reportable accidents/incidents that occurred at the establishment, thereby making this information accessible to all those working at the establishment and not simply the particular employee who suffered the injury or illness. § 225.25(h). That limited information includes the incident number used to report the case, the date of the injury or illness, the regular job title of the employee involved, and a description of the injury or condition. Even though the name of the employee is not required to be listed, the identity of the person might in some cases be determined, particularly at small establishments. Currently, under § 225.25(h)(15), FRA permits the railroad not to post an injury or illness at the establishment where it occurred if the ill or injured employee requests in writing to the railroad's reporting officer that the injury or illness not be posted. The preceding revision of the rule would be consistent with OSHA's requirements with regard to its Log, but more expansive than those requirements. FRA would also give railroads discretion not to provide details of the injury or condition that constitutes a privacy case. FRA will discuss these slight variations from OSHA's privacy requirements in the MOU.

Another issue relevant to reporting privacy concern cases arose in § 1904.29(b)(7)(vi) of OSHA's January 19, 2001, Final Rule, which states that musculoskeletal disorders (MSDs) are not considered privacy concern cases. OSHA delayed the effective date of this exclusion until January 1, 2003, in its October 12, 2001, final rule. On July 1, 2002, OSHA proposed to delay the effective date of this same provision until January 1, 2004. *See* 67 FR 44124. As the issue of OSHA's proposed delay of this provision was not before the Working Group when consensus was reached, FRA seeks comment on whether or not this exclusion should be adopted if OSHA's proposed January 1, 2004, delay takes effect. If FRA goes forth with the provision as approved by the Working Group, FRA would be adopting the exclusion in advance of OSHA's adoption of it and in advance of OSHA's defining the very term that is supposed to be excluded, a result that may not have been contemplated by the Working Group when it agreed to the proposed rule text on this issue prior to OSHA's issuance of the proposed delay. *See* discussion concerning reporting criteria for MSDs at section III.D.1 of the preamble, above. Even if OSHA chooses not to delay the effective date of this provision and to give it effect on January 1, 2003, FRA seeks comment on whether or not we should diverge from OSHA by not adopting the exclusion. If FRA's final definition of privacy concern case differs from OSHA's eventual definition of the term, then the difference would be discussed in the MOU.

Finally, the question was raised in the Working Group whether FRA's proposed regulations conformed to the Health Insurance Portability and Accessibility Act of 1996 (Pub. L. 104–191 (HIPAA)) and to the Department of Health and Human Services' regulations implementing HIPAA with regard to the privacy of medical records. *See* ''the Standards for Privacy of Individually Identifiable Health Information.'' 65 FR 82462 (Dec. 28, 2000), codified at 45 CFR parts 160 and 164. Since it appears that OSHA's regulations conform to HIPAA, and FRA proposes to conform to OSHA in all essential respects with regard to the treatment of medical information, FRA believes that its proposed regulations will not conflict with HIPAA requirements.

2. Claimed Illnesses for Which Work-Relatedness Is Doubted

a. Recording claimed illnesses. Under the current FRA rule, all accountable or reportable injuries and illnesses are required to be recorded on Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record,'' or an equivalent record containing the same information. The subset of those cases that qualify for reporting are then reported on the appropriate forms. § 225.25(a), (b). If the case is not reported, the railroad is required to state why not on Form FRA F 6180.98 or the equivalent record. § 225.25(b)(26).

Although this system has generally worked well, problems have arisen with respect to accounting of claimed occupational illnesses. As further explained below, railroads are subject to tort-based liability for illnesses and injuries that arise as a result of conditions in the workplace. By their nature, many occupational illnesses, particularly repetitive stress cases, may arise either from exposures outside the workplace, inside the workplace, or a combination of the two. Accordingly, issues of work-relatedness become very prominent. Railroads evaluate claims of this nature using medical and ergonomic experts, often relying upon job analysis studies as well as focusing on the individual claims.

With respect to accounting and reportability under part 225, railroad representatives state their concern that mere allegations (*e.g.*, receipt of a complaint in a tort suit naming a large number of plaintiffs) not give rise to a duty to report. They add that many such claims are settled for what amounts to nuisance values, often with no admission of liability on the part of the railroad, so even the payment of compensation is not clear evidence that the railroad views the claim of work-relatedness as valid.

Although sympathetic to these concerns, FRA is disappointed in the quality of data provided in the past related to occupational illnesses. Indeed, in recent years the number of such events reported to FRA has been extremely small. FRA has an obligation to verify, insofar as possible, whether the railroad's judgments rest on a reasonable basis, and discharging that responsibility requires that there be a reasonable audit trail to verify on what basis the railroad's decisions were made. While the basic elements of the audit trail are evident within the internal control plans of most railroads, this is not universally the case.

Accordingly, FRA asked the Working Group to consider establishing a separate category of claimed illnesses. This category would be comprised of (1) Illnesses for which there is insufficient information to determine whether the illness is work-related; (2) Illnesses for which the railroad has made a preliminary determination that the illness was not work-related; and (3) Illnesses for which the railroad has made a final determination that the illness is not work-related. These records would contain the same information as the Form FRA F 6180.98, but might at the railroad's election—

- Be captioned ''alleged'';
- Be retained in a separate file from other accountables; and
- If accountables are maintained electronically, be excluded from the requirement to be provided at any railroad establishment within 4 hours of a request.

This would permit the records to be kept at a central location, in either paper or electronic format.

The railroad's internal control plan would be required to specify the custodian of these records and where they could be found. For any case determined to be reportable, the designation ''alleged'' would be removed, and the record would be transferred to the reporting officer for retention and reporting in the normal manner. In the event the narrative block (Form FRA F 6180.98, block 39) indicates that the case is not reportable, the explanation contained in that block would record the reasons the railroad determined that the case was not reportable, making reference to the ''most authoritative'' information relied upon. Although the proposed Form FRA F 6180.107 or equivalent would not require a railroad to include all supporting documentation, such as medical records, it would require a railroad to note where the supporting documentation is located so that it will be readily accessible to FRA upon request.

FRA believes that the system of accounting for contested illness cases described above will focus responsibility for these decisions and provide an appropriate audit trail. In addition, it will result in a body of information that can be used in the future for research into the causes of prevalent illnesses. Particularly in the case of musculoskeletal disorders, it is entirely possible that individual cases may appear not to be work-related due to an imperfect understanding of stressors in the workplace. Review of data may suggest the need for further investigation, which may lead to practical solutions that will be implemented either under the industrial hygiene programs of the railroads or as a result of further regulatory action. Putting this information ''on the books'' is a critical step in sorting out over time what types of disorders have a nexus to the workplace. *See* proposed amendments to §§ 225.21, 225.25,

225.33, and 225.35 and proposed new Chapter 13 of the Guide.

b. FRA review of railroads' work-relatedness determinations. Concern arose within the Working Group regarding how FRA planned to review a reporting officer's determination that the illness is not work-related. As discussed in section ''III.P.3.,'' below, of the preamble, it will be the railroad's responsibility to determine whether an illness is work-related. In connection with an inspection or audit, FRA's role will be to determine whether the reporting officer's determination was reasonable. Even if FRA disagrees with the reporting officer's determination not to report, FRA will not find that a violation has been committed as long as the determination was reasonable. FRA understands that this is consistent with the approach OSHA is employing under its revised rule, and in any event it is most appropriate given the assignment of responsibility for reporting to the employing railroad. FRA plans to establish access to appropriate expert resources (medical, ergonomic, etc.) as necessary to evaluate the reasonableness of railroad decisions not to report particular cases.

3. Technical Amendments

The Working Group also agreed to propose certain minor changes to subsections 225.25(b)(16), (b)(25), (e)(8), and (e)(24), simply to bring these subsections into conformity with the other major changes to the regulatory text that are proposed.

H. Proposed Addition of § 225.39, ''FRA Policy Statement on Covered Data''

FRA proposes to add a new section to the regulatory text that would include a policy statement on covered data. Specifically, proposed § 225.39 would state that FRA will not include in its periodic summaries of data for the number of occupational injuries and illnesses, reports of a case, not otherwise reportable under part 225, involving (1) One day away from work when in fact the employee returned to work, contrary to the written recommendation to the employee by the treating physician or other licensed health care professional; (2) One day of restricted work when in fact the employee was not restricted, contrary to the written recommendation to the employee by the treating physician or other licensed health care professional; or (3) A written over-the-counter medication prescribed at prescription strength, whether or not the medication was taken.

In addition to proposing revisions to its regulations in the *Code of Federal Regulations,* FRA is proposing revisions to its Guide for Preparing Accident/Incident Reports (*Guide* or *FRA's Guide*).

Written comments on the proposed *Guide* must be received by November 8, 2002. Comments may be mailed to the address or submitted electronically to the Web site given under **ADDRESSES** at the beginning of this document. The proposed *Guide* is posted on FRA's Web site at *http://safetydata.fra.dot.gov/guide.*

I. Proposed Revisions to Chapter 1 of the Guide, ''Overview of Accident/Incident Reporting and Recordkeeping Requirements''

Proposed Chapter 1 of the Guide has been revised to reflect the major proposed changes to part 225 and the rest of the Guide, such as important proposed definitions, the proposed revision of the telephonic reporting requirement, and the proposed revision of the reportability criteria in § 225.19(d). In addition, Chapter 1 has been revised to change the closeout date for the reporting year. Under FRA's current reporting requirements, railroads are permitted until April 15 to close out their accident/incident records for the previous reporting year. Guide, Ch. 1, p. 11. FRA proposes to amend its Guide to extend the deadline for completing such accident/incident reporting records until December 1, and will extend the deadline even beyond that date on a case-by-case basis for individual records or cases, if warranted.

J. Proposed Revisions to Chapter 6 of the Guide, Pertaining to Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet)''

FRA proposes to amend its Guide to bring it, for the most part, into conformity with OSHA's recently published Final Rule on recordkeeping and reporting. The Working Group also wanted to make it clear, by noting in Chapter 6, that railroads are not required to report occupational fatalities, injuries, and illnesses to OSHA if FRA and OSHA enter into an MOU that so provides.

Under OSHA's Final Rule, reporting requirements have changed in many ways, several of which are described below. See also proposed § 225.39 regarding FRA's treatment of cases reportable under proposed part 225 solely because of, *e.g.*, recommended days away from work that are not actually taken.

1. Changes in How Days Away From Work and Days of Restricted Work Are Counted

Under OSHA's Final Rule, if a doctor orders a patient to rest and not return to work for a number of days, or recommends that an employee engage only in restricted work, for purposes of reporting days away from work or restricted work, an employer must report the actual number of days that the employee was ordered not to return to work or was ordered to restrict the type of work performed, even if the employee decides to ignore the doctor's orders, and instead opts to return to work or to work without restriction. Specifically, under OSHA's Final Rule,

> If a physician or other licensed health care professional recommends days away, you should encourage your employee to follow that recommendation. However, the days away must be recorded whether the injured or ill employee follows the physician or licensed health care professional's recommendation or not.

29 CFR 1904.7(b)(3)(ii). The FRA agrees with the position taken by OSHA, that the employee should be encouraged to follow the doctor's advice about not reporting to work and or/taking restricted time to allow the employee to heal from the injury.

OSHA states a similar rule with respect to reporting the number of days of recommended restricted duty. Specifically, OSHA's Final Rule states,

> May I stop counting days if an employee who is away from work because of an injury or illness retires or leaves my company? Yes, if the employee leaves your company for some reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, you may stop counting days away from work or days of restricted/job transfer. If the employee leaves your company because of the injury or illness, you must estimate the number of days away or days of restriction/job transfer and enter the day count on the 300 Log.

29 CFR 1904.7(b)(3)(viii). Contrarily, under FRA's current Guide, a railroad must report only the actual number of days that an employee does not return to work or is on restricted work duty due to a work-related injury or illness. ''A record of the actual count of these days must be maintained for the affected employee.'' *See* Guide, Ch. 6, pp. 13–14.

There was much discussion at the Working Group meetings of whether FRA should conform to OSHA's Final Rule with respect to reporting the number of days away from work or number of days of restricted duty. Some Working Group members wanted to leave FRA's current reporting system in place, while others saw merit in the

OSHA approach. FRA representatives met with OSHA representatives to address this issue. OSHA insisted that since it tracks an index of the severity of injuries, with days away from work being the most severe non-fatal injuries and illnesses, it was important to OSHA to maintain a uniform database and have those types of injuries captured in its statistics.

A compromise was reached on the issue of reporting the number of days away and number of days of restricted work activity that was acceptable both to the Working Group and, preliminarily, to OSHA. Specifically, FRA proposes that if no other reporting criteria apply but a doctor orders a patient to rest and not to report to work for a number of days, the railroad must report the case under a special category called ''covered data.'' The Guide would explain how this covered data would be coded. The principal purpose of collecting covered data is so that this information can be provided to the Department of Labor for inter-industry comparison. The general rule is as follows: Where a doctor orders days of rest for an employee, the railroad must report actual days away from work unless the employee reports for work the next day, in which case, the railroad must report one day. Note: If the employee takes more days than the doctor ordered, the railroad must still report actual days away from work unless the railroad can show that the employee should have returned to work sooner. The following examples illustrate the application of this principle in combination with existing requirements that would be carried forward.

- If the doctor orders the patient to five days of rest, and the employee reports to work the next day, the railroad must report one day away from work. (This case would be separately coded and not included in FRA accident/incident aggregate statistics.)
- If, on the other hand, the employee takes three days of rest, when the doctor ordered five days of rest, then the railroad must report the actual number of days away from work as three days away from work.
- Of course, if the doctor orders five days of rest and the employee takes five days of rest, then the railroad must report the full five days away from work.
- Finally, if the doctor orders five days of rest, and the employee takes more than the five days ordered, then the railroad must report the actual number of days away from work, unless the railroad can show that the employee should have returned to work sooner than the employee actually did.

An MOU between FRA and OSHA would address these issues.

FRA notes that it may be appropriate to take into consideration special circumstances in determining the appropriate reporting system for the railroad industry. While compensation for injuries and illnesses in most industries is determined under state-level worker compensation systems, which provide recovery on a ''no-fault'' basis with fixed benefits, railroad claims departments generally compensate railroad employees for lost workdays resulting from injuries or occupational illnesses. In the event a railroad employee is not satisfied with the level of compensation offered by the railroad, the injured or ill employee may seek relief under FELA, which is a fault-based system and subject to full recovery for compensatory damages. Further, railroad employees generally are subject to a federally-administered sickness program, which provides benefits less generous than under some private sector plans. Although it is not readily apparent in any quantitative sense how this combination of factors influences actual practices with respect to medical advice provided and employee decisions to return to work, very clearly the external stimuli are different than one would expect to be found in a typical workplace. Accordingly, it seems particularly appropriate that the Working Group found it wise to adopt a compromise approach that blends the new OSHA approach with the traditional emphasis on actual outcomes. The approach described above will foster continuity in rail accident/incident trend analysis while permitting inter-industry comparability, as well.

2. Changes in the ''Cap'' on Days Away From Work and Days Restricted; Including All Calendar Days in the Count of Days Away From Work and Days of Restricted Work Activity

In addition, to conform to OSHA's Final Rule, FRA proposes to amend its Guide to lower the maximum number of days away or days of restricted work activity that must be reported, from 365 days to 180 days, and to change the method of counting days away from work and days of restricted work activity. The Working Group noted that counting calendar days is administratively simpler for employers than counting scheduled days of work that are missed. Using this simpler method of counting days away from work provides employers who keep records some relief from the complexities of counting days away from work under FRA's former system. Moreover, the calendar day approach makes it easier to compare an injury/illness date with a return-to-work date and to compute the difference between those two dates. The calendar method also facilitates computerized day counts. In addition, calendar day counts will also be a better measure of severity, because they will be based on the length of disability instead of being dependent on the individual employee's work schedule. Accordingly, FRA proposes to adopt OSHA's approach of counting calendar days because this approach is easier than the former system and provides a more accurate and consistent measure of disability duration resulting from occupational injury and illness and thus will generate more reliable data. Currently, under FRA's Guide, days away from work and days of restricted work activity are counted only if the employee was scheduled to work on those days. In the proposed Guide, because it is a preferred approach, and to be consistent with OSHA's Final Rule, days away from work would include all calendar days, even a Saturday, Sunday, holiday, vacation day, or other day off, after the day of the injury and before the employee reports to work, even if the employee was not scheduled to work on those days.

3. Definitions of ''Medical Treatment'' and ''First Aid''

FRA's current Guide states what constitutes ''medical treatment'' and what constitutes ''first aid'' and how to categorize other kinds of treatment. *See* Guide, Ch. 6, pp. 6–9. As stated in the current Guide, ''medical treatment'' renders an injury reportable. If an injury or illness requires only ''first aid,'' the injury is not reportable, but will, instead, be accountable. Under OSHA's Final Rule, a list is provided of what constitutes ''first aid.'' 29 CFR 1904.7(b)(5). If a particular procedure is not included on that list, and does not fit into one of the two categories of treatments that are expressly defined as not medical treatment (diagnostic procedures and visits for observation or counseling), then the procedure is considered to be ''medical treatment.'' *Id.* FRA proposes to amend its regulations and Guide to conform to OSHA's definition and new method of categorizing what constitutes medical treatment and first aid. Specifically, FRA proposes to amend its regulations and the Guide to address the following four items:

a. Counseling. Under FRA's ''definitions'' section of its regulations,

* * * Medical treatment also does not include preventive emotional trauma counseling provided by the railroad's employee counseling and assistance officer unless the participating worker has been diagnosed as having a mental disorder that was significantly caused or aggravated by an accident/incident and this condition requires a regimen of treatment to correct.

See § 225.5. Contrarily, under OSHA's Final Rule, ''medical treatment does not include: (A) Visits to a physician or other licensed health care professional solely for observation or counseling * * *.'' Emphasis added. *See* 29 CFR 1904.7(b)(5)(i). Accordingly, to conform to OSHA's Final Rule, FRA proposes to amend its definition of ''medical treatment'' to exclude counseling as a type of medical treatment. *See* proposed § 225.5.

b. Eye patches, butterfly bandages, Steri-Strips™, and similar items Under FRA's current Guide, use of an eye patch, butterfly bandage, Steri-Strip™, or similar item is considered medical treatment, rendering the injury reportable. Under OSHA's Final Rule, however, use of an eye patch, butterfly bandage, or Steri-Strip™ is considered to be first aid and, therefore, not reportable. In order to conform FRA's Guide to OSHA's Final Rule, FRA proposes to amend the Guide so that use of an eye patch, butterfly bandage, or Steri-Strip™ will be considered to be first aid.

c. Immobilization of a body part Under FRA's current Guide, immobilization of a body part for transport purposes is considered medical treatment. Given, however, that OSHA's Final Rule considers immobilization of a body part for transport to be first aid, FRA proposes to amend its Guide so that immobilization of a body part for transport would be considered first aid.

d. Prescription versus non-prescription medication Under FRA's current Guide, a doctor's order to take over-the-counter medication is not considered medical treatment even if a doctor orders the over-the-counter medication at prescription strength. Under OSHA's Final Rule, however, a doctor's order to take over-the-counter medication at prescription strength is considered medical treatment rather than first aid. For example, under OSHA's Final Rule, if a doctor orders a patient to take simultaneously three 200 mg. tablets of over-the-counter Ibuprofen, since 467 mg. of Ibuprofen is considered to be prescription strength, this case would be reportable.

The Working Group struggled with this issue. On the one hand, it is a legitimate concern that reportability not be manipulated by encouraging occupational clinics to substitute a non-prescription medication when a prescription medication is indicated. That result, however, may be more humane than a circumstance in which the medical provider is encouraged not to order an appropriate dosage.

Further, in some cases, physicians may direct the use of patent medicines simply to save the employee the time to fill a prescription or simply to hold down costs to the insurer; and the physician may find the over-the-counter preparation to be more suitable in terms of formulation, including rate of release and absorption.

As in the case of recommended days away from work not taken (discussed above), the Working Group settled on a compromise position. Where the treating health care professional directs in writing the use of a non-prescription preparation at a dose at least that of the minimum prescribed amount, and no other reporting criteria apply, the railroad would report this as a special case (''covered data'' under §§ 225.5 and 225.39). FRA will explore whether it is practical to add to Chapter 6 of the Guide, a list of commonly used over-the-counter medications, including the prescription strength for those medications. This list of over-the-counter medications would conform to OSHA's published standards. Future over-the-counter medication added by OSHA would be posted on FRA's Web site. The case would be included in aggregate data provided to the Department of Labor, but would not be included in FRA's periodic statistical summaries. FRA would have the data available to reference, and if a pattern of apparent abuse emerged, FRA could both examine the working conditions in question and also review possible further amendments to these reporting regulations.

K. Proposed Revisions to Chapter 7 of the Guide, ''Rail Equipment Accident/Incident Report''

FRA proposes to amend Chapter 7 of the Guide to include the new codes for remote control locomotive operations, and for reporting the location of a rail equipment accident/incident using longitude and latitude variables.

L. Proposed New Chapter 12 of the Guide on Reporting by Commuter Railroads

FRA has been faced with a number of commuter rail service accident reporting issues. For example, in reviewing accident/incident data using automated processing routines, FRA could not distinguish Amtrak's commuter activities from its intercity service, and could not always distinguish between a commuter railroad that ran part of its operation and contracted for another part of its operation with a freight railroad. FRA developed alternative strategies with the affected railroads for collecting these data to ensure that commuter rail operation accurately reflected the entire scope of operations, yet did not increase the burden of reporting for affected railroads. This issue also arose in the context of an NTSB Safety Recommendation, R–97–11, following NTSB's investigation of a collision on February 16, 1996, in Silver Spring, Maryland, between an Amtrak passenger train and a MARC commuter train. During the accident investigation, NTSB requested from FRA, a five-year accident history for commuter railroad operations. FRA was not, however, able to provide a composite accident history for some of the commuter railroad operations because some of the commuter operations were operated under contract with Amtrak and other freight railroads, and the accident data for some commuter railroads were commingled with the data of Amtrak and the other contracted freight railroads. Accordingly, NTSB's Safety Recommendation R–97–11 addressed to FRA read, ''Develop and maintain separate identifiable data records for commuter and intercity rail passenger operations.''

When the RSAC Task Statement 2001–1 was presented, FRA determined that a new chapter in the Guide was needed to address NTSB's and FRA's concerns regarding commuter railroad reporting. At the initial May 2001 meeting, FRA representatives presented the issue to the Working Group. FRA representatives were tasked to develop a chapter specifically dealing with commuter rail reporting. In the August 2001 Working Group meeting, FRA presented a draft of the new chapter. A task group was formed that included representatives of Amtrak, Metra, APTA, and FRA. The new Chapter 12 was presented in November of 2001 to the entire Working Group, and the Working Group accepted the chapter in its entirety.

M. Proposed Changes in Reporting of Accidents/Incidents Involving Remote Control Locomotives

An FRA notice entitled, ''Notification of Modification of Information Collection Requirements on Remote Control Locomotives,'' says that the Special Study Blocks on the rail equipment accident report and highway-rail crossing report, as well as special codes in the narrative section of

the ''Injury and Illness Summary Report (Continuation Sheet),'' are for only temporary use until part 225 and the Guide are amended. 65 FR 79915, Dec. 20, 2000. At the November 2001 Working Group meeting, some members brought up this statement in FRA's notice and the need to craft regular means for reporting accidents/incidents involving remote control locomotives (RCL). In response, a special task group was formed to study the reporting of RCL-related rail equipment accidents, highway-rail crashes, and casualties.

In December of 2001, the task group initially decided to recommend modifying the ''Rail Equipment Accident/Incident Report Form'' (FRA F 6180.54) and the ''Highway-Rail Grade Crossing Accident/Incident Report Form'' (FRA F 6180.57) to add an additional block to capture RCL operations, but the task group was not able to reach consensus on the ''Injury and Illness Summary Report (Continuation Sheet)'' (FRA F 6180.55a).

Railroad representatives were concerned about modifying the accident/incident database with additional data elements. The FRA representatives proposed a new, modified coding scheme that utilized the Probable Reason for Injury/Illness Code field in the set of Circumstance Codes and also included some additional Event Codes and two special Job Codes.

During a subsequent Working Group meeting, a new element was added as Item 30a, ''Remote Control Locomotive,'' on the ''Rail Equipment Accident/Incident Report'' form to allow entry of one of four possible values:

''0''—Not a remotely controlled operation;

''1''—Remote control portable transmitter;

''2''—Remote control tower operation; and

''3''—Remote control portable transmitter—more than one remote control transmitter.

For the ''Highway-Rail Grade Crossing Accident/Incident Report'' form to capture RCL operations, the ''Rail Equipment Involved'' block would be modified to add three additional values:

''A''—Train pulling—RCL;

''B''—Train pushing—RCL; and

''C''—Train standing—RCL.

These recommendations were accepted by the Working Group, as well as the changes in the Job Codes and Circumstance Codes for the ''Injury and Illness Summary Report (Continuation Sheet).''

N. Proposed Changes in Circumstance Codes (Appendix F of the Guide)

Prior to 1997, the ''Injury and Illness Summary Report (Continuation Sheet)'' contained a field called ''Occurrence Code.'' The field attempted to describe what a person was doing at the time the person was injured. Often the action of the injured person was the same, but the equipment involved was different, so a different Occurrence Code was needed for each situation, *e.g.*, person getting off locomotive, person getting off freight car, person getting off passenger car. Another problem with the Occurrence Code was that the code did not provide the information necessary to explain the incident, *e.g.*, if the injury was electric shock, the Occurrence Code was ''using hand held tools,'' so FRA could not tell from the report if the electrical shock was from the hand tool, the third rail, lightning, or drilling into a live electric wire.

To address these concerns, the Occurrence Code field was replaced in 1997 with the Circumstance Code field. The change allowed for more flexibility in describing what the person was doing when injured. Under the broad category of Circumstance Codes, FRA had developed five subsets of codes: Physical Act; Location; Event; Tools, Machinery, Appliances, Structures, Surfaces (etc.); and Probable Reason for Injury/Illness.

During the next five years, FRA and the railroad reporting officers realized that there were still gaps in the codes. FRA proposed expanding the list of Circumstance Codes and determined that some injuries and fatalities should always be reported using a narrative. Also, some Circumstance Codes required the use of narratives. In the July 2001 Working Group meeting, the railroads noted that expanded Circumstance Codes would assist in reporting and analysis. FRA asked the railroads to provide an expanded list of Circumstance Codes for the next meeting, with the understanding that a narrative would be required when the codes did not adequately describe the incident. By the September 2001 meeting, the railroads had produced many new codes, which FRA compiled and presented at the November 2001 meeting. At that meeting, rail labor discussed RCL reporting. In the January 2002 Working Group meeting, the members reviewed the compiled list, including the special RCL codes. The Working Group made recommendations to move some of the codes to other areas. In the March 2002 Working Group meeting, a task group was formed to resolve the remaining issues with respect to codes. Specifically, the Working Group started by referring to proposed codes that pertained to switching operations. These codes were Probable Reason codes that came out of a separate FRA Working Group on Switching Operations Fatality Analysis (SOFA). The task group revised the SOFA codes and added them to Appendix F. The entire Working Group then reviewed and voted to approve all of the task force's proposed codes.

O. Proposed Changes in Three Forms (Appendix H of the Guide)

The Working Group converted the Form FRA F 6180.78, ''Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor [and] Employee Statement Supplementing Railroad Accident Report,'' and Form FRA F 6180.81, ''Employee Human Factor Attachment'' to question-and-answer format, and simplified the language so that they are easier to understand. One issue raised was whether a specific warning related to criminal liability for falsifying the form should be included on the form. Some Working Group members believed that a warning would only serve to intimidate employees from filling out the form. FRA noted that it was important to put the warning on the form to deter employees from falsifying information on the forms. FRA also noted that the same warning would be included on the form for reporting officers. Given that labor representatives felt strongly that the language was too intimidating, it was agreed that a general warning would be included on the back of the form, and that the warning would not specifically state the penalties for falsifying information on the form. In addition, the Working Group agreed to propose to modify Form FRA F 6180.98 to include an item for the county in which the accident/incident occurred.

P. Miscellaneous Issues Regarding Part 225 of the Guide

1. Longitude and Latitude Blocks for Two Forms

Following discussions of this issue, the Working Group agreed that provision could be made for voluntarily reporting the latitude and longitude of a rail equipment accident/incident, a trespasser incident, and an employee fatality. FRA proposes to add blocks to the Form FRA F 6180.54 and Form FRA F 6180.55a for this information. The reason FRA is seeking to gather this information is to better determine if there is a pattern in the location of

certain rail equipment accidents/incidents, trespasser incidents, and employee fatalities. Geographic information systems under development in the public and private sectors provide an increasingly capable means of organizing information. Railroads are mapping their route systems, and increasingly accurate and affordable Global Positioning System (GPS) receivers are available and in widespread use.

2. Train Accident Cause Code ''Under Investigation'' (Appendix C of the Guide)

One of the tasks addressed by the Working Group was to define ''under investigation'' as that term is used in Cause Code M505, ''Cause under investigation (Corrected report will be forwarded at a later date),'' and to put that definition in Chapter 7 of the Guide, under subpart C, ''Instructions for Completing Form FRA F 6180.54,'' block 38, ''Primary Cause Code'' and Appendix C of the Guide. Currently, many accidents/incidents of a significant nature, *e.g.*, ones that are involved in private litigation for many years, are coded as ''under investigation.'' Even if FRA and the railroad think that they know the primary cause of an accident, some railroads will not assign a specific cause code to the accident, either for liability reasons, or because the railroad or a local jurisdiction, or some other authority is still investigating the accident.

To provide finality to the process of investigating an investigation, the Working Group agreed that ''under investigation'' would mean under active investigation by the railroad. When the railroad has completed its own investigation and received all laboratory results the railroad must make a ''good faith'' determination of the primary cause of the accident, any contributing causes, and their proper codes. The railroad must not wait for FRA or NTSB to complete its investigation before assigning a cause code. After FRA or NTSB completes its investigation, the railroad may choose to amend the cause code on the accident report. Accordingly, FRA proposes to revise the Guide to show that the meaning of the cause code in question has been changed to ''Cause under active investigation by reporting railroad (Amended report will be forwarded when reporting railroad's active investigation has been completed).''

In addition, the Working Group agreed to add a new code ''M507'' to denote accidents/incidents in which the investigation is complete but the cause of the accident/incident could not be determined. If a railroad uses this code, the railroad would be required to include in the narrative block, an explanation for why the cause of the accident/incident could not be determined.

3. ''Most Authoritative'': Determining Work-Relatedness and Other Aspects of Reportability

The duty to report work-related illnesses under the current rule has occasioned concern and disagreement about not only whether an illness exists, but, more importantly and more controversially, whether the illness is work-related. Often an employee's doctor's opinion is that an employee's illness is work-related, while the railroad's doctor's opinion is that the illness is not work-related. In providing guidance in how a reporting officer is to determine whether an illness is work-related, OSHA's Final Rule states,

> [the employer] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in Sec. 1904.5(b)(2) applies.

29 CFR 1904.5(a). In addition, the preamble to OSHA's Final Rule states,

> Accordingly, OSHA has concluded that the determination of work-relatedness is best made by the employer, as it has been in the past. Employers are in the best position to obtain the information, both from the employee and the workplace, that is necessary to make this determination. Although expert advice may occasionally be sought by employers in particularly complex cases, the final rule provides that the determination of work-relatedness ultimately rests with the employer.

66 FR 5950.

Following publication of this Final Rule, the National Association of Manufacturers (NAM) filed a First Amended Complaint challenging portions of the Final Rule. As part of the NAM–OSHA settlement agreement, published in the **Federal Register**, the parties agreed to the following:

> Under this language [29 CFR 1904.5(a)], a case is presumed work-related if, and only if, an event or exposure in the work environment is a *discernable* cause of the injury or illness or of a *significant* aggravation to pre-existing condition. The work event or exposure need only be one of the discernable causes; it need not be the sole or predominant cause.
>
> Section 1904.5(b)(2) states that a case is not recordable if it ''involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment.'' This language is intended as a restatement of the principle expressed in 1904.5(a), described above. Regardless of where signs or symptoms surface, a case is recordable only if a work event or exposure is a *discernable* cause of the injury or illness or of a *significant* aggravation to a pre-existing condition.
>
> Section 1904.5(b)(3) states that if it is not obvious whether the precipitating event or exposure occurred in the work environment or elsewhere, *the employer* ''must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment caused or contributed to the resulting condition or *significantly* aggravated a pre-existing condition.'' This means that *the employer* must make a determination whether it is *more likely than not* that work events or exposures were a cause of the injury or illness, or a *significant* aggravation to a pre-existing condition. If the employer decides the case is not work-related, and OSHA subsequently issues a citation for failure to record, the Government would have the burden of proving that the injury or illness was work-related.

(Emphasis added.) 66 FR 66944. FRA proposes to conform to this language, particularly with respect to making reference to the terms ''discernable'' and ''significant'' to qualify the type of causation and aggravation, respectively. *See* proposed definition of ''accident/incident'' and proposed reportability criteria at proposed § 225.19(d).

The other part of the problem of determining whether an injury or illness is work-related is ''who decides.'' The Working Group proposed to adopt OSHA's Final Rule definition of ''most authoritative'' stated in OSHA's Final Rule. In the context of discussing how to determine whether or not a case is new, OSHA's Final Rule states,

> If you receive recommendations from two or more physicians or other licensed health care professionals, you must make a decision as to which recommendation is the most authoritative (best documented, best reasoned, or most [persuasive]) and record the case based upon that recommendation.

29 CFR 1904.6(b)(3). (Note: the preamble to OSHA's Final Rule uses the word ''persuasive'' while the rule text uses the word ''authoritative'' where FRA put the word ''persuasive'' in brackets. FRA chose to use the language from the preamble, instead of that in the rule text, to avoid redundancy.)

The question of who is the ''most authoritative'' physician or other licensed health care professional arises in a number of contexts when there is a conflict of medical opinion. Conflicting medical opinions, often between an employee's physician and a railroad's company physician, arise

regarding whether an injury or illness is work-related, whether and how many days away from work an employee needs to recuperate from a work-related injury or illness, and whether a fatality was work-related, or arose from the operation of a railroad. FRA proposes to adopt in its Guide OSHA's definition in its Final Rule of ''most authoritative,'' and to adopt the language from the NAM–OSHA settlement agreement in order to resolve this issue. (*See also* discussion of FRA review of work-relatedness determinations under section ''III.G.2.b.'' of the preamble.)

4. Job Title versus Job Function

An additional issue resolved by the Working Group was to propose to amend the Guide's instructions for completing blocks 40–43 of FRA Form F6180.54 to make it clear that the job function of the employee, rather than the employee's job title, would be used to determine the employee's job title for reporting purposes, when the railroad gives the employee a job title other than ''engineer,'' ''fireman,'' ''conductor,'' or ''brakeman.''

5. ''Recording'' versus ''Reporting''

Under OSHA's Final Rule, the term ''recording'' is used. Under FRA's regulations and Guide, the term ''reporting'' is used. Since FRA has always used the term ''reporting'' and since one of the statutes authorizing part 225 uses the term ''reporting,'' FRA proposes to continue to use in its regulations and Guide the term ''reporting'' instead of ''recording.'' *See* 49 U.S.C. 20901(b)(1) (''In establishing or changing a monetary threshold for the reporting of a railroad accident or incident * * *'')

IV. Section-by-Section Analysis

Section 219.5 Definitions

For purposes of part 219, ''accident or incident reportable under Part 225'' would be defined to exclude a case that is classified as ''covered data'' under § 225.5 of this chapter (*i.e.*, employee injury/illness cases exclusively resulting from a written recommendation to the employee by a physician or other licensed health care professional for time off when the employee instead returned to work, or for a work restriction that was not imposed, or for a non-prescription medication recommended in writing to be taken at a prescription dose, whether or not the medication was taken). The term ''accident or incident reportable under Part 225'' appears in § 219.301(b)(2), in the description of an event that authorizes breath testing for reasonable cause:

* * * * *

The employee has been involved in an *accident or incident reportable under Part 225 of this chapter,* and a supervisory employee of the railroad has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident;

* * * * *

[Emphasis added.] It should also be noted that § 219.301(b)(2) is incorporated by reference in § 219.301(c) as a basis for ''for cause drug testing.''

The definition of ''reportable injury'' would be revised to mean an injury reportable under part 225 of this chapter except for an injury that is classified as ''covered data'' under § 225.5 of this chapter. The term ''reportable injury'' appears in three provisions of part 219, each of which describes an event that triggers the requirement for post-accident toxicological testing: (i) A ''major train accident'' that includes a release of hazardous material lading with a ''reportable injury'' resulting from the release; (ii) an ''impact accident'' involving damage above the current reporting threshold and resulting in a ''reportable injury''; and (iii) a passenger train accident with a ''reportable injury'' to any person. §§ 219.201(a)(1)(ii)(B), 219.201(a)(2), and 219.201(a)(4).

The reason that ''accident or incident reportable under Part 225'' and ''reportable injury'' would not, for purposes of part 219, include covered data cases is that while these cases are of importance from the standpoint of rail safety analysis and therefore reportable, they are, nevertheless, comparatively less severe than fatalities, other injuries and illnesses and, as such, should not trigger alcohol and drug testing or related requirements and sanctions.

Section 225.5 Definitions

''Accident/incident'' would be redefined to conform to OSHA's Final Rule. Under FRA's current rule, ''accident/incident'' is defined in part as,

(3) Any event arising from the operation of a railroad which results in:
(i) Death to any person;
(ii) Injury to any person that requires medical treatment;
(iii) Injury to a railroad employee that results in:
(A) A day away from work;
(B) Restricted work activity or job transfer; or
(C) Loss of consciousness; or
(4) Occupational illness.

(The designation ''(4)'' in the definition above should read ''(iv).'' See § 225.19(d)(3).) The parallel language in FRA's proposed definition reads as follows:

''Accident/incident'' means:

* * * * *

(3) Any event or exposure arising from the operation of a railroad, if the event or exposure is a discernable cause of any of the following, and the following is a new case or a significant aggravation of a pre-existing injury or illness:
(i) Death to any person;
(ii) Injury to any person that results in medical treatment;
(iii) Injury to a railroad employee that results in:
(A) A day away from work;
(B) Restricted work activity or job transfer; or
(C) Loss of consciousness;
(iv) Occupational illness of a railroad employee that results in any of the following:
(A) A day away from work;
(B) Restricted work activity or job transfer;
(C) Loss of consciousness; or
(D) Medical treatment;
(v) A significant injury to or significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness;
(vi) An illness or injury that meets the application of the following specific case criteria:
(A) A needlestick or sharps injury to a railroad employee;
(B) Medical removal of a railroad employee;
(C) Occupational hearing loss of a railroad employee;
(D) Occupational tuberculosis of a railroad employee; or
(E) An occupational musculoskeletal disorder of a railroad employee that is independently reportable under one or more of the general reporting criteria.

The phrase ''discernable cause'' would be included in the proposed definition, and the words ''or exposure'' would be added before the word ''arising.'' The addition of the word ''discernable'' is intended to take into account the OSHA–NAM settlement agreement, which also uses ''discernable'' to describe ''cause.'' As defined in *Webster's Third New International Dictionary, Unabridged* (1971), ''discernable'' means ''capable of being discerned by the senses or the understanding: distinguishable (a trend) (there was the outline of an old trunk-Floyd Dell).'' FRA understands why some Working Group members requested this change as a matter of conformity and to emphasize that the employer is not required to speculate regarding work-relatedness. By the same

token, FRA emphasizes that when confronted with specific claims regarding work-relatedness, it is the employer's responsibility to fairly evaluate those claims and opt for reporting if an event, exposure, or series of exposures in the workplace likely contributed to the cause or significantly aggravated the illness.

The Working Group agreed that the definition of ''accident/incident'' also needed to include that the case had to be a new case, or a significant aggravation of a pre-existing condition. This reference to a ''new case'' was added to conform to § 1904.4 of OSHA's Final Rule, and the reference to ''significant'' aggravation of a pre-existing condition was added to conform to the OSHA–NAM settlement agreement.

The inclusion of ''death to any person'' would remain the same. ''[I]njury to any person which requires medical treatment'' would be changed to ''Injury to any person that results in medical treatment'; no substantive change is proposed. Injury to a railroad employee that results in ''(A) A day away from work; (B) Restricted work activity or job transfer; or (C) Loss of consciousness' would not change. FRA would, however, change the existing rule that all occupational illnesses of railroad employees are to be reported and require that they be reported only under certain enumerated conditions. This would also make it clear that an occupational illness of an employee to a contractor to a railroad is not to be reported. Further, FRA proposes to add to its criteria for reportability ''significant injuries or illnesses,'' ''needlestick or sharps injuries,'' ''medical removal,'' ''occupational hearing loss,'' ''occupational tuberculosis,'' and an independently reportable ''occupational musculoskeletal disorder'' to railroad employees to track OSHA's Final Rule. Finally, as previously discussed, a three-tier definition of ''event or exposure arising from the operation of a railroad'' would be added.

The definition of ''accountable injury or illness'' would be revised by substituting the words ''railroad employee'' for ''railroad worker,'' and by adding the word ''discernably'' before the word ''associated.'' These are technical changes to bring the language into conformity with the rest of the regulatory text.

The definition of ''day away from work'' currently means ''any day subsequent to the day of the injury or diagnosis of occupational illness that a railroad employee does not report to work for reasons associated with his or her condition.'' § 225.5. Under the Guide, ''If the days away from work were entirely unconnected with the injury (*e.g.*, plant closing or scheduled seasonal layoff), then the count can cease at this time.'' Guide, Ch. 6, p. 31, question 34. FRA proposes to come closer to following OSHA's general recording criteria under 29 CFR 1904.7 of ''day away from work'' by proposing that the definition be ''any calendar day subsequent to the day of the injury or the diagnosis of the illness that a railroad employee does not report to work, or was recommended by a physician or other licensed health care professional not to return to work, as applicable, even if the employee was not scheduled to work on that day.'' Currently, if a doctor recommends that an employee not return to work, but the employee ignores the doctor's advice and returns to work anyway, this would not count as a day away from work. Under OSHA's Final Rule, however, the reporting entity would still have to count all the days the doctor recommended that the employee not work. As a compromise, FRA proposes that the railroad would have to report one day away from work, even if the employee actually returned to work on that day, as discussed previously in the preamble. The revision of the definition of ''day away from work'' is intended to take into account the new rule for reporting the number of days away from work.

The definition of ''day of restricted work activity'' would be revised for the same reason that FRA is proposing to revise the definition of ''day away from work.''

The definition of ''event or exposure arising from the operation of a railroad'' would be added to include, (1) with respect to a person who is on property owned, leased, or maintained by the railroad, an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity; (2) with respect to an employee of the railroad (whether on or off property owned, leased or maintained by the railroad), an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity; and (3) with respect to a person who is not a railroad employee and not on property owned, leased, or maintained by the railroad—(i) a train accident; a train incident; a highway-rail crossing accident/incident involving the railroad; or (ii) a release of a hazardous material from a railcar in the railroad's possession or a release of other dangerous commodity that is related to the performance of the railroad's rail transportation business. Accordingly, with respect to a person who is not a railroad employee and not on property owned, leased, or maintained by the railroad, the definition of ''event or exposure arising from the operation of a railroad'' is more narrow, covering a more limited number of circumstances than for persons who are either on railroad property, or for railroad employees whether on or off property owned, leased or maintained by the railroad. The justification for narrowing the set of circumstances in which a railroad would be required to report certain injuries and illnesses for events that occur off railroad property is because it is difficult for railroads to know about and follow up on injuries to persons who are not railroad employees. Even more so for persons who are not employees to contractors to a railroad, a reporting railroad would have difficulty tracking, for example, a slip and fall case of a passenger, who may subsequently seek medical treatment from his or her doctor, but not report this to the railroad. Railroads simply have more limited opportunity to know about injuries and illnesses to persons other than those who are injured on their property or who are employed by the railroad. Accordingly, injuries to such persons would not be considered for reporting purposes as events or exposures arising from the operation of the railroad.

The definition of ''medical treatment'' would be revised as discussed earlier in the preamble, to conform generally to OSHA's new definition under 29 CFR 1904.7(b)(5)(i) of ''medical treatment.'' The proposed definition reads,

> any medical care or treatment beyond ''first aid'' regardless of who provides such treatment. Medical treatment does not include diagnostic procedures, such as X-rays and drawing blood samples. Medical treatment also does *not* include counseling.

FRA proposes that any type of counseling, in and of itself, is not considered to be medical treatment. If, for example, a locomotive engineer witnesses a grade crossing fatality and subsequently is diagnosed as suffering from Post Traumatic Stress Syndrome as a result of the incident, and receives counseling for this, the case is not reportable. The only factors that would make the case reportable would be if, in addition to the counseling, the employee received prescription medication, such as tranquilizers, had a day away from work or was placed on restricted work, was transferred to another job, or met one of the other criteria for reportability in § 225.19(d). In addition to the general objective of

inter-industry conformity, this change is supported by the absence of meaningful interventions available to prevent such disorders. Although involvement in highway-rail crossing and trespass casualties is a known cause of stress in the railroad industry, FRA and its partners are already aware of that fact and are making every effort to prevent these occurrences. Further, the industry is actively engaged in preventive post-event counseling.

''General reportability criteria'' would mean the criteria set forth in § 225.19(d)(1)–(5).

''Medical removal'' would be defined as it is described in OSHA's recording criteria under 29 CFR 1904.9 for medical removal cases. ''Medical removal'' refers to removing an employee from a work location because that location has been determined to be a health hazard. FRA proposes that this definition would change automatically if OSHA elected to revise its recording criteria.

''Needlestick and sharps injury'' and ''new case'' would be defined in general conformity with OSHA's definitions of these terms under 29 CFR 1904.8 and 1904.6, respectively. ''Privacy concern case'' would be defined as in 29 CFR 1904.29, except that FRA would categorically exclude MSDs from privacy concern cases. As discussed in section ''III.G.1.,'' above, FRA seeks comment on whether or not FRA should adopt this exclusion, especially if OSHA's proposed January 1, 2004, delay takes effect, but in either case. FRA also seeks comment on whether it should adopt the proposed exclusion of MSDs from privacy concern cases as a fixed approach beginning on the effective date of FRA's final rule or whether FRA should ''float'' with OSHA, *i.e.*, make the existence or nonexistence of the exclusion contingent on OSHA's action.

''Occupational hearing loss'' would be defined as OSHA currently defines it under 29 CFR 1904.10 for calendar year 2002. As discussed in section ''III.D.1.,'' above, FRA seeks comment on whether FRA should adopt OSHA's new approach for calendar year 2003 as its fixed approach, beginning on the effective date of FRA's final rule, or whether FRA should diverge from OSHA and continue to enforce OSHA's current approach (which was approved by the Working Group and the RSAC and is the same as FRA's current approach) as a fixed approach beginning on the effective date of FRA's final rule.

The definition of ''occupational illness'' has been revised to make it clear that only certain occupational illnesses of a person classified under Chapter 2 of the Guide as a Worker on Duty—Employee are to be reported. Contrarily, under the current definition of ''occupational illness'' other categories of persons, such as Worker on Duty—Contractor, are included in the definition, but illnesses to those persons are not reportable because § 225.19(d)(4) limits the reportability of occupational illnesses to those of ''a railroad employee.''

''Occupational musculoskeletal disorder'' would be defined essentially as it is set forth by OSHA in 29 CFR 1904.12. One of the most common forms of occupational musculoskeletal disorder is Carpal Tunnel Syndrome and other repetitive motion disorders. Under 1904.12 of its January 19, 2001, Final Rule, OSHA defines musculoskeletal disorders (MSDs) as:

> disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs. MSDs do not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Examples of MSDs include: Carpal tunnel syndrome, Rotator cuff syndrome, De Quervain's disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendinitis, Raynaud's phenomenon, Carpet layers knee, Herniated spinal disc, and Low back pain.

66 FR at 6129. *See also* 66 FR at 52034. However, as noted in the overview in Section I of this preamble, OSHA has delayed the effective date of this provision from January 1, 2002, to January 1, 2003, and has proposed to delay the effective date until January 1, 2004, ''to give [OSHA] the time necessary to resolve whether and how MSDs should be defined for recordkeeping purposes.'' *See* 67 FR 44125. As the issue of OSHA's proposed delay of this provision was not before the Working Group when consensus was reached, FRA seeks comment on whether or not FRA should still adopt the above definition of MSDs if OSHA's proposed January 1, 2004, delay takes effect. If FRA goes forth with the provision as approved by the Working Group, FRA would be adopting the definition in advance of OSHA's defining of the term, a result that may not have been contemplated by the Working Group when it agreed to follow OSHA on this issue prior to the issuance of the proposed delay. *See* discussion concerning reporting criteria for MSDs at section III.D.1 of the preamble, above. Even if OSHA chooses not to delay the effective date of this provision, FRA seeks comment on whether or not we should even adopt OSHA's definition for calendar year 2003, since it states that there are no special criteria beyond the general recording criteria for determining which MSDs to record and because OSHA's definition appears to be used primarily as guidance for when to check the MSD column on the 300 Log. *See* 66 FR 6129–6130. Note that choosing to exclude this definition from FRA's final rule would not affect an employer's obligation to report work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs in accordance with the requirements applicable to any injury or illness. If the definition of MSD were to be omitted from the Final Rule, this difference would be discussed in the MOU. FRA also seeks comment on whether or not this definition should ''float'' with OSHA's. *See* discussion of ''float'' vs. ''fixed'' at section III.D.1 of the preamble, above.

''Occupational tuberculosis'' would be defined in general conformity with OSHA's recording criteria under 29 CFR 1904.11 for work-related tuberculosis cases. The word ''occupational'' would be included in the term because the term is intended to cover only the occupational illness and it would be confusing to define simply ''tuberculosis'' when the unmodified term would seem to call for medical definition of tuberculosis in general.

''Significant change in the number of reportable days away from work'' would be defined as a ten-percent or greater change in the number of days away from work that the railroad would have to report. FRA decided on ten percent as the threshold so that railroads would not have to submit amended reports for *de minimis* changes in data. For example, if a railroad estimated that an employee would be away from work for 30 days and reported the 30-day estimate to FRA, and the employee was actually away from work for 32 days, the railroad would not have to amend its accident report to reflect this change. Moreover, FRA uses a ten-percent threshold for amending rail equipment accident reports. Specifically, if a railroad estimates the damage from a rail equipment accident to be $7,000, a railroad need not amend that report unless the actual damage exceeds $7,700. If on the other hand, the actual damage is less than the reporting threshold, but less than ten percent difference from the estimate, the railroad would be allowed to amend the report to indicate that the incident was not a reportable accident. For example, in the scenario above, if the actual damage was $6,400 (less than 10-percent difference from the $7,000 estimate), the railroad would nevertheless be permitted not to report the incident. While the ten-percent threshold is currently in Chapter 6 of the Guide, FRA proposes to create a

definition in the regulatory text since the General Accounting Office recommended that FRA define this term.

For clarification of the terms ''Significant illness'' and ''Significant injury'', see discussion earlier in section ''III.D.1.'' of the preamble, above.

Section 225.9 Telephonic Reports of Certain Accidents/Incidents and Other Events

Currently, § 225.9 requires a railroad to report immediately by telephone any accident/incident arising from the operation of the railroad that results in the death of a railroad employee or railroad passenger or the death or injury of five or more persons. FRA proposes an amendment to this section, as recommended by the Working Group, to add new circumstances under which a railroad is to telephonically report and to clarify existing procedures for telephonic reporting of the expanded list of events.

Proposed subsection (a) lists the events that a railroad would be required to report telephonically. In proposed subsection (a)(1), ''Certain deaths or injuries,'' FRA proposes that each railroad must report immediately, whenever it learns of the occurrence of an accident/incident that arose from the operation of the railroad, or an event or exposure that may have arisen from the operation of the railroad, that has certain specified consequences. FRA proposes to use the phrase ''may have arisen'' in the proposed regulatory text, instead of keeping the current language ''arising from the operation of a railroad,'' because a railroad may not learn for some time that a particular event in fact arose from the operation of the railroad. By stating that a railroad must report an event that ''may'' have arisen from the operation of the railroad, FRA is assured to capture a broader group of cases. For example, if a railroad employee dies of a heart attack on the railroad's property, the railroad may not know for weeks, following a coroner's report, what the cause of death was, and whether the death was work-related. This case might not get immediately reported because the railroad did not immediately learn that the death arose out of the operation of a railroad. Under the proposed change, if the death ''may'' have arisen out of the operation of the railroad, the case would be immediately reported, permitting FRA to commence its investigation in a timely manner. Even when death is ultimately determined to be caused by a coronary event, for instance, it is appropriate to inquire whether unusual workplace stressors (*e.g.*, extreme heat, excessive physical activity without relief) may have played a role in causing the fatality. In addition, under subsection (a)(1), FRA would add the death of an employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad as a new category for telephonic reporting.

In proposed subsection (a)(2), FRA would capture certain train accidents or train incidents, even if death or injury does not necessarily occur as a result of the accident or incident. Currently, FRA does not require telephonic reporting of certain train accidents or train incidents *per se,* but requires that they be reported only if they result in death of a rail passenger or employee, or death or injury of five or more persons. Accordingly, FRA proposes that railroads telephonically report immediately, whenever it learns of the occurrence of any of the following events:

(i) A train accident that results in serious injury to two or more train crewmembers or passengers requiring admission to a hospital;

(ii) A train accident resulting in evacuation of a passenger train;

(iii) A fatality at a highway-rail grade crossing as a result of a train accident or train incident;

(iv) A train accident resulting in damage (based on a preliminary gross estimate) of $150,000, to railroad and nonrailroad property; or

(v) A train accident resulting in damage of $25,000 or more to a passenger train and railroad and nonrailroad property.

In proposed subsection (a)(3), FRA would require telephonic reporting of incidents in which reportable derailment or collision occurs on, or fouls, a line used for scheduled passenger service. This final provision would permit more timely initiation of investigation in cases where the underlying hazards involved could threaten the safety of passenger operations.

For clarification of other aspects of this proposed section, see discussion at section ''III.C.'' of this preamble, above.

Section 225.19 Primary Groups of Accidents/Incidents

FRA proposes to amend subsection (d), ''Group III, ''Death, injury, occupational illness.'' See prior discussion in section-by-section analysis of the definition of ''accident/incident'' and ''event or exposure arising from the operation of a railroad.'' Proposed 225.5.

Section 225.23 Joint Operations

FRA proposes to make technical amendments to § 225.23(a) simply to bring it into conformity with the rest of the proposed regulatory text.

Section 225.25 Recordkeeping

FRA proposes to amend this section by revising subsection 225.25(h)(15) to apply to ''privacy concern cases.'' Accordingly, under the proposed subsection, a railroad is permitted not to post information on an occupational injury or illness that is a ''privacy concern case.'' ''Privacy concern case'' would be defined in proposed § 225.5.

Section 225.39 FRA Policy Statement on Covered Data

In connection with the requirements for reporting employee illness/injury cases exclusively resulting from a written recommendation of a physician or other licensed health care provider (POLHCP) for time off when the employee instead returned to work, or a written recommendation for a work restriction that was not imposed, and in connection with the provision for special reporting of cases exclusively resulting from the direction of a POLHCP in writing to take a non-prescription medication at prescription dose, FRA proposes to express its policy that these cases would not be included in FRA's regular statistical summaries. The data are requested by the Department of Labor to ensure comparability of employment-related safety data across industries. The data may also be utilized for other purposes as the need arises, but they would not be reported in FRA's periodic statistical summaries for the railroad industry.

Section 240.117 Criteria for Consideration of Operating Rules Compliance Data

FRA proposes a minor change to its locomotive engineer qualifications regulations, which uses a term from part 225. In particular, § 240.117(e)(2) of the locomotive engineer qualifications regulations defines one of the types of violations of railroad rules and practices for the safe operation of trains that is a basis for decertifying a locomotive engineer: failures to adhere to the conditional clause of a restricted speed rule ''which cause reportable accidents or incidents under part 225 of this chapter. * * *'' This proposed amendment would create an exception for accidents or incidents that are classified as ''covered data'' under proposed part 225. ''Covered data'' would be defined as accidents or incidents that are reportable only because a physician or other licensed health care professional recommended in writing that a railroad employee take one or more days away from work, that

the employee's work activity be restricted for one or more days, or that the employee take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the medication is taken. The reason that ''covered data'' would be excluded as a partial basis for decertification under § 240.117(e)(2) is that the injuries and illnesses associated with ''covered data'' cases are comparatively less severe than other types of injuries and illnesses, and, as such, when coupled with a violation of restricted speed, should not trigger a decertification hearing under part 240.

V. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at *http://dms.dot.gov.* FRA invites comments on this regulatory evaluation.

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of costs and a qualitative discussion of the benefits expected from the adoption of this proposed rule. Over a 20-year period, the Present Value (PV) of the estimated costs is $410 thousand, and the PV of the estimated benefits is $612 thousand.

The major costs anticipated from adopting this proposed rule include those incurred in complying with additional OSHA-conformity reporting requirements, such as the covered data cases. Additional reporting burdens will also occur from an increase in telephonic reporting, and from the reporting of claimed occupational illnesses cases by railroads. Finally, there are costs associated with the familiarization of the railroad reporting officers with the revised *Guide,* and for revisions to FRA and railroad electronic reporting systems and databases.

The major benefits anticipated from implementing this proposed rule include savings from a simplification in the reporting of occupational injuries due to a new definition of ''first aid.'' This benefit will produce a savings in the decision making process for both reportable injuries and accountable injuries. Additional savings would also occur from a reduction in the average burden time to complete a Rail Equipment Accident/Incident Report. This savings is largely a product of a revision to the train accident cause codes. The revised casualty circumstance codes would produce a savings from a reduction in the use of the narrative block on the railroad injury and illness reports. Finally, railroads should receive a savings from a simplification in counting the number of days away from work or of restricted work activity. This includes a savings due to a reduction from 365 to 180 days for the maximum number of days that the railroads would have to track and report injuries and illnesses. FRA also anticipates that there would also be qualitative benefits from this rulemaking from better data or information on railroad reports, and the increased utility that the additional data codes would provide to future analysis.

B. Regulatory Flexibility Act of 1980 and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires a Federal agency to review its proposed and final rules in order to assess their impact on small entities (small businesses, small organizations, and local governments). If the agency determines that its proposed rule would have a significant economic impact on a substantial number of small entities, then the agency must prepare an Initial Regulatory Flexibility Analysis (IRFA). If the agency determines the opposite, then the agency must certify that determination; an IRFA may also provide the basis for the agency's determination that the proposed rule would not have a significant economic impact on a substantial number of small entities.

''Small entity'' is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The Small Business Administration (SBA) stipulates in its ''Size Standards'' that the largest a railroad business firm that is ''for-profit'' may be, and still be classified as a ''small entity'' is 1,500 employees for ''Line-Haul Operating'' Railroads, and 500 employees for ''Switching and Terminal Establishments.'' SBA's ''size standards'' may be altered by Federal agencies on consultation with SBA and in conjunction with public comment. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has published an interim policy that formally establishes ''small entities'' as being railroads that meet the line-haulage revenue requirements of a Class III railroad. 62 FR 43024, Aug. 11, 1997. Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment. *See* 49 CFR Part 1201. The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA proposes to use this alternative definition of ''small entity'' for this rulemaking. Since this is still considered to be an alternative definition, FRA is using this definition in consultation with the Office of Advocacy, SBA, and therefore requests public comment on its use.

Like the Regulatory Flexibility Act of 1980, a recently published executive order also establishes rulemaking procedures related to small entities. Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' requires in part that a Federal agency notify the Chief Counsel for Advocacy of the SBA of any of its draft rules that would have a significant economic impact on a substantial number of small entities, to consider any comments provided by the SBA, and to include in the preamble to the final rule the agency's response to any written comments by the SBA unless the agency head certifies that including such material would not serve the public interest. 67 FR 53461 (Aug. 16, 2002).

In accordance with the Regulatory Flexibility Act of 1980, FRA has prepared and placed in the docket an IRFA, which assesses the small entity impact of this proposed rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590; please refer to Docket No. FRA–2002–13221, Notice No. 1.

As stated in the IRFA, FRA has determined that there are over 650 small railroads that could potentially be affected by this proposal; however, the

frequency of accidents/incidents, and therefore reporting burden, is generally proportional to the size of the railroad. A railroad that employs thousands of employees and operates trains millions of miles is exposed to greater risks than one whose operation is substantially smaller, all other things being equal. For example, in 1998, only 327 railroads reported one or more casualties.

The economic impacts from this proposed regulation are primarily a result of an increase in casualty reporting due to the reporting of some casualties, due to OSHA recordkeeping requirements which this rulemaking is adopting into FRA reporting requirements. In addition, the railroad industry will incur small burdens for an increase in telephonic reporting of some accident/incidents, and for modifications made to computer software and databases, however, FRA does not anticipate that any of these burdens will be imposed on small entities due to the decreased likelihood of a casualty occurring on a small railroad. The computer-based burdens are not expected to impact small entities either since most small railroads report using personal computer (PC)-based software provided by FRA. It is estimated by FRA that small entities will incur five percent or less of the total costs for this proposed rulemaking.

It is important to note that this proposed rule would also reduce recordkeeping burdens by simplifying the method used to count employee absences and work restrictions, and by reducing the requirement to keep track of lengthy employee absences. The proposed rule would also simplify reporting requirements with clarifying definitions for things such as ''medical treatment'' and ''first aid.'' Train accident cause codes and injury occurrence codes would be added, so that accident and injury data would be more precise and the need for some narratives would be eliminated.

This proposed rule would not provide alternative treatment for small entities in the regulation or reporting requirements. However, small railroads that report using PC-based software will not be burdened with any costs for modifying or changing the software, since FRA provides this software free to all railroads that utilize it. It is important to note that just by the fact that small railroads report fewer accidents/incidents and casualties, they are less likely to be burdened by the proposed rule.

The IRFA concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities; therefore, FRA certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities. For the same reason, consistent with Executive Order 13272, the draft rule has not been submitted to the SBA. However, FRA will consider any comments submitted by the SBA in developing the final rule. In order to determine the significance of the economic impact for the final rule's Regulatory Flexibility Assessment (RFA), FRA invites comments from all interested parties concerning the potential economic impact on small entities caused by this proposed rule. The Agency will consider the comments and data it receives—or lack of comments and data—in making a decision on the RFA for the final rule.

C. Paperwork Reduction Act of 1995

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section—49 CFR	Respondent universe responses	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
225.9—Telephone Reports—Certain Accidents/Incidents and Other Events.	685 railroads	500 Reports	15 minutes	125 hours	$5,250
225.11—Reporting of Rail Equipment Accidents/Incidents (Form FRA F 6180.54).	685 railroads	3,000 forms	2 hours	6,000 hours	$252,000
225.12(a)—Rail Equipment Accident/Incident Reports—Human Factor (Form FRA F 6180.81).	685 railroads	1,000 forms	15 minutes	250 hours	$10,500
225.12(b)—Rail Equipment Accident/Incident Repots—Human Factor (Part 1, Form FRA F 6180.78).	685 railroads	8,200 notices+copies.	10 minutes and 3 minutes.	527 hours	$22,134
225.12(c)—Rail Equipment Accident/Incident Reports—Human Factor—Joint Operations.	685 railroads	100 requests	20 minutes	33 hours	$1,386
225.12(d)—Rail Equipment Accident/Incident Reports—Human Factor—Late Identification.	685 railroads	20 attachments+20 notices.	15 minutes	10 hours	$420
225.12(e)—Rail Equipment Accident/Incident Reports—Human Factor—Employee Supplement (Part II, Form FRA F 6180.78).	685 railroads	75 statements	1.5 hours	113 hours	$2,938
225.12(f)—Rail Equipment Accident/Incident Reports—Human Factor—Employee Confidential Letter.	Railroad Employees	10 letters	2 hours	20 hours	$520
225.13—Amended Rail Equipment Accident/Incident Reports.	685 railroads	10 amended reports/20 copies.	1 hour+3 minutes	11 hours	$462
225.17—Doubtful Cases; Alcohol/Drug Involvement.	685 railroads	80 reports	30 minutes	40 hours	$1,680
—Appended Reports	685 railroads	5 reports	30 minutes	3 hours	$126
225.19—Highway-Rail Grade Crossing Accident/Incident Reports (Form FRA F 6180.57).	685 railroads	3,400 forms	2 hours	6,800 hours	$285,600

CFR Section—49 CFR	Respondent universe responses	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Death, Injury, or Occupational Illness (Form FRA F 6180.55a).	685 railroads	13,200 forms	20 minutes	4,400 hours	$184,800
225.21 Forms:					
—Form FRA F 6180.55—Railroad Injury/Illness Summary.	685 railroads	8,220 forms	10 minutes	1,370 hours	$57,540
—Form FRA 6180.56—Annual Report of Manhours By State.	685 railroads	685 forms	15 minutes	171 hours	$7,182
—Form FRA F 6180.98—RR Employee Injury and/or Illness Record.	685 railroads	18,000 forms	1 hour	18,000 hours	$756,000
—Form FRA F 6180.98—Copies	685 railroads	540 copies	2 minutes	18 hours	$756
—Form FRA F 6180.97—Initial Rail Equipment Accident/Incident Record.	685 railroads	13,000 forms	30 minutes	6,500 hours	$273,000
225.25—Posting of Monthly Summary	685 railroads	8,220 lists	16 minutes	2,191 hours	$92,064
225.27—Retention of Records	685 railroads	1,900 records	2 minutes	63 hours	$2,646
225.33—Internal Control Plans—Amended.	685 railroads	60 amendments	14 hours	840 hours	$35,280
225.35—Access to Records and Reports—Lists.	15 railroads	400 lists	20 minutes	133 hours	$5,586
—Subsequent Years	4 railroads	16 lists	20 minutes	5 hours	$210
225.37—Magnetic Media Transfers	8 railroads	96 transfers	10 minutes	16 hours	$672
—Batch Control (Form FRA F 6180.99).	685 railroads	200 forms	3 minutes	10 hours	$420

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning the following issues: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan at 202–493–6292.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 17, Washington, DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, entitled, ''Federalism,'' issued on August 4, 1999, requires that each agency ''in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provide to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *.''

When issuing the proposed rule in this proceeding, FRA has adhered to Executive Order 13132. FRA engaged in the required Federalism consultation during the early stages of the rulemaking through meetings of the full RSAC, on which several representatives of groups representing State and local officials sit. To date, FRA has received only one concern about the Federalism implications of this rulemaking from these representatives, regarding whether or not FRA's notification requirements would preempt State accident notification requirements. Although our regulations under part 225 preempt States from prescribing accident/incident reporting requirements, there is nothing in our regulations that preempts States from having their own, perhaps even different, accident notification requirements:

> Issuance of these regulations under the federal railroad safety laws and regulations preempts States from prescribing accident/incident reporting requirements. Any State may, however, require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this part, for accident/incidents and injuries/illnesses which occur in that State.

49 CFR 225.1. FRA does not propose to change this provision that a State may require a railroad to submit to the State copies of reports required by part 225 regarding accidents in the State.

Additionally, section 20902 of title 49 of the United States Code, which authorizes the Secretary of Transportation to investigate certain accidents and incidents, provides: ''[i]f the accident or incident is investigated by a commission of the State in which it occurred, the Secretary, if convenient, shall carry out the investigation at the same time as, and in coordination with, the commission's investigation.'' This section contemplates that States have an

interest in carrying out simultaneous investigations in coordination with the Secretary, where convenient. It would be consistent with this interest to permit States to adopt their own accident notification requirements so as to allow a prompt, and perhaps coordinated, investigation. Accordingly, FRA believes that it has satisfied the Executive Order.

E. Environmental Impact

FRA has evaluated this regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. *** The following classes of FRA actions are categorically excluded:

* * * * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The proposed rule would not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355, May 22, 2001. Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) that is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

List of Subjects

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 225

Accident investigation, Penalties, Railroad safety, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend Chapter II, Subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 219—[AMENDED]

1. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

2. Section 219.5 is amended by adding a definition of *Accident or incident reportable under part 225* of this chapter and revising the definition of *Reportable injury* to read as follows:

§ 219.5 Definitions.

* * * * *

Accident or incident reportable under part 225 of this chapter does not include a case that is classified as ''covered data'' under § 225.5 of this chapter (*i.e.*, employee injury/illness cases exclusively resulting from a written recommendation to the employee by a physician or other licensed health care professional for time off when the employee instead returned to work, for a work restriction that was not imposed, or for a non-prescription medication at prescription strength, whether or not the medication was taken).

* * * * *

Reportable injury means an injury reportable under part 225 of this chapter except for an injury that is classified as ''covered data'' under § 225.5 of this chapter (*i.e.*, employee injury/illness cases exclusively resulting from a written recommendation to the employee by a physician or other licensed health care professional for time off when the employee instead returned to work, for a work restriction that was not imposed, or for a non-prescription medication at prescription strength, whether or not the medication was taken).

* * * * *

PART 225—[AMENDED]

3. The authority citation for part 225 is revised to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

4. Section 225.5 is amended as follows:

a. By revising paragraph (3) of the definition of the term *Accident/incident.*

b. By revising the definitions of the terms *Accountable injury or illness, Day*

away from work, Day of restricted work activity, Medical treatment, and *Occupational illness;*

c. By removing the term *Arising from the operation of a railroad* and its definition, and;

d. By adding definitions of *Covered data, Event or exposure arising from the operation of a railroad, General reporting criteria, Medical removal, Musculoskeletal disorder, Needlestick or sharps injury, New case, Occupational hearing loss, Occupational tuberculosis, Privacy concern case, Significant change in the number of reportable days away from work, Significant illness,* and *Significant injury.*

The revised and added text reads as follows:

§ 225.5 Definitions.

* * * * *

Accident/incident means:

* * *

(3) Any event or exposure arising from the operation of a railroad, if the event or exposure is a discernable cause of one or more of the following, and the following is a new case or a significant aggravation of a pre-existing injury or illness:

(i) Death to any person;

(ii) Injury to any person that results in medical treatment;

(iii) Injury to a railroad employee that results in:

(A) A day away from work;

(B) Restricted work activity or job transfer; or

(C) Loss of consciousness;

(iv) Occupational illness of a railroad employee that results in any of the following:

(A) A day away from work;

(B) Restricted work activity or job transfer;

(C) Loss of consciousness; or

(D) Medical treatment;

(v) Significant injury to or significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness;

(vi) Illness or injury that meets the application of the following specific case criteria:

(A) Needlestick or sharps injury to a railroad employee;

(B) Medical removal of a railroad employee;

(C) Occupational hearing loss of a railroad employee;

(D) Occupational tuberculosis of a railroad employee; or

(E) Musculoskeletal disorder of a railroad employee that is independently reportable under one or more of the general reporting criteria.

Accountable injury or illness means any condition, not otherwise reportable, of a railroad employee that is discernably caused by an event, exposure, or activity in the work environment which condition causes or requires the railroad employee to be examined or treated by a qualified health care professional.

* * * * *

Covered data means a case involving an employee of a railroad that is reportable exclusively because a physician or other licensed health care professional recommended in writing that—

(1) The employee take one or more days away from work when the employee instead returned to work;

(2) The employee's work activity be restricted for one or more days when the work restriction was not imposed; or

(3) The employee take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the employee takes the medication.

Day away from work means any calendar day subsequent to the day of the injury or the diagnosis of the illness that a railroad employee does not report to work, or was recommended by a physician or other licensed health care professional not to return to work, as applicable, for reasons associated with the employee's condition even if the employee was not scheduled to work on that day.

Day of restricted work activity means any calendar day that an employee is restricted in his or her job following the day of the injury or the diagnosis of the illness, or was recommended by a physician or other licensed health care professional not to return to work, as applicable, for reasons associated with the employee's condition if the work restriction affects one or more of the employee's routine job functions or from working the full workday that the employee would otherwise have worked. An employee's routine job functions are those work activities that the employee regularly performs at least once per week.

* * * * *

Event or exposure arising from the operation of a railroad includes—

(1) With respect to a person who is on property owned, leased, or maintained by the railroad, an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity;

(2) With respect to an employee of the railroad (whether on or off property owned, leased or maintained by the railroad), an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity; and

(3) With respect to a person who is not an employee of the railroad and not on property owned, leased, or maintained by the railroad—an event or exposure directly resulting from the following railroad operations:

(i) A train accident, a train incident, or a highway-rail crossing accident or incident involving the railroad; or

(ii) A release of a hazardous material from a railcar in the possession of the railroad or of another dangerous commodity that is related to the performance of the railroad's rail transportation business.

* * * * *

General reporting criteria means the criteria listed in § 225.19(d)(1), (2), (3), (4), and (5).

* * * * *

Medical removal means medical removal under the medical surveillance requirements of an Occupational Safety and Health Administration standard in 29 CFR part 1910, even if the case does not meet one of the general reporting criteria.

Medical treatment means any medical care or treatment beyond ''first aid'' regardless of who provides such treatment. Medical treatment does not include diagnostic procedures, such as X-rays and drawing blood samples. Medical treatment also does *not* include counseling.

Musculoskeletal disorder (MSD) means a disorder of the muscles, nerves, tendons, ligaments, joints, cartilage, and spinal discs. The term does not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Examples of MSDs include: Carpal tunnel syndrome, Rotator cuff syndrome, De Quervain's disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendinitis, Raynaud's phenomenon, Carpet layers knee, Herniated spinal disc, and Low back pain.

Needlestick or sharps injury means a cut, laceration, puncture, or scratch from a needle or other sharp object that involves contamination with another person's blood or other potentially infectious material, even if the case does not meet one of the general reporting criteria.

New case means a case in which either the employee has not previously experienced a reported injury or illness of the same type that affects the same part of the body, or the employee previously experienced a reported

injury or illness of the same type that affected the same part of the body but had recovered completely (all signs had disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear.

* * * * *

Occupational hearing loss means a diagnosis of occupational hearing loss by a physician or other licensed health care professional, under the criteria established by the Occupational Safety and Health Administration in 29 CFR 1904.10 for calendar year 2002, even if the case does not meet one of the general reporting criteria.

Occupational illness means any abnormal condition or disorder, as diagnosed by a physician or other licensed health care professional, of any person who falls under the definition for the classification of Worker on Duty—Employee, other than one resulting from injury, discernably caused by an environmental factor associated with the person's railroad employment, including, but not limited to, acute or chronic illnesses or diseases that may be caused by inhalation, absorption, ingestion, or direct contact.

Occupational tuberculosis means the occupational exposure of an employee to anyone with a known case of active tuberculosis if the employee subsequently develops a tuberculosis infection, as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional, even if the case does not meet one of the general reporting criteria.

* * * * *

Privacy concern case is any occupational injury or illness, other than a musculoskeletal disorder, in the following list:

(1) Any injury or illness to an intimate body part or the reproductive system;

(2) An injury or illness resulting from a sexual assault;

(3) Mental illnesses;

(4) HIV infection, hepatitis, or tuberculosis;

(5) Needlestick and sharps injuries; and

(6) Other illnesses, if the employee independently and voluntarily requests in writing to the railroad reporting officer that his or her injury or illness not be posted.

* * * * *

Significant change in the number of reportable days away from work means at least a ten-percent increase in the number of reportable days away from work compared to the number of reportable days away from work actually reported.

Significant illness means an illness involving cancer or a chronic irreversible disease such as byssinosis or silicosis, if the disease does not result in death, a day away from work, restricted work, job transfer, medical treatment, or loss of consciousness.

Significant injury means an injury involving a fractured or cracked bone or a punctured eardrum, if the injury does not result in death, a day away from work, restricted work, job transfer, medical treatment, or loss of consciousness.

* * * * *

5. Section 225.9 is revised to read as follows:

§ 225.9 Telephonic reports of certain accidents/incidents and other events.

(a) *Types of accidents/incidents and other events to be reported.* (1) *Certain deaths or injuries.* Each railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of an accident/incident arising from the operation of the railroad, or an event or exposure that may have arisen from the operation of the railroad, that results in the—

(i) Death of a rail passenger or a railroad employee;

(ii) Death of an employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad; or

(iii) Death or injury of five or more persons.

(2) *Certain train accidents or train incidents.* Each railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of any of the following events that arose from the operation of the railroad:

(i) A train accident that results in serious injury to two or more train crewmembers or passengers requiring their admission to a hospital;

(ii) A train accident resulting in evacuation of a passenger train;

(iii) A fatality at a highway-rail grade crossing as a result of a train accident or train incident;

(iv) A train accident resulting in damage (based on a preliminary gross estimate) of $150,000, to railroad and nonrailroad property; or

(v) A train accident resulting in damage of $25,000 or more to a passenger train and railroad and nonrailroad property.

(3) *Train accidents on or fouling passenger service main lines.* The dispatching railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of any train accident reportable as a rail equipment accident/incident under §§ 225.11 and 225.19(c)—

(i) That involves a collision or derailment on a main line that is used for scheduled passenger service; or

(ii) That fouls a main line used for scheduled passenger service.

(b) *Method of reporting.* (1) Telephonic reports required by this section shall be made by toll-free telephone to the National Response Center, Area Code 800–424–8802 or 800–424–0201.

(2) Through one of the same telephone numbers (800–424–0201), the National Response Center (NRC) also receives notifications of rail accidents for the National Transportation Safety Board (49 CFR part 840) and the Research and Special Programs Administration of the U.S. Department of Transportation (Hazardous Materials Regulations, 49 CFR 171.15). FRA Locomotive Safety Standards require certain locomotive accidents to be reported by telephone to the NRC at the same toll-free number (800–424–0201). 49 CFR 229.17.

(c) *Contents of report.* Each report must state the:

(1) Name of the railroad;

(2) Name, title, and telephone number of the individual making the report;

(3) Time, date, and location of the accident/incident;

(4) Circumstances of the accident/incident;

(5) Number of persons killed or injured; and

(6) Available estimates of railroad and non-railroad property damage.

(d) *Timing of report.* (1) To the extent that the necessity to report an accident/incident depends upon a determination of fact or an estimate of property damage, a report will be considered immediate if made as soon as possible following the time that the determination or estimate is made, or could reasonably have been made, whichever comes first, taking into consideration the health and safety of those affected by the accident/incident, including actions to protect the environment.

(2) NTSB has other specific requirements regarding the timeliness of reporting. *See* 49 CFR part 840.

6. In section 225.19, paragraph (d) is revised to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(d) *Group III—Death, injury, or occupational illness.* Each event or

exposure arising from the operation of a railroad shall be reported on Form FRA F 6180.55a if the event or exposure is a discernable cause of one or more of the following, and the following is a new case or a significant aggravation of a pre-existing injury or illness:

(1) Death to any person;

(2) Injury to any person that results in medical treatment;

(3) Injury to a railroad employee that results in:

(i) A day away from work;

(ii) Restricted work activity or job transfer; or

(iii) Loss of consciousness;

(4) Occupational illness of a railroad employee that results in any of the following:

(i) A day away from work;

(ii) Restricted work activity or job transfer;

(iii) Loss of consciousness; or

(iv) Medical treatment;

(5) Significant injury to or significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness;

(6) Illness or injury that meets the application of the following specific case criteria:

(i) Needlestick or sharps injury to a railroad employee;

(ii) Medical removal of a railroad employee;

(iii) Occupational hearing loss of a railroad employee;

(iv) Occupational tuberculosis of a railroad employee; or

(v) Musculoskeletal disorder of a railroad employee that is independently reportable under one or more of the general reporting criteria.

* * * * *

7. In section 225.21, a new paragraph (j) is added to read as follows:

§ 225.21 Forms.

* * * * *

(j) Form FRA 6180.107—*Alternative Record for Illnesses Claimed to Be Work-Related.* (1) Form FRA F 6180.107 shall be used by the railroads to record each illness claimed to be work-related that is reported to the railroad—

(i) For which there is insufficient information to determine whether the illness is work-related;

(ii) For which the railroad has made a preliminary determination that the illness is not work-related; or

(iii) For which the railroad has made a final determination that the illness is not work-related.

(2) For any case determined to be reportable, the designation ''illness claimed to be work-related'' shall be removed, and the record shall be transferred to the reporting officer for retention and reporting in the normal manner.

(3) In the event the narrative block (similar to Form FRA F 6180.98, block 39) indicates that the case is not reportable, the explanation contained on that block shall record the reasons the railroad determined that the case is not reportable, making reference to the most authoritative information relied upon.

(4) Although the Form FRA F 6180.107 may not include all supporting documentation, such as medical records, the Form FRA F 6180.107 shall note the name, title, and address of the custodian of those documents and where the supporting documents are located so that it is readily accessible to FRA upon request.

8. In section 225.23, paragraph (a) is revised to read as follows:

§ 225.23 Joint operations.

(a) Any reportable death, injury, or illness of an employee arising from an accident/incident involving joint operations must be reported on Form FRA F 6180.55a by the employing railroad.

* * * * *

9. Section 225.25 is amended by revising paragraphs (b)(6), (b)(16), (b)(25)(v), (e)(8), (e)(24), (h)(15), and new paragraphs (b)(25)(xi), (b)(25)(xii) and (i) are added to read as follows:

§ 225.25 Recordkeeping.

* * * * *

(b) * * *

(6) Employee identification number or, in the alternative, Social Security Number of railroad employee;

* * * * *

(16) Whether employee was on premises when injury, illness, or condition occurred;

* * * * *

(25) * * *

(v) If one or more days away from work, provide the number of days away and the beginning date;

* * * * *

(xi) Significant injury or illness of a railroad employee;

(xii) Needlestick or sharps injury to a railroad employee, medical removal of a railroad employee, occupational hearing loss of a railroad employee, occupational tuberculosis of a railroad employee, or musculoskeletal disorder of a railroad employee which musculoskeletal disorder is reportable under one or more of the general reporting criteria.

* * * * *

(e) * * *

(8) County and nearest city or town;

* * * * *

(24) Persons injured, persons killed, and employees with an occupational illness, broken down into the following classifications: worker on duty—employee; employee not on duty; passenger on train; nontrespasser-on railroad property; trespasser; worker on duty—contractor; contractor—other; worker on duty—volunteer; volunteer—other; and nontrespasser-off railroad property;

* * * * *

(h) * * *

(15) The railroad is permitted not to post information on an occupational injury or illness that is a privacy concern case.

* * * * *

(i) *Claimed occupational illnesses.* (1) Each railroad shall maintain either the Form FRA F 6180.107, to the extent that the information is reasonably available, or an alternate railroad-designed record containing the same information as called for on the Form FRA F 6180.107, to the extent that the information is reasonably available, for each illness claimed to be work-related—

(i) For which there is insufficient information to determine whether the illness is work-related;

(ii) For which the railroad has made a preliminary determination that the illness is not work-related; or

(iii) For which the railroad has made a final determination that the illness is not work-related.

(2) For any case determined to be reportable, the designation ''illness claimed to be work-related'' shall be removed, and the record shall be transferred to the reporting officer for retention and reporting in the normal manner.

(3) In the event the narrative block (similar to Form FRA F 6180.98, block 39) indicates that the case is not reportable, the explanation contained on that block shall record the reasons the railroad determined that the case is not reportable, making reference to the most authoritative information relied upon.

(4) In the event the railroad must amend the record with new or additional information, the railroad shall have up until December 1 of the next calendar year for reporting accidents/incidents to make the update.

(5) Although the Alternative Record for Illnesses Claimed to be Work-Related (or the alternate railroad-designed form) may not include all supporting documentation, such as medical records, the alternative record shall note the custodian of those documents and

where the supporting documents are located so that it is readily accessible to FRA upon request.

10. Section 225.33 is amended by adding new paragraph (a)(11) to read as follows:

§ 225.33 Internal Control Plans.

(a) * * *

(11) In the case of the Form FRA F 6180.107 or the alternate railroad-designed form, a statement that specifies the name, title, and address of the custodian of these records, all supporting documentation, such as medical records, and where the documents are located.

* * * * *

11. Section 225.35 is amended by designating the first paragraph as paragraph (a), designating the second paragraph as paragraph (b), and adding after the fourth sentence of newly designated paragraph (b) the following two sentences:

§ 225.35 Access to records and reports.

* * * * *

(b) * * * The Form FRA F 6180.107 or the alternate railroad-designed form need not be provided at any railroad establishment within 4 hours of a request. Rather, the Form FRA F 6180.107 or the alternate railroad-designed form must be provided upon request, within five business days, and may be kept at a central location, in either paper or electronic format. * * *

12. Section 225.39 is added to read as follows:

§ 225.39 FRA policy on covered data.

FRA will not include covered data (as defined in § 225.5) in its periodic summaries of data on the number of occupational injuries and illnesses.

PART 240—[AMENDED]

13. The authority citation for part 240 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

14. In section 240.117, paragraph (e)(2) is revised to read as follows:

§ 240.117 Criteria for consideration of operating rules compliance data.

* * * * *

(e) * * *

(2) Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour. Where restricted speed is in effect, railroads shall consider only those violations of the conditional clause of restricted speed rules (*i.e.*, the clause that requires stopping within one half of the locomotive engineer's range of vision), or the operational equivalent thereof, which cause reportable accidents or incidents under part 225 of this chapter, except for accidents and incidents that are classified as ''covered data'' under § 225.5 of this chapter (*i.e.*, employee injury/illness cases exclusively resulting from a written recommendation to the employee by a physician or other licensed health care professional for time off when the employee instead returned to work, for a work restriction that was not imposed, or for a non-prescription medication to be taken at prescription strength, whether or not the medication was taken), as instances of failure to adhere to this section;

* * * * *

Issued in Washington, DC, on September 18, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–24393 Filed 10–8–02; 8:45 am]

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