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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

RIN 0584–AD08

Codification of Poultry Substitution and Modification of Commodity Inventory Controls for Recipient Agencies

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends USDA's Food Distribution Program regulations. The rule has two distinct parts. The first part of the rule allows limited poultry substitution and full substitution of all other commodities except for beef and pork. The second part of the rule reduces current commodity recordkeeping and reporting requirements for some local level recipient agencies, such as schools.

The Department has operated a demonstration project program since Feb. 1, 1996, which has allowed commercial poultry to be substituted for commodity poultry in processing. Substitution of most donated foods with commercial foods has always been permitted under current regulations. Current regulations provide a list of 16 commodities that may be substituted without the prior approval of the Food and Nutrition Service (FNS). Any other commodity, except for meat and poultry, may be substituted with the prior written approval of FNS under 7 CFR § 250.30(f)(4) of the current regulations. Required Certified Public Accountant (CPA) audits have not shown any significant problems with these substitution options. No substitution of inferior or non-domestic product has been identified. Therefore, this rule amends the regulations to allow limited poultry substitution, with a substitution plan approved by both FNS and Agriculture Marketing Service (AMS) grading; and full substitution for all other commodities except for beef and pork, on a permanent basis, without prior written approval form FNS.

Secondly, because of changes in the commercial market and the food donation programs, USDA has tested the effects of allowing vendors to use commercial labels on some commodity products purchased for schools. Commercial labeling had already been introduced in other USDA food donation programs with good results. However, commercial labels complicate the current inventory procedures that require commodity inventories to be kept separate from purchased inventories. Therefore, FNS is amending the current inventory requirements for USDA's Child Nutrition Programs in order to accommodate the use of commercial labels on some commodity products.

EFFECTIVE DATE: This rule is effective November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Suzanne Rigby, Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or telephone (703) 305–2644.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant impact on a substantial number of small entities. State agencies, school food authorities and schools choosing to utilize this new method of inventory control will be affected. However, the majority of entities participating in the Food Distribution Programs will not be affected.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.550, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notices published at 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

Paperwork Reduction Act

Information collection requirements associated with the commodity processing program are approved under 0584–0293. This rule deletes the requirement for schools to maintain a dual inventory control system. Although the current inventory control requirements represent a burden on schools, estimated at 1.8 million hours annually for recipient agencies, this burden was not identified to or approved by the Office of Management and Budget. Therefore, deleting the

burden requires no change to 0584–0293.

Allowing the limited substitution of donated poultry with commercial poultry significantly streamlines the manufacturing process for processors and allows recipients to receive end products on a timely basis. However, this rule does not relieve the processor from any of the current reporting or record keeping requirements contained in the regulations. Therefore, no changes are required to the current burden hours shown in 0584–0293.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the applications of its provisions.

Background

The Food Distribution Program regulations (hereinafter all references to regulations in this rulemaking are to regulations in Title 7 of the Code of Federal Regulations unless indicated otherwise), beginning at § 250.3 and continuing through § 250.30, set forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for the further processing of donated foods.

On February 21, 2002, the Department published a proposed rule in the **Federal Register** (67 FR 7977) that would (1) Amend the Food Distribution regulations to allow limited substitution of poultry products consistent with the demonstration project in effect since 1996; (2) make fruits, vegetables, and eggs eligible to be substituted under the 100 percent yield concept without prior approval from FNS; and (3) eliminate the requirement for recipient agencies to maintain inventory records for USDA purchased commodities separate from other food inventory. The proposed rule provided a 60-day comment period. This final rule implements these provisions while incorporating some of the changes suggested in the public comments on the proposed rule.

Analysis of Comments

The Department received written comment from 82 different entities consisting of distributing agencies, recipient agencies, processors, consultants, and various interest groups. Forty-three commenters generally supported the proposed changes to the regulations. Thirty-three commenters generally opposed the proposed changes to the regulations. Six commenters only offered suggestions to improve the final rule.

a. Poultry Substitution

Fifteen commenters on poultry substitution, all participants in the demonstration project in either processing or distributing, cited their ability to have end products delivered ''just in time'' for use in the meal service as a positive reason to support the proposed regulations. Thirteen commenters saw savings in the costs associated with storing commodities. Five commenters believe poultry substitution made inventory procedures at commercial distributors more manageable. Four commenters believe that competition increased among poultry processors. Two recipient agency commenters cited increased participation in the school lunch program because they could now show consistency between commodity and commercial end products.

Of the 33 commenters opposed to the proposed changes to the regulation, 19 opposed specific proposed changes regarding poultry substitution. However, not one commenter opposed the general concept of poultry substitution. Ten commenters believe that the proposed changes were too vague. They also believe that the Department did not furnish sufficient poultry substitution guidelines in the proposed rule. Four commenters on this provision believe that the proposed regulations lack clarity. The Department has considered the suggestions made by these commenters and has provided further detail for poultry substitution in both the preamble and regulatory text of this final rule.

Seven commenters regarding poultry substitution believe that the Department had dropped the requirement that any commercial food item substituted for commodity product be of U.S. origin. Three commenters stated that the ''Buy American'' provisions of § 250.23 are addressed in the Child Nutrition Program (CNP) regulations at § 210.21(d) and do not need to be a part of the part 250 regulations. The Department became aware of the purported omission of a U.S. origin requirement in the proposed rule during the comment period and publicly indicated on the Food Distribution website that this requirement still applies. The applicability of this requirement for substitution is reemphasized in this final regulation. Although ''Buy American'' is discussed in the CNP regulations, those regulations specifically address only school food authorities. Numerous other types of recipient agencies rely on the part 250 regulations for their guidance. Therefore, this rule amends the proposed language of § 250.23 to make clear the Department's intent to have all recipient agencies ''Buy American'' whenever possible.

Five commenters suggested that the Department clarify the definitions of ''full substitution'' and ''limited substitution.'' The Department agrees with these commenters and has included definitions of these terms in § 250.3, Definitions, as subparagraphs under the definition of ''substitution.''

Three commenters believe that the Department should include detailed penalties for processors who fail to comply with the regulation. The Department believes that sufficient penalties are already described in the regulations.

Five commenters regarding poultry substitution believe the Department should publish data to support its assertion that the poultry demonstration projects merit a regulatory amendment to make this practice permanent. The public has been on notice for the last six years regarding the demonstration project to explore poultry substitution. During that period, prior to the publishing of the proposed rule to make the poultry substitution option permanent, the Department did not receive any written comment either for or against poultry substitution as defined in the demonstration project. However, during numerous public meetings over the same six years, the Department was continually encouraged by recipient agencies, processors, and State distributing agencies to make the poultry substitution option permanent. The Department does acknowledge that some of its pilot projects in more recent years have caused some reporting problems for both the processor and the recipients. These issues will be addressed as processors file the final substitution plans required under this rule change with FNS and AMS. The pilot programs were designed to test different ways of doing business in the commodity program and are a separate issue from poultry substitution.

b. Inventory Recordkeeping Changes

The Department received thirty-seven comments specifically addressing the changes to the proposed commodity inventory and recordkeeping

requirements. Seventeen of the commenters indicated that the proposed changes would reduce paperwork for recipient agencies so that they could keep only one inventory record rather than one record for commodity foods and one record for purchased or commercial foods.

Twenty commenters opposed the proposed changes to the inventory recordkeeping regulations. However, the Department believes that the discussion of a commercial labels demonstration project in the preamble of the proposed rule may have confused those commenters. It appears that all 20 of the negative commenters were expressing opposition to the use of commercial labels rather than the proposed regulation change. Of the 20, 11 represent recipient agencies that were opposed to the commercial labels because of the visual difficulty in separating them from purchased items. It is assumed that this opposition would not exist once the commenters understood that the proposed regulation would eliminate the need for recipients to keep separate inventory records. Three comments expressed concerns that distributors might substitute commodity products with commercially labeled products of lesser quality. However, the Department believes that the disincentives for substituting inferior product far outweigh any possible perceived financial gain from such a substitution. Three commenters expressed concerns about identifying commodity foods to be used in Presidentially declared disasters when the commodities are not recorded separate from purchased foods. Three commenters expressed concerns about tracking commodities with commercial labels in a recall situation or when registering a product complaint. FNS has already issued guidance for both supplying foods to disaster situations and for handling commodities in a recall or complaint situation.

Some commenters suggested that the Department provide guidance to recipient agencies for implementing any new procedures resulting from the change in inventory requirements. The Department intends to provide additional guidance and technical assistance as needed.

One commenter suggested that the Department identify specific types of recipient agencies for which the change is intended. The provisions contained in this rule relative to inventory and recordkeeping requirements are applicable to local-level recipient agencies participating in the National School Lunch Program, Child and Adult Care Food Program, the Nutrition Services Incentive Program, the Summer Food Service Program for Children, and other recipient agencies, such as charitable institutions and summer camps, that receive commodities outside of specifically authorized programs. They are not applicable to recipient agencies participating in the Emergency Food Assistance Program (TEFAP) under part 251, Food Distribution Program on Indian Reservations (FDPIR) under parts 253 and 254, or the Commodity Supplemental Food Program (CSFP) under part 247. Local level organizations involved in the administration of these programs are, by definition, subdistributing agencies and, therefore, remain subject to the inventory and recordkeeping requirements contained in part 250, except where the provisions in part 250 are inconsistent with the provisions contained in regulations specific to these programs. For example, recordkeeping requirements have been relaxed for food pantries and soup kitchens under part 251, the Emergency Food Assistance Program (TEFAP) regulations. However, since food packages containing specific types of commodities must be distributed monthly to eligible households participating in CSFP and FDPIR, and the amount of financial resources available to purchase such commodities are limited, inventory and recordkeeping requirements have not been relaxed for these programs. In addition, inventory and recordkeeping requirements have not been relaxed for TEFAP recipient agencies that distribute commodities to other local-level recipient agencies. At this time, FNS is of the opinion that maintaining current inventory and recordkeeping requirements at this level is a necessary means of maintaining program integrity given the manner in which such requirements have been relaxed at the food pantry and soup kitchen level. The definition of ''subdistributing agency'' in § 250.3 has been revised to clarify that TEFAP, CSFP, and FDPIR recipient agencies are subdistributing agencies.

While the provisions contained in this rule are not intended to affect the administration of TEFAP, CSFP, or FDPIR recipient agencies, FNS will continue to examine current inventory and recordkeeping requirements imposed on these agencies, and where appropriate, revise them.

Changes in the Substitution Regulations

Substitution of donated foods with commercial foods has always been permitted under current regulations. However, current regulations at § 250.30(f)(1)(i) provide a list of 16 commodities that could be substituted without the prior approval of FNS. Any other commodity, except for meat and poultry, could be substituted with the prior written approval of FNS under § 250.30(f)(4) of the current regulations. The Department is amending the regulations at § 250.30(f) to allow full substitution in the further processing of all commodities except for beef, pork, and poultry without prior written approval from FNS. Any substitution of fully substitutable commodities is subject to a 100-percent yield requirement. As requested by commenters on the proposed rule, a description of ''full substitution'' has been added to § 250.3, as a subparagraph under the definition of ''substitution''. Under the 100-percent yield concept, the processor is responsible for all manufacturing losses. The processor must return to the contracting agency the same number of pounds of the commodity in finished end product that were delivered to the processor for further processing. Any commercial product substituted for donated commodity must be of U.S. origin and of equal or better quality than the donated commodity. Substitution remains an option available to processors.

The Department is also amending the regulations at § 250.30(f) to allow the limited substitution of commercial bulk pack poultry and poultry parts for USDA donated bulk pack poultry and poultry parts on a permanent basis. Limited substitution means that a processor can substitute commercial product for donated commodity product with some restrictions. Restrictions include, but are not limited to, the prohibition against substituting for backhauled commodity product. FNS may also prohibit substitution of certain types of the same generic commodity. (For example, FNS may decide to permit substitution for bulk chicken but not for canned chicken.) As requested by commenters on the proposed rule, a description of ''limited substitution'' has been added to § 250.3, as a subparagraph under the definition of ''substitution''. Substitution is an option available to the processor, not a mandatory practice. Any substitution of commercial poultry or poultry parts for commodity poultry or poultry parts must be performed using poultry of U.S origin that is equal or superior in every particular to the USDA specification for commodity poultry.

Processors will need to submit a poultry substitution plan to FNS and AMS for approval. Once approved, the plan will be permanent. Any proposed

changes to the procedures that are addressed in the plan would require submission of a revised plan and approval by USDA before implementation.

The following general conditions apply to all poultry substitution plans: Only bulk pack chicken, chicken parts, and bulk pack turkey delivered by USDA vendors to the processor will be eligible for substitution. No backhauled product will be eligible. (Backhauled product is typically cut-up frozen poultry parts delivered to schools that may be turned over to processors for further processing at a later time.) Substitution of commercial poultry for donated poultry may occur in advance of the actual receipt of the donated poultry by the processor. Should a processor choose to use the substitution option prior to the commodity being purchased by the USDA, the processor assumes all risks. Any variation between the amount of commercial poultry substituted and the amount of donated poultry received by the processor will be adjusted according to guidelines furnished by USDA.

Any donated poultry not used in end products because of substitution can only be used by the processor at one of its facilities in other commercial processed products. It cannot be sold as an intact unit. In lieu of processing the donated poultry, however, the processor may use the product to fulfill other USDA contracts awarded for delivery to another processor provided all terms of the other contract are met. The substitution plan must contain (1) A step-by-step description of how production will be monitored; (2) a complete description of the records that will be maintained for (a) the commercial poultry substituted for the donated poultry, and (b) the disposition of the donated poultry delivered; and (3) how the substitution will be tracked for the purpose of monthly reporting to the State distributing agencies. As with the processing of donated poultry into end products, AMS graders must monitor the processing of any substituted commercial poultry to ensure that program integrity is maintained.

Changes in the Inventory Control Regulations

Beginning in 1996, the Department piloted the use of commercial labels in place of USDA labels on commodities supplied to the Emergency Temporary Assistance Program. The use of commercial labels was also permitted on some price-support products that are provided to the National School Lunch Program. The pilot has demonstrated excellent benefits for recipient agencies including reduced delivery delays, increased competition, and reduced program costs. In addition, the project has helped eliminate a perceived stigma implied by the ''generic'' USDA labels.

However, using commercial labels has made it difficult for recipients to distinguish between donated commodities and commercially purchased items in order to comply with the current regulatory requirement to inventory donated commodities separately. These Federal requirements for inventory of donated commodities have always been more stringent than the Federal requirements for foods that have been purchased using Federal reimbursement dollars from the National School Lunch Program. It is recognized that schools currently must use generally accepted inventory and business management practices in order to safeguard commercially purchased products and maintain the financial integrity of their child nutrition operations. Therefore, during the period November 2000 to June 2001, the Department tested a procedure in two States that allowed schools to inventory commodity foods along with purchased foods. Anecdotal evidence from these States suggests that this procedure was well received and beneficial.

For these reasons, the Department has determined that requirements in part 250 for separate inventory maintenance of donated commodities by recipient agencies are redundant and more onerous than necessary to safeguard the value of commodities received by schools. Therefore, the Department is amending the regulations at § 250.13(a) to require that recipient agencies use specific guidance to be provided by the Food and Nutrition Service to value commodities for the purpose of OMB Circular A–133, and at § 250.14(b), § 250.14(e), and § 250.14(f)(1) and (f)(2) to remove the requirement that ''recipient agencies'' inventory USDA donated food separately. A technical amendment has also been made in § 250.14(c) to improve sentence structure. Section 250.14(e) is revised to reduce physical inventory requirements for recipient agencies in this section. State warehouses, State contracted commercial warehouses, and subdistributing agencies continue to be required to maintain separate inventories of donated commodities. They also are required to continue to perform annual physical inventories and reconciliation of donated commodities.

List of Subjects in 7 CFR Part 250

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and record keeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 250 is amended to read as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

2. In § 250.3:

a. Revise the definition of *Subdistributing agency;* and

b. In the definition for *Substitution,* remove ''; or'' at the end of paragraph (a) and add in its place a period and add new paragraphs (c) and (d).

The revision and additions read as follows:

§ 250.3 Definitions.

* * * * *

Subdistributing agency means an agency performing one or more distribution functions for a distributing agency other than, or in addition to, functions normally performed by common carriers or warehousemen. A subdistributing agency may also be a recipient agency. State and local agencies, and Indian Tribal Organizations administering the Emergency Food Assistance Program, the Food Distribution Program on Indian Reservations, or the Commodity Supplemental Food Program, are subdistributing agencies subject to all provisions relative to subdistributing agencies contained in this part, unless specifically exempt under part 251, part 253, part 254, or part 247 of this chapter.

* * * * *

Substitution * * *

(c) A processor can substitute commercial product for donated commodity, as described in paragraph (a) of this section, without restrictions under full substitution. The processor must return to the contracting agency, in finished end products, the same number of pounds of commodity that the processor originally received for processing under full substitution. This is the 100-percent yield requirement.

(d) A processor can substitute commercial product for donated commodity product, as described in paragraph (a) of this section, with some

restrictions under limited substitution. Restrictions include, but are not limited to, the prohibition against substituting for backhauled poultry commodity product. FNS may also prohibit substitution of certain types of the same generic commodity. (For example, FNS may decide to permit substitution for bulk chicken but not for canned chicken.)

* * * * *

3. In § 250.13 add a new sentence at the end of paragraph (a)(5) to read as follows:

§ 250.13 Distribution and control of donated foods.

(a) * * *

(5) * * * For purposes of complying with OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations on inventory valuation, recipient agencies shall comply with guidance provided by the Food and Nutrition Service. (For availability of OMB Circulars referenced in this paragraph (a), see 5 CFR 1310.3.)

* * * * *

4. In § 250.14:

a. Remove the word ''Stock'' at the beginning of paragraph (b)(4) and add in its place the words ''Excepting recipient agencies, stock'';

b. Remove the word ''Conduct'' from the beginning of the third sentence in paragraph (c) and add in its place the word ''conduct'', and remove the period at the end of the second sentence;

c. Revise paragraph (e);

d. Remove the words ''or recipient agency's'' in paragraph (f)(1) introductory text and add in its place the word ''agency's''; and

e. Remove the words ''and recipient agencies'' in the second sentence of paragraph (f)(2).

The revision reads as follows:

§ 250.14 Warehousing, distributing and storage of donated foods.

* * * * *

(e) *Physical inventory.* During the annual review required by paragraph (c) of this section, distributing agencies and subdistributing agencies shall take a physical inventory of their storage facilities. The physical inventory shall be reconciled with each storage facility's book inventory. The reconciliation records shall be maintained by the agency that contracted for or maintained the storage facility. Food items that have been lost, stolen, or found to be out of condition, shall be identified and recorded. Potential excessive inventory, as described in paragraph (f) of this section, shall be reported by the subdistributing agency to the distributing agency. Corrective action on each deficiency noted during these inventories shall be initiated immediately, and a written report of those corrective actions shall be forwarded to the distributing agency. Where applicable, the distributing agency shall pursue claims in accordance with § 250.15(c).

* * * * *

5. In § 250.16, revise paragraph (a)(2) to read as follows:

§ 250.16 Maintenance of records.

(a) * * *

(2) Distributing agencies shall require all subdistributing agencies to maintain accurate and complete records with respect to the receipt, distribution/disposal, and inventory of donated foods, including end products processed from donated foods. Subdistributing agencies and recipient agencies must document any funds that arise from the operation of the distribution program, including refunds made to recipient agencies by a processor in accordance with § 250.30(k). Further, these documents should allow an independent determination of the specific accounts that benefit from these funds.

* * * * *

6. In § 250.23, revise paragraph (a)(2) to read as follows:

§ 250.23 Buy American.

(a) * * *

(2) A food product manufactured in the U.S. primarily using food grown in the U.S.

* * * * *

7. In § 250.30:

a. Revise paragraph (f)(1) introductory text;

b. Remove paragraph (f)(1)(i) and redesignate paragraph (f)(1)(ii) as paragraph (f)(1)(i); add a new paragraph (f)(1)(ii);

c. Revise newly redesignated paragraph (f)(1)(i);

d. Remove the words ''specifically listed in paragraph (f)(1)(i) of this section'' in the second sentence of paragraph (f)(2);

e. Remove the words ''by the Agricultural Stabilization and Conservation Service (ASCS) in the original inspection of donated foods'' in the fourth sentence of paragraph (f)(2) and add in their place the words ''in the original USDA procurement specification'';

f. Remove paragraph (f)(4) and redesignate paragraph (f)(5) as paragraph (f)(4); and

g. Amend the introductory text of paragraph (g) by adding a sentence after the second sentence.

The revisions and additions read as follows:

§ 250.30 State processing of donated foods.

* * * * *

(f) * * * (1) The processing contract may provide for substitution of donated foods as defined in § 250.3 except that donated beef and donated pork shall not be substitutable. Any substitution of commercial product for commodities other than beef, pork, or poultry is subject to a 100-percent yield requirement. Under the 100-percent yield requirement, the processor is responsible for any manufacturing losses.

(i) All components of commercial foods substituted for any donated food must be of U.S. origin and identical or superior in every particular of the donated food specification. Records must be maintained to allow independent verification that the substituted food meets the above condition.

(ii) Poultry shall be eligible for limited substitution. Any processors that wish to substitute poultry must have a plan approved by both FNS and AMS. Only bulk pack chicken, chicken parts, and bulk pack turkey delivered by USDA vendors to the processor are eligible for substitution. No backhauled poultry product may be substituted. (Backhauled product is typically cut-up frozen poultry parts delivered to schools that may be turned over to processors for further processing at a later time.) Should a processor want to amend its approved plan, it shall submit any amendments to USDA for approval prior to implementing such amendments.

(A) Substitution of commercial poultry may occur in advance of the actual receipt of the donated poultry by the processor. Should a processor choose to use the substitution option prior to the commodity being purchased by the USDA, the processor shall assume all risks. Any donated poultry not used in end products because of substitution shall only be used by the processor at one of its facilities in other commercially processed products and cannot be sold as an intact unit. However, in lieu of processing the donated poultry, the processor may use the commodity product to fulfill other USDA contracts awarded for delivery to another processor provided all terms of the other contract are met. Any variation between the amount of commercial poultry substituted and the amount of donated poultry received by the processor shall be adjusted according to guidelines furnished by USDA.

(B) The substitution plan shall contain a step-by-step description of how production will be monitored; a complete description of the records that will be maintained for the commercial poultry substituted for the donated poultry and the disposition of the donated poultry delivered; and how the substitution will be tracked for the purpose of monthly reporting to the State distributing agencies. Poultry substitution shall not be subject to the 100-percent yield requirement; however, the AMS Grading Service must verify processing yields. Should a processor choose to have all production of a specific end product, identified by name and product code, produced under AMS grading, then the label ''Contains Commodities Donated by the United States Department of Agriculture. This Product Shall Only Be Sold to Eligible Recipient Agencies'' shall not be required. Finished poultry end products that have not been produced under AMS grading supervision may not be substituted for finished commodity end products.

* * * * *

(g) * * * As with the processing of donated poultry into end products, AMS graders must monitor the processing of any substituted commercial poultry to ensure that program integrity is maintained. * * *

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Dated: October 16, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–26874 Filed 10–22–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. 98–030–4]

RIN 0579–AA97

Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are establishing regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The irradiation treatment provides protection against fruit flies and the mango seed weevil. This action provides an alternative to other currently approved treatments (various fumigation, cold, and heat treatments, and systems approaches employing techniques such as greenhouse growing) against fruit flies and the mango seed weevil in fruits and vegetables.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale MD 20737–1236; (301) 734–5210.

SUPPLEMENTARY INFORMATION:

Background

In response to growing commercial interest in the use of irradiation as a treatment for agricultural products, the Animal and Plant Health Inspection Service (APHIS) has been developing policies for evaluating irradiation methods and evaluating research on the efficacy of irradiation.

To set a framework for developing APHIS'' irradiation policy, we published a notice entitled ''The Application of Irradiation to Phytosanitary Problems'' in the **Federal Register** on May 15, 1996 (61 FR 24433–24439, Docket No. 95–088–1). Among other things, the notice discussed how APHIS, in collaboration with the Agricultural Research Service (ARS), would evaluate scientific research to determine the minimum irradiation doses necessary to kill or render sterile particular pests associated with particular articles. The notice emphasized that minimum dose levels are important and necessary, but that dose levels by themselves do not constitute a complete treatment schedule or an adequate regulatory framework. Treatment schedules, in addition to specifying minimum doses, may employ irradiation as a single treatment, as part of a multiple treatment, or as a component of a systems approach combined with other pest mitigation measures. The regulatory framework for employing irradiation treatments must also address system integrity or quality control issues, including methods to ensure that the irradiation is properly conducted so that the specified dose is achieved, and must address matters such as packaging or safeguarding of the treated articles to prevent reinfestation.

In a proposed rule published in the **Federal Register** on May 26, 2000 (65 FR 34113–34125, Docket No. 98–030–1), we proposed a framework for the use of phytosanitary irradiation treatments for imported fruits and vegetables, and proposed specific standards for an irradiation treatment for fruit flies and the mango seed weevil (*Sternochetus mangiferae* (Fabricus), formerly known as *Cryptorhynchus mangiferae*) in imported fruits and vegetables. We solicited comments concerning our proposed rule for a period of 60 days, ending July 25, 2000. On August 4, 2000, we published a **Federal Register** notice that reopened and extended the comment period until August 21, 2000 (65 FR 47908, Docket No. 98–030–2). By the end of this comment period we received 2,212 comments, including many form letters and form postcards.

The various issues raised in these comments are discussed below by topic.

Comments Outside the Scope of APHIS' Authority

Approximately 2,000 of the comments we received on the proposed rule were a form letter, or slight variations of the form letter. In addition to comments addressing the proposed rule, discussed below, these form letters raised several issues that concern matters under the regulatory authority of other Federal and State agencies, not APHIS. We do not intend to reopen debate over matters that have been resolved through rulemaking by other agencies that have primary authority in these areas.

For example, one concern expressed is that irradiation will make foods unsafe to eat. The Food and Drug Administration (FDA) has primary regulatory responsibility for ensuring that approved irradiation doses do not render foods unsafe to eat. FDA regulations (21 CFR 179.26) establish a limit of 1.0 kilogray for disinfestation of arthropod pests in food. None of the irradiation doses contained in our rule exceed one quarter of this approved safe dose limit. A similar concern is whether irradiation could generate harmful chemicals from the cartons in which fruits and vegetables are irradiated. FDA has addressed safe packaging materials in 21 CFR 179.26, where it specifically allows wax-coated paperboard, the common carton type for fruits and vegetables.

Other comments suggested that irradiation facilities are inherently unsafe, and that workers and the public may be exposed to dangerous levels of radiation as the result of accidents at the plants or during transport of radioisotopes to and from plants. The Nuclear Regulatory Commission, the Occupational Safety and Health Administration, and the United States Department of Transportation have the primary regulatory responsibility for issues including irradiation facility construction, operation, employee and public safety, and transportation of

radioisotopes. Their requirements in these areas were established through public rulemaking by the respective agencies.

Many comments also stated that irradiation would reduce the nutritional value of fruits and vegetables, particularly through vitamin depletion, and could also mask the effects of spoilage. Again, regulation of these matters is outside the scope of the current rulemaking and outside the statutory authority of APHIS. However, on these points we do note for the record the following information from the August 2000 report by the United States General Accounting Office, ''Food Irradiation: Available Research Indicates That Benefits Outweigh Risks'' (GAO/RCED–00–217):

> There is also some vitamin loss associated with irradiation—with certain vitamins, such as thiamin (B1), ascorbic acid (C), and alpha-tocopherol (E)—more affected by irradiation than others. However, according to the Institute of Food Technologists, it is highly doubtful that there would ever be any vitamin deficiency resulting from eating irradiated food. For example, thiamin is the most radiation-sensitive, water-soluble vitamin. With regard to this vitamin, the American Dietetic Association's position statement on food irradiation notes that FDA evaluated an extreme case in which all meat, poultry, and fish were irradiated at the maximum permissible dose under conditions resulting in the maximum destruction of thiamin. Even in these circumstances, the average thiamin intake was above the Recommended Dietary Allowance, leading FDA to conclude that there was no deleterious effect on the total dietary intake of thiamin as a result of irradiating foods. In its 1980 evaluation of food irradiation, the Joint Expert Committee convened by FAO, WHO, and IAEA concluded that irradiation caused no special nutritional problems in food. Another meeting of experts in 1997—organized by the same three international organizations—concluded that even high doses of irradiation (*i.e.*, over 10 kGy) would not result in nutrient losses that could adversely affect a food's nutritional value.
>
> Irradiation cannot reverse the spoilage process—the bad appearance, taste, and/or smell will remain the same after irradiation. In addition, current regulations do not allow food processors to use doses of irradiation on meat, poultry, fruits, and vegetables that would be high enough to sterilize extremely contaminated food. If a processor attempted to use a sterilization dose on many of these products, the odor, flavor, taste, and texture would be seriously impaired and the consumer would reject such products.

APHIS Should Use Treatments and Procedures Other Than Irradiation To Control Pests

Numerous commenters stated that APHIS should not employ irradiation as a treatment but should instead use other treatments and procedures to prevent the introduction of dangerous plant pests associated with imported fruits and vegetables. They stated that these other methods were preferable to the human health risks and environmental effects the commenters believe are associated with irradiation. The suggested alternatives included fumigation with methyl bromide, cold treatment, heat treatment, pressure treatment, controlled atmosphere treatments altering carbon dioxide concentrations, and several developing technologies such as use of laser ultraviolet light pulses. Some commenters also suggested that APHIS should only allow articles to be imported from areas free from significant pests.

We have not made any changes to the rule in response to these comments. Again, we emphasize that importers are free to choose other treatments authorized by the regulations in lieu of irradiation. The reason that irradiation may be attractive to certain importers, particularly those importing fresh tropical fruits from fruit fly-infested regions, is that irradiation allows fruits of higher quality to be imported. Alternative heat, cold, and fumigation treatments often cause unacceptable phytotoxicity (damage to the fruits). Also, these alternative treatments often must be used on fruit harvested before it is fully ripe. The irradiation alternative allows importers to sell riper, more valuable fruit, with less damage.

In authorizing irradiation treatments, we have considered both the efficacy and the environmental effects of irradiation compared to other treatments already authorized by our regulations. The irradiation treatments in the final rule are effective against the listed plant pests. As discussed below, an environmental assessment and finding of no significant impact have been prepared for this rule, documenting the conclusions that the irradiation methods in this rule would not present a risk of introducing or disseminating plant pests, would have environmental effects that are substantially less than those of some other authorized treatments, and would not have a significant impact on the quality of the human environment.

It is true that several technologies under development may also provide effective treatments for various plant pests (*e.g.*, pressure treatments, controlled atmospheres, and laser ultraviolet light pulses). To date, we have not seen conclusive scientific documentation that establishes standard methodologies for these treatments, or that demonstrates that these treatments effectively control pests of concern in fruits and vegetables subject to APHIS regulations. APHIS is always willing to evaluate petitions to add new treatments to our import regulations. Petitioners should submit a detailed description of the methodology and standards of the treatment to be evaluated, and should include any scientific studies that document the effectiveness of the treatment and related issues (*e.g.*, quality effects on treated articles).

Prohibition of Irradiation Facilities in Southern States

In the proposed rule, § 305.2(b) provided that irradiation could be conducted prior to the arrival of articles in the United States, or after arrival, but limited the location of facilities in the United States to certain northern States where the climate would preclude the successful establishment of the targeted fruit flies. We proposed that irradiation facilities could be located in any State on the mainland United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia. We proposed this location restriction as a safeguard against the possibility that, despite container and movement restrictions designed to prevent this possibility, fruit flies could escape from regulated articles in the United States prior to treatment.

Four commenters stated that this restriction should be dropped. They stated that the restriction was unnecessary because imported shipments could be successfully safeguarded to prevent the escape of pests between the time the articles arrive and the time they are irradiated to destroy any pests associated with them. One commenter specifically suggested that in lieu of prohibiting irradiation in southern States, APHIS could impose stringent packaging requirements to prevent the escape of pests, such as plastic shrouding, banding of boxes, insect-proof screening, and additional labeling to prevent misrouting of articles. Another commenter described planned operating procedures for an irradiation facility to operate at a southern port of arrival. These procedures would subject containers arriving at the port to a sanitizing wash upon arrival, then move the unsealed containers directly into the irradiation facility before they are opened. The facility would have insect suppression systems to prevent the escape of insects, including solid walls separating untreated product from treated product. Another commenter stated that an irradiation facility in

Florida had already demonstrated the ability to move high-risk fruits and vegetables into the facility without escape of pests, treat them, and move them to their final destinations in Texas and California without reinfestation. That commenter submitted as evidence the protocols for moving and irradiating guavas, mangos, and sweet potatoes.

These commenters, in addition to arguing that irradiation facilities could safely operate in southern States, maintained that severe business and economic losses would result from prohibiting irradiation in southern States. They stated that this action would prevent the most logical ports from accepting shipments of fruits and vegetables from South America and Mexico. They also noted that the South has a large demand for the types of fresh fruits and vegetables that would enter in accordance with the rule. These commenters also noted that southern ports are currently allowed to import a large volume of fruits and vegetables that must be treated after arrival with treatments other than irradiation—*e.g.*, cold treatment, or fumigation with methyl bromide—and that the rule would be inconsistent to allow one kind of trade but not the other.

After careful consideration of these comments, we have decided that allowing irradiation facilities in all southern States under the requirements of the proposed rule, or under safeguards described in general terms by the commenters, would permit an unacceptable risk that fruit fly populations could become established and flourish in the southern climate, and therefore we are not changing the proposed general prohibition of irradiation facilities in southern States although, as discussed below, we are allowing irradiation facilities to be established at three ports in southern States if the facilities meet special conditions. The commenters requesting us to allow irradiation facilities in other southern States make strong arguments that there are notable business advantages related to certain port locations and established trade patterns for imported fruits and vegetables. However, our primary consideration must be the risk of introduction and establishment of dangerous plant pests.

The commenters argue that importing fruit fly host materials from fruit fly-infested regions for irradiation in southern States would be no riskier than other importations (and interstate movements) that are currently allowed. However, the examples they cite are not completely relevant. In the case of the Florida irradiation facility that irradiates guavas, mangos, and sweet potatoes for movement to Texas and California, the irradiated articles are of domestic origin. While they may be exposed to the Caribbean fruit fly, which is established in certain parts of Florida, they do not represent a risk of spreading exotic species of fruit flies. Also, even the risks associated with Caribbean fruit fly have become a concern to other States. In its own comment on the proposed rule, the California Department of Food and Agriculture expressed concern over the number of live Caribbean fruit fly larvae emerging from guavas irradiated in Florida, and was considering developing a quality control program for such fruit and reviewing its policy regarding the acceptance of heavily infested irradiated fruit from Florida. The other pests for which these articles are irradiated in Florida (weevils and surface pests) do not have the pest risk potential represented by exotic fruit flies. The argument that allowing this facility to irradiate imported fruit fly host material would not increase risks over the level of its current operations is therefore unconvincing.

We also disagree with the argument that southern ports are currently allowed to import a large volume of fruits and vegetables that must be treated after arrival with treatments other than irradiation—*e.g.*, cold treatment, or fumigation with methyl bromide—and that this justifies allowing irradiation in all southern States. Generally, the articles allowed to be imported into southern ports for fumigation treatment upon arrival are not high-risk fruit fly host materials; when such articles are allowed to be imported, they must be treated prior to arrival. Some higher-risk articles (*e.g.*, citrus, apples, grapes, and pears) are allowed to be imported into three southern ports (Wilmington, NC; Gulfport, MS; and the Atlanta, GA, airport) for cold treatment after arrival. Unlike northern ports, at least two of these three ports (Gulfport and Atlanta) do not have sufficient biological barriers, including climatic conditions, to prevent the introduction and establishment of fruit flies and other insect pests that could escape from shipments of imported fruit after arrival in the United States. Cold treatment after arrival is allowed at these three ports because APHIS has imposed special conditions to mitigate the risk of the introduction of fruit flies and other insect pests into the United States (*see* 7 CFR 319.56–2d(b)(5)(iv), (vi), and (vii)).

The special conditions appropriate for allowing cold treatment after arrival would also be sufficient to safely allow irradiation treatment after arrival, although several requirements for cold treatment facilities (*e.g.*, back-up cooling systems and cold holding rooms) would not be needed for irradiation facilities at these ports. Therefore, we are changing this final rule to allow irradiation facilities to be located at the ports of Gulfport, Wilmington, and Atlanta. We are accomplishing this change by adding a footnote to § 305.2(b), which lists States where facilities may be located, to read as follows: ''Irradiation facilities may be located at the maritime ports of Gulfport, MS, or Wilmington, NC, or the airport of Atlanta, GA, if the following special conditions are met: The articles to be irradiated must be imported packaged in accordance with paragraph (g)(2)(i)(A) of this section; the irradiation facility and APHIS must agree in advance on the route by which shipments are allowed to move between the vessel on which they arrive and the irradiation facility; untreated articles may not be removed from their packaging prior to treatment under any circumstances; blacklight or sticky paper must be used within the irradiation facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the facility; and the facility must have contingency plans, approved by APHIS, for safely destroying or disposing of fruit.''

These special conditions are derived from the special conditions in § 319.56–2d(b)(5) that are required for cold treatment facilities in Wilmington, Gulfport, and Atlanta. The purposes of the conditions are as follows.

Insect-proof packaging; no removal from packaging prior to treatment. These requirements guard against the possible escape of adult, larval, or pupal fruit flies or other pests.

Approval of the route by which shipments are allowed to move between the vessel on which they arrive and the irradiation facility. This requirement allows APHIS to ensure the articles are not moved through areas containing crops or wild plants that are good host material for fruit flies, and to ensure timely, low-risk delivery to the irradiation facility.

Fruit fly attractants and traps in the irradiation facility and surrounding areas. The dual purpose is to both kill escaped fruit flies and to reveal their presence so further control efforts can be planned.

Contingency plans for safely destroying or disposing of fruit. If irradiation operations are delayed due to equipment failure or for other reasons, APHIS may order articles

destroyed to avoid risks that pests might escape them while they are in storage.

We are not changing the final rule to allow irradiation at other ports in southern States at this time. Post-arrival cold treatments at the ports of Wilmington, Gulfport, and Atlanta were initially allowed in the mid-1990s after APHIS evaluated detailed petitions from port authorities, State governments, and business interests who worked jointly to develop detailed proposals for the siting, operations, and safeguarding of cold treatment facilities at these ports. Requests to allow irradiation at other southern ports would have to be evaluated in a similar manner. In each case we would have to thoroughly evaluate the risk situation of the suggested port, including the individual port's latitude, microclimate, immediate host availability, and past fruit fly infestations. After such evaluation, if APHIS determines special conditions that would allow post-arrival irradiation treatment to occur without risk of spreading pests, we would initiate rulemaking to allow such treatment at the designated ports.

Therefore, with the exception noted above for Wilmington, Gulfport, and Atlanta, this final rule includes the requirement of the proposal that irradiation facilities in southern States may not treat imported articles in accordance with the regulations. However, we welcome detailed petitions from businesses working in concert with port authorities and State governments who believe that post-arrival irradiation treatment facilities can safely operate at particular southern ports.

Recommended Doses

The proposed rule, in § 305.2, set forth the following irradiation doses:

IRRADIATION FOR FRUIT FLIES AND SEED WEEVILS IN IMPORTED FRUITS AND VEGETABLES

Scientific name	Common name	Dose (gray)
(1) *Bactrocera dorsalis*	Oriental fruit fly	250
(2) *Ceratitis capitata*	Mediterranean fruit fly	225
(3) *Bactrocera cucurbitae*	Melon fly	210
(4) *Anastrepha fraterculus*	South American fruit fly	150
(5) *Anastrepha suspensa*	Caribbean fruit fly	150
(6) *Anastrepha ludens*	Mexican fruit fly	150
(7) *Anastrepha obliqua*	West Indian fruit fly	150
(8) *Anastrepha serpentina*	Sapote fruit fly	150
(9) *Bactrocera tryoni*	Queensland fruit fly	150
(10) *Bactrocera jarvisi*	(No common name)	150
(11) *Bactrocera latifrons*	Malaysian fruit fly	150
(12) *Sternochetus mangiferae* (Fabricus)	Mango seed weevil	100

Six commenters made comments suggesting changes to these dose rates. Four of these commenters suggested specific dose rate changes, and two addressed the need for research on dose rates more generally. Several commenters drew attention to the statement in the proposed rule (pp. 34113–34114) that ''The dose of ionizing radiation, calculated in gray, must be sufficient to prevent adult emergence of each species of fruit fly in fruits and vegetables. Each dose is set at the lowest level that achieves this effect; the dose will not necessarily kill larvae immediately after treatment.'' Three commenters stated that APHIS did not set doses at the lowest level that will prevent adult emergence and cited research reports to support their positions.

The commenters who suggested specific changes to doses suggested the following doses for the final rule:

Scientific name	Common name	Proposed dose (gray)	Dose suggested by commenters
(1) *Bactrocera dorsalis*	Oriental fruit fly	250	150
(2) *Ceratitis capitata*	Mediterranean fruit fly	225	150
(3) *Bactrocera cucurbitae*	Melon fly	210	150
(4) *Anastrepha fraterculus*	South American fruit fly	150	100
(5) *Anastrepha suspensa*	Caribbean fruit fly	150	100
(6) *Anastrepha ludens*	Mexican fruit fly	150	100
(7) *Anastrepha obliqua*	West Indian fruit fly	150	100
(8) *Anastrepha serpentina*	Sapote fruit fly	150	100
(9) *Bactrocera tryoni*	Queensland fruit fly	150	100
(10) *Bactrocera jarvisi*	(No common name)	150	100
(11) *Bactrocera latifrons*	Malaysian fruit fly	150	100
(12) *Sternochetus mangiferae* (Fabricus)	Mango seed weevil	100	300

One commenter stated that the new doses were supported by ''numerous sound science based studies,'' but did not identify specific studies. Two commenters referred to research reports contained in ''Proceedings of the Final Research Coordination Meeting on Use of Irradiation as a Quarantine Treatment of Food and Agricultural Commodities'' (IAEA 1992) and ''Report of ICGFI Task Force on Irradiation as a Quarantine Treatment of Fresh Fruits and Vegetables'' (ICGFI 1991). These studies support the proposition that a 150 gray treatment for *B. dorsalis, B. cucurbitae,* and *C. capitata* is effective in preventing emergence of adult flies.

Another commenter cited studies by Hallman (1999), Bustos *et al.* (1992), and Gould & von Windeguth (1991) to support doses of 100 gray to treat for *A. suspensa, A. ludens, A. obliqua, A. serpentina, B. jarvisi,* and *B. tryoni.* This commenter also stated that the research suggests that the doses of 250 gray for *B. dorsalis* and 225 gray for *C. capitata*

may be too high, but suggested that APHIS seek further research to demonstrate this rather than changing those doses at this time. This commenter also suggested that the dose for mango seed weevil, *S. mangiferae*, should be raised to 300 gray, because the 100 gray dose was based on two limited studies that did not fully evaluate the efficacy of irradiating the weevils in mangoes, rather than in laboratory vials, and due to the extremely high rate of infestation of many foreign mangoes by the seed weevil.

Another commenter cited recent research indicating that a dose of 100 gray prevents adult emergence of *A. ludens, A. obliqua,* and *A. serpentina*, and that a dose of 150 gray does so for *C. capitata*. The research cited showed no adult emergence at these doses after study of more than 100,000 irradiated third instar larvae in mangoes.

In addition to suggesting that smaller doses may be effective in controlling fruit flies, several commenters stated that the proposed doses, as applied in commercial operation, would cause an unacceptably high level of damage to the quality of fresh fruit. These commenters noted that commercial irradiators treating large lots often must expose some of the lot (*e.g.,* outer layers) to two to three times the minimum dose in order to ensure that the entire lot receives at least the minimum dose. Therefore, some of the fruit treated to a minimum dose of 150 gray could receive a dose of up to 450 gray, a dose that significantly reduces the quality of some fruits. A minimum dose of 250 gray (proposed for *B. dorsalis*) would result in some of the lot being exposed to up to 750 gray, a level that would reduce most fruits to an unsaleable quality. These commenters also noted that there is a direct relationship between dose and cost of treatment; the higher the dose, the greater the cost; and suggested that it might not be economically feasible for commercial irradiators to treat fruit using the proposed doses.

Based on these comments concerning doses, we have decided to increase the dose for mango seed weevil from 100 gray to 300 gray, and to leave all the other doses at their proposed levels. We have reexamined research on irradiation as a means to control seed weevils, and the preponderance of it supports using a higher dose than the 100 gray we proposed. The only research that found 100 gray to be effective against mango seed weevil was a limited study involving a very few insects; other research by Heather and Corcoran (1990) [1], Jessup and Rigney (1990) [2], and Follett [3] found that a dose in the 300 gray range was necessary to effectively control the weevil.

The comments suggesting lowered doses for other pests, and the research supporting these comments, may have merit, but such research must be carefully evaluated and verified before we lower doses below the proposed levels, which we know are effective. APHIS, in cooperation with the Agricultural Research Service and others, will evaluate the lower doses recommended by commenters. If we determine that any or all of the recommended lower doses are effective, we will initiate rulemaking in the future to reduce the doses. However, this evaluation process will take time, and the current final rule maintains the proposed higher doses so that irradiation treatments may occur while this evaluation is underway.

Barriers Between Treated and Untreated Articles in Irradiation Facilities

Several commenters addressed the possibility that, while articles are in an irradiation facility, pests might move from articles that have not yet been irradiated to articles that have been irradiated. If this happens, irradiated articles would pose a risk of spreading these pests. They noted that if the irradiation facility is outside the United States, this risk is addressed by the proposed requirement that articles must be in insect-proof cartons before, during, and after irradiation. However, the proposal did not require insect-proof cartons at irradiation facilities in the United States. Also, while the proposed physical layout for irradiation facilities, with physically separate locations for treated and untreated articles (§ 305.2(e)(2), would prevent mixing of articles, it would not prevent the self-movement of pests from untreated articles to treated articles in the facility. The proposal only required that facility areas for untreated and treated articles ''must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons.'' While the proposal stated that normal business practices result in material moving through a facility quickly for cost reasons, and that untreated material would not remain in a facility long enough for adult flies to emerge from untreated materials and move to treated materials, these commenters stated that unforseen delays and processing backlogs could sometimes allow enough time for pests to move from untreated to treated articles. They suggested that for this reason, irradiation facilities in the United States should be required either to use insectproof cartons, or to have a solid barrier impervious to fruit flies between areas of the facility where untreated articles are kept and areas of the facility where treated articles are kept.

We have not made any change based on these comments because there is only a slight risk of this scenario occurring, because it is extremely improbable that larvae could crawl from the untreated to the treated area of the facility, and articles do not remain in the untreated section long enough for flies to hatch and move to the treated area. Section 305.2(c) addresses even these slight risks, by stating that in the compliance agreement a facility must sign with APHIS, ''the facility operator must agree to comply with any additional requirements found necessary by the Administrator to prevent the escape, prior to irradiation, of any fruit flies that may be associated with the articles to be irradiated.'' In drawing up that compliance agreement, we will consider on a case-by-case basis for each facility whether safeguards are needed to prevent the escape or movement of pests at that facility.

Monitoring of Foreign Irradiation Facilities by Foreign Plant Protection Organizations and by APHIS

Several commenters suggested that effective monitoring of operations at foreign irradiation facilities was crucial to ensure that treatments were safe and effective. These commenters pointed out that in some countries the national plant protection organization could provide most of this monitoring, while in others APHIS would have to provide most of the monitoring, depending on different situations in different countries. They suggested that the section of the rule dealing with monitoring should be flexible enough to let APHIS vary its level of monitoring as needed, based on the infrastructure and capabilities of plant protection organizations in different countries. They also suggested

[1] Heather, N.W., and Corcoran, R.J. ''Effects of ionizing energy on fruit flies and seed weevil in Australian mangoes''. Proceedings of the IAEA/FAO Research Coordination Meeting on the Use of Irradiation as a Quarantine Treatment of Food and Agricultural Commodities, Kuala Lumpur, Malaysia, August, 1990.

[2] Jessup, A.J., and Rigney, C.J. ''Gamma irradiation as a commodity treatment against Dacus tryoni, Queensland fruit fly, in fresh fruit.'' Proceedings of the IAEA/FAO Research Coordination Meeting on the Use of Irradiation as a Quarantine Treatment of Food and Agricultural Commodities, Kuala Lumpur, Malaysia, August, 1990.

[3] Dr. Peter Follett, Agricultural Research Service, USDA. Personal communication (1999).

that the activities that foreign plant protection services will conduct to enforce the regulations and monitor compliance should be recorded in an agreement between the foreign plant protection service and APHIS.

We agree with this comment, and have decided that the monitoring section of the rule should allow APHIS to target its monitoring as needed and provide the appropriate level of monitoring, ranging from intermittent monitoring of operations and inspection of records to a continual APHIS presence at facilities and regular inspection of untreated and treated articles for pests. We also believe that providing this level of monitoring may require APHIS to arrange for foreign plant protection services to deposit monies into a trust fund to reimburse APHIS for services, as is common practice under many other APHIS import regulations (*e.g.,* importing Fuji apples from Japan and the Republic of Korea under § 319.56–2cc, or importing Hass avocados from Mexico under § 319.56–2ff). We also agree that the activities of foreign plant protection services in support of the regulations should be recorded in a work plan that the foreign plant protection service submits to APHIS.

Supplemental Proposed Rule

Because the issues of appropriate levels of monitoring, foreign plant protection service work plans, and another issue mentioned by commenters—carton irradiation indicators, were not specifically raised in the proposed rule, we published a supplemental proposed rule to seek public comment on these issues. That supplemental proposed rule was published in the **Federal Register** on March 15, 2002 (67 FR 11610–11614, Docket 98–030–3). We accepted public comments on the supplemental proposed rule for 30 days, ending April 15, 2002. We received 67 comments during that period.

In that supplemental proposed rule, we proposed changing the monitoring section of the rule to allow APHIS to provide an appropriate level of monitoring at irradiation facilities depending on the situations in different countries, to establish two kinds of work plans to document requirements and activities, and to establish trust funds with national plant protection organizations to reimburse APHIS for its expenses.

These changes reflect our position that APHIS should sign work plans with foreign plant protection services to clearly state what regulatory requirements and levels of inspection, monitoring, and other activities apply to importation of irradiated articles into the United States and into the signatory foreign country, and that APHIS should be able to target its monitoring as needed, ranging from intermittent monitoring of operations and inspection of records to a continual APHIS presence at facilities and regular inspection of untreated and treated articles for target and nontarget pests.

With respect to the work plans, the supplemental proposed rule provided, in support of the equivalence principle, that APHIS and each foreign plant protection service will sign an irradiation treatment framework equivalency work plan that clearly states what legislative, regulatory, and other requirements must be met, and what monitoring and other activities must occur, for irradiated articles to be imported into the United States, or into the foreign country.

Of the approximately 10 comments that addressed this proposed revision of proposed § 305.2(f), most supported the changes. One commenter addressed the language in proposed § 305.2(f)(1) that would require the framework equivalency work plan to include ''citations for any requirements that apply to the importation of irradiated fruits and vegetables.'' The commenter pointed out that some countries may not develop or legislate original requirements regarding irradiation, but may rely on and cite irradiation standards developed by international bodies such as the International Consultative Group on Food Irradiation, the International Plant Protection Convention, and others. APHIS is aware of this, and believes no change to the proposed language is needed. The framework equivalency work plan can cite whatever requirements the respective countries apply to irradiated fruits and vegetables, whether they are laws or regulations of that country or international guidelines or standards.

One commenter addressed the statement in proposed § 305.2(f)(1)(ii) that the framework equivalency plan must describe ''the type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables.'' This commenter stated that inspection and monitoring of irradiation processing should not differ significantly from other treatment methods, *e.g.*, heat or cold treatments, fumigation, or controlled atmosphere treatments.

APHIS does not believe any change is necessary in regard to this comment. The proposed language does not set any required level for inspection and monitoring activities; it merely asks each country to state the level of such activities it chooses to require in the framework equivalency plan. We do not agree that all types of treatment necessarily require the same level of monitoring and inspection to verify that they are effective. The level required depends on the nature of the treatments and their technical complexity, including the number of critical control points to be monitored.

This commenter also noted that the framework equivalency plan is silent on the role of the irradiation facility, and suggested the facility should be involved in developing framework equivalency plans because facilities bear the major responsibility for making effective monitoring possible.

We do not believe any change is needed in response to this comment. The point of the framework equivalency plan is to document consistency in national requirements for importation of irradiated fruits and vegetables. The proposed regulations present no barrier to consultations between a foreign plant protection service and an irradiation facility during development of a framework equivalency plan, but it is not APHIS' place to require foreign governments to have such consultations when developing their import requirements. With regard to documenting the role and specific responsibilities of irradiation facilities under our regulations, we note that proposed § 305.2(d) requires that both a compliance agreement and an annual work plan be developed and signed by APHIS and the foreign irradiation facility.

One commenter objected to the trust fund agreement in proposed § 305.2(f)(3), stating that it is unnecessary for APHIS to send personnel to foreign countries to monitor irradiation processing. He stated that between the framework equivalency work plan and the facility preclearance work plan in proposed § 305.2(f), APHIS had set up a system where equivalency in national requirements existed, in terms of the Sanitary and Phytosanitary (SPS) Agreement of the World Trade Organization. Article 4 of that Agreement states that ''Members shall accept the sanitary and phytosanitary measures of other members as equivalent, even if these measures differ from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary

or phytosanitary protection.'' If this situation applies, the commenter stated, ''it is more cost effective for both importing and exporting countries to establish and agree to the ''equivalency work plan,'' including the procedure for operation of irradiation facilities required for treating fruits and vegetables, than to continue to depend on inspection and monitoring of operation of quarantine treatments by officials from importing countries. Exporting countries *must* ensure that fruits are produced through Good Agricultural Practices (GAPs), and handled and processed or treated through proper protocols under Good Manufacturing Practices (GMPs) to be in compliance with the requirements of the importing countries. Each step in the production, handling, processing/ treatment *must* be certified by the competent authorities in importing countries. The final product must be certified by the national plant protection organization that proper quarantine treatment, *e.g.* irradiation, was done * * *.''

In response to this comment, APHIS understands that equivalency issues under the SPS Agreement are complex and evolving. First, we note that USDA collects funds for the foreign activities of its inspectors in accordance with specific statutory authority, 7 U.S.C. 7753(a), which states ''The Secretary may enter into reimbursable fee agreements with persons for preclearance of plants, plant products, biological control organisms, and articles at locations outside the United States for movement into the United States.''

Secondly, we disagree that, by jointly developing a framework equivalency work plan and a facility preclearance work plan, APHIS and the exporting country will demonstrate that equivalency exists. At most, developing these plans will help identify *to what degree* equivalency exists, and may also identify areas where the procedures and technical expertise of the exporting country do not meet the United States' ''appropriate level of sanitary or phytosanitary protection.'' Certainly, the level of inspection and monitoring performed by APHIS employees under the trust fund agreement will vary depending on the effectiveness—the equivalency—of the activities of the foreign plant protection service.

In developing the framework equivalency work plan—a joint activity—both APHIS and the exporting country will have the opportunity to negotiate the necessary or appropriate conditions to establish and run the program. In some cases, there may be concerns about whether the exporting country has adequate technical expertise, experience, and oversight capability to ensure an irradiation treatment program is conducted properly. In other cases, the host government may have more capability. This final rule does not preclude the exporting country from proposing alternative approaches or options for meeting any concerns we may have that might cause us to increase the level of activities by APHIS inspectors under the trust fund agreement. Also, the framework equivalency work plan will be subject to annual review, which allows for the possible reduction of oversight (and associated costs) as confidence grows in the program.

Thirdly, costs associated with implementing an inspection, treatment, or other safeguarding program are normal and expected in agricultural trade. The obligation in the SPS Agreement is that ''* * *any fees imposed for procedures related to control, inspection, and approval are equitable in relation to any fees charged on like domestic products or products originating in any other Member and should be no higher than the actual cost of the service'' (Annex C). In other words, APHIS should avoid inconsistent or discriminatory charges or fees, and we believe the final rule does this.

One commenter stated that the work plans and monitoring provisions in proposed § 305.2(f) are premature and are subject to challenge, vis-a-vis pending revisions to the two main General Standards of the Codex Alimentarius Commission that relate to food irradiation. If and when these standards are approved, they could become official WTO guidance addressing operational requirements at irradiation facilities, including dosimetry, recordkeeping, inventory control, inspections, and other matters. The commenter stated that any conflict between U.S. food standards and those of a WTO member nation could be challenged under the WTO's binding dispute resolution system.

We are making no change based on this comment. The fact that the Codex Alimentarius Commission is working on developing standards for the future does not provide any current basis for a challenge to our regulations. If and when international standards are ready for adoption, we will examine them to determine whether any of our regulations should be amended to be consistent with them. We also note that APHIS has consistently worked with bodies developing international guidelines for irradiation of fruits and vegetables, and we believe our final rule is consistent with the anticipated products of these bodies.

One commenter suggested a change to proposed § 305.2(h)(3), which read ''The utilization of the dosimetry system, including the number and placement of dosimeters used, must be in accordance with American Society for Testing and Materials (ASTM) standards.'' This commenter pointed out that much of the ASTM ''standards'' are actually guidelines that are meant to be flexible and adaptive, and to state that they ''must'' be followed is confusing. The commenter also noted that there are other authoritative sources similar to ASTM standards regarding dosimetry, such as standards developed by the National Institute of Standards and Technology, that are in wide use in U.S. and foreign nuclear industries.

We agree that the reference in proposed § 305.2(h)(3) was too definite and restrictive, and implied that the ASTM published precise dosimetry standards that all irradiation facilities could and must follow exactly. In fact, the ASTM describes its dosimetry guide as a document that ''covers the basis for selecting and calibrating dosimetry systems used to measure absorbed dose * * *. It discusses the types of dosimetry systems that may be employed during calibration or on a routine basis as part of quality assurance in commercial radiation processing of products. This guide also discusses interpretation of absorbed dose and briefly outlines measurements of the uncertainties associated with the dosimetry. The details of the calibration of the analytical instrumentation are addressed in individual dosimetry system standard practices * * *. This guide should be used along with standard practices and guides for specific dosimetry systems and applications covered in other standards.''

In fact, the ASTM standards for dosimetry describe basic principles, effective techniques, and best practices, but do not provide absolute or mandatory standards for dosimetry systems. To recognize this, we are changing the statement in § 305.2(h)(3) to read as follows: ''When designing the facility's dosimetry system and procedures for its operation, the facility operator must address guidance and principles from American Society for Testing and Materials (ASTM) standards or an equivalent standard recognized by the Administrator.''

Irradiation Indicators and Tests To Identify Irradiated Fruit

Several commenters on the original proposed rule suggested that we should

require that prior to irradiation, indicators should be attached to cartons of articles. These indicators would change color, or undergo some other obvious change, when exposed to irradiation in the required dose range for regulated articles. The commenters stated that these indicators would be a very useful safeguard and could be used by enforcement personnel and others as a quick check to confirm that a particular carton had in fact been exposed to the required level of radiation. Commenters identified several devices and dye-impregnated labels that react to radiation in the 150–250 gray range.

Because we did not propose to require any such indicators or tests in the proposed rule, we discussed their use in the supplemental proposed rule. In the supplemental proposed rule, we proposed to change the paragraph addressing packaging, § 305.2(g)(1), to state that ''each carton must bear an indicator device, securely attached prior to irradiation, that changes color or provides another clear visual change when it is exposed to radiation in the dose range required by this section for the pests for which the articles are being treated.''

We received more than 20 comments on this proposed change. Several were mildly supportive of using carton indicators, but the large majority of comments opposed the requirement for numerous technical, operational, and cost-benefit reasons. Several commenters cited the report, ''Standardized methods to verify absorbed dose in irradiated food for insect control,'' published in 2001 by the International Atomic Energy Agency, IAEA, Vienna, IAEA–TECDOC–1201. The commenters stated that the findings of that report indicated that, at present, color indicator devices are not suitable and not reliable to be used in phytosanitary applications and should not be used until such devices are further developed and are thoroughly tested for reliability.

Other commenters cited the document ASTM Standard E 1539–98, ''Standard Guide for Use of Radiation-Sensitive Indicators.'' Section 7.3 of that document states: ''Some irradiation or storage conditions may result in false positive or negative observations. For these reasons, indicators should not be used as a criterion for product release. Also, external environmental influences may make the interpretation of the indicators meaningless outside the irradiation facility unless appropriate controls are used.''

One commenter cited several additional research articles [4] that evaluate the effectiveness, sensitivity, and vulnerability to environmental effects of irradiation indicators.

Several commenters noted that the few indicators currently on the market were not sensitive enough to properly document the proposed dose ranges of 100 to 250 gray. They noted that the margin of error for such indicators appeared to be about 100 gray—meaning that an indicator designed to change color at a dose of 250 gray might change at a dose as low as 150 gray, or not change until it received a dose of 350 gray. These commenters noted that if irradiation facilities concentrate on indicator color change as a measure of success, they could subject some articles to unnecessarily high doses, or even pass some articles that received less than the required doses.

Several commenters suggested that APHIS should concentrate on ensuring that irradiation facilities conduct and document proper and effective dosimetry programs and not require carton indicators unless and until they are proven reliable, useful, and cost-effective at a later date. They suggested that inspectors at the port of entry, if they find insects or larvae in an irradiated shipment or have other questions about the adequacy of the irradiation, could use the required labeling and documentation to check on the treatment of that shipment—*e.g.*, by matching carton lot numbers from the port with carton lot numbers in the facility's records. Inspectors could readily verify with the facility operator that a particular shipment had been irradiated, and could also check APHIS monitoring records for that facility. Given modern communications and databases, such verification would not unduly delay release of shipments at ports.

Other commenters took issue with a statement in the economic analysis for the supplemental proposal that use of indicators would increase the price of imported articles by only ''a few cents per pound.'' These commenters pointed out that, even if this is true, the cost of irradiating articles at some facilities could be as low as 5 cents per pound, and increasing this cost to 8 cents by requiring indicators amounted to a 60 percent cost increase for treatment. They also noted that a price differential of 3 cents per pound could be a critical disadvantage in some market situations.

We have carefully analyzed all the data and opinions submitted recommending against the indicator requirement, and we have decided not to require indicators at this time. While we believe that a conceivable indicator could be employed as a possible cross-check at ports of entry, apparently there is no such indicator that is: (1) Currently available at low cost; (2) validated to be sensitive and reliable in the appropriate dose ranges; and (3) validated to be resistant to false positives and false negatives caused by environmental effects. We also concur with commenters that, at least during the early implementation of this program and the first operations of irradiation facilities under the regulations, it is important to concentrate on effective dosimetry programs and recordkeeping at facilities, and effective communications between APHIS inspectors and facilities to backtrack treatment records for individual shipments, rather than attempting to use problematic indicator technologies.

One commenter wrote, in support of requiring indicators, that it was a manufacturer of luminescence technology devices that were sensitive to irradiation in the dose ranges APHIS proposed. While these indicators do not change color in a manner visible to the naked eye, their state change after irradiation can be read by an inexpensive device similar to a barcode scanner. This commenter claimed that such indicators have advantages in terms of cost, resistance to environmental effects, and counterfeit resistance.

While such devices are not consistent with the type of indicator APHIS proposed—which was for an indicator ''that changes color or provides another clear visual change''—APHIS will consider such devices, along with other types of indicator technology, in its future consideration of whether to require indicators. We wish to emphasize that we welcome suggestions regarding ways indicators might be used effectively, and technical descriptions of available indicators. Also, since irradiation facilities in foreign countries,

[4] Ehlermann, D.A.E. (Federal Research Centre for Nutrition, Karlsruhe (DE). Inst. of Process Engineering), ''Validation of a label dosimeter for food irradiation applications by subjective and objective means,'' Appl. Radiat. Isot.; v. 48(9), p. 1197–1201; 1997.

Ehlermann, D.A.E. (Federal Research Centre for Nutrition, Karlsruhe (Germany). Inst. of Process Engineering), ''Validation of a label dosimeter with regard to dose assurance in critical applications as quarantine control,'' International Atomic Energy Agency, IAEA; Vienna (Austria); 1999, p. 265–270; IAEA–TECDOC—1070; IAEA–SM–356/38.

International Atomic Energy Agency, ''Standardized methods to verify absorbed dose in irradiated food for insect control,'' IAEA, Vienna, 2001, IAEA–TECDOC–1201.

Razem, D. (Ruder Boskovic Inst., Zagreb (Croatia)), ''Dosimetric performance of and environmental effects on sterin irradiation indicator labels,'' Radiat. Phys. Chem.; v. 49(4) p. 491–495.

and the government agencies that regulate irradiation in those countries, ultimately bear a great deal of responsibility for ensuring that products are irradiated in accordance with APHIS requirements, we welcome any suggestions from those sources on the use of indicators or other methods for confirming that products were properly irradiated.

Other Comments on the Supplemental Proposed Rule

We received approximately 50 comments on the supplemental proposed rule that were similar to the 2000 form-letter comments we received on the original proposal. These comments generally raised issues that are outside the scope of the current rulemaking, such as the safety of irradiation facilities and the nutritional value of irradiated food.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide an alternative to other currently approved treatments against fruit files and the mango seed weevil in fruits and vegetables, thus relieving restrictions. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

The economic analysis for the changes in this document is set forth below. It provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis regarding the effect of this rule on small entities. In the initial regulatory flexibility analysis in the proposed rule we stated that we did not have all the data necessary for a comprehensive analysis of the effects of this rule on small entities, and we invited comments concerning potential effects. In particular, we solicited data to help determine the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule. We did not receive any comments challenging our estimates of the number and kinds of small entities affected, although several comments did state that the additional cost of requiring carton indicators (a requirement removed from this final rule, as discussed elsewhere in this document) would have adverse impacts on both large and small importers.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

This rule will permit the treatment of imported fruits and vegetables by irradiation, in place of or in conjunction with existing phytosanitary treatments or other protocols, for 11 species of fruit flies and one species of seed weevil. Irradiation could take place prior to shipment to the United States or after arrival. There are requirements for certification of the facilities, treatment monitoring, pallet security, and recordkeeping for irradiation at all facilities, and packaging and labeling requirements for articles irradiated before arrival in the United States. Irradiation facilities must use an approved dosimetry system during treatment and keep records to verify effective irradiation. For irradiation after arrival, compliance agreements will impose requirements on the transit from ports to irradiation facilities, to ensure all shipments requiring irradiation are delivered to the facility and are not rerouted to sale prior to treatment.

Firms in the United States primarily affected by this rule will be ones conducting the irradiation treatments. They could be variously classified by the Small Business Administration, depending on each one's particular business enterprises. A firm providing irradiation services strictly for the treatment of crops, including imported fruits and vegetables, would be included in the Standard Industry Classification (SIC) category 0723 (Crop Preparation Services, except Cotton Ginning). A firm would qualify as a small entity if it had annual revenues of $5 million or less. If a firm that imports or wholesales fruits and vegetables were to perform the irradiation itself, it would be included in SIC 5148 (Fresh Fruits and Vegetables), since its principal activity would remain importing or wholesaling. In this case, the firm would be designated as a small entity if it had 100 or fewer employees.

Firms expected to benefit most immediately from this rule, however, would not belong in either of these SIC categories. They would be companies that currently provide irradiation services on contract for decontamination or sterilization purposes and could readily adapt to perform phytosanitary irradiation. They are classified within SIC 2099 (Food Preparations, N.E.C.) or SIC 2842 (Specialty Cleaning, Polishing, and Sanitation). The former category includes firms that irradiate food items, such as spices, seeds, culinary herbs, vegetable seasoning, and poultry, to destroy harmful pathogens. Included in SIC 2842 are firms that primarily provide irradiation services for the sterilization of medical devices, pharmaceutical preparations, and raw materials used in cosmetic products.

Four firms with SIC 2099 or 2842 designations have been identified that provide irradiation services on contract. For both categories, employment of 500 or fewer persons qualifies a firm as a small entity. Three of the four firms are considered small. (The fourth one had been a small entity until last year, when it was purchased by another corporation.)

Of these four companies, the one that is not a small entity is the only one engaged at present in phytosanitary irradiation. This firm treats papayas, carambolas, litchis, and other tropical fruits from Hawaii that are moved interstate to the mainland United States. Irradiation of the fruit in accordance with 7 CFR 318.13–4f, performed at facilities in Illinois, removes the risk of Mediterranean, Oriental, and melon fruit fly introduction, while also lengthening the shelf life of the fruit. Treatment of the Hawaiian fruit, however, is a small part of the firm's business; irradiation services are mainly provided for sterilization purposes through a network of facilities in nine States and Canada.

Similarly, the second of the four firms has 12 facilities throughout the United States, 8 of which are used for medical sterilizations and 4 for other purposes. One of the 12 facilities, located in southern California, has been adapted for irradiation of fruits and vegetables for the purpose of lengthening shelf life.

The other two firms that provide irradiation services are single-facility businesses. One, in Maryland, principally conducts medical and pharmaceutical sterilizations, and the other, in Florida, has been irradiating

poultry products for the retail market and hospitals since 1993.

In addition to these four firms, companies that use irradiation to sterilize their own products could also benefit from this rule by contracting their irradiation facilities for phytosanitary purposes. Location, throughput capacity, the irradiating processes used, and other characteristics of the facilities would help determine whether the cost of their services would be competitive in comparison to the cost of alternative methods of treatments.

While these firms are technologically capable of taking advantage of treatment opportunities afforded by this rule, any economic effects on them will ultimately depend on the cost effectiveness of irradiation when compared to alternative phytosanitary treatments. A 1994 study sheds light on the benefits and costs of irradiation versus methyl bromide (MB) fumigation for the treatment of imported fruits and vegetables.[5] Economic benefits in this study were estimated in terms of preventing potential economic losses in U.S. fruit and vegetable markets that would result from discontinuation of MB as a fumigant for imports. In fiscal year 1996, 14 percent of imported fruits, nuts, and vegetables, valued at about $345 million, were treated with MB, 80 percent at U.S. ports and 20 percent in preclearance programs in foreign locations.[6] Although temperature-modifying treatments are possible alternatives for some fruits and vegetables, MB fumigation is the principal, and sometimes sole, phytosanitary treatment available for many commodities.

The 1994 study focused on short- and medium-term costs and benefits of irradiation treatment in off-season U.S. import markets for grapes, nectarines, okra, peaches, and plums. Grapes comprise over 80 percent, by value, of imported fruits and vegetables fumigated with MB, but they have a low tolerance for irradiation. When grapes were included in the analysis, irradiation treatment costs, in 1998 dollars, ranged from 1.6 to 3.9 cents per pound. Excluding grapes, irradiation cost estimates ranged from 3.4 to 3.9 cents per pound.[7] These unit costs reflect the substantial economies of size that could be captured by irradiation facilities, due to the concentration of imported fruit at certain ports of arrival.

Preshipment and quarantine uses of MB, along with critical agricultural and emergency uses, are exempted from the MB phase out required by the Clean Air Act.[8] These exemptions essentially segment the MB market into restricted and unrestricted parts. Demand for MB used for exempted purposes is expected to remain unaffected as its use as a soil fumigant is restricted. However, reduced production due to the phase out may cause the price of MB used for phytosanitary purposes to rise, due to an increase in the unit cost of production. Most MB in the world is manufactured by only three companies, two in the United States and one in Israel. Whether their economies of production can be maintained will depend on the demand for MB for exempted purposes in the United States and other developed countries, and overall demand in developing countries (where final phase out is scheduled under the Montreal Protocol for 2015).

The demand for irradiation as a treatment alternative will be influenced by product quality and phytotoxicity issues. Product shelf life can be extended by irradiation. Moreover, some fruits and vegetables that are damaged by fumigation or temperature-modifying treatments are tolerant of irradiation. On the other hand, as indicated above for grapes, some fruits and vegetables are considered not very tolerant of irradiation. Assuming consumers accept irradiation as a phytosanitary treatment, its use will be determined not only by the availability of alternative treatments and relative costs but also by its enhancing or diminishing effects on product quality.

When the latter range of unit costs (3.4 to 3.9 cents per pound) are applied to fumigated quantities of 11 varieties of fruits imported in fiscal year 1996 that have a high or medium tolerance of irradiation, costs of irradiation treatment range, in 1998 dollars, between $2.7 million and $3.1 million.[9] Applying MB fumigation costs assumed in the 1994 study, 0.6 to 1.2 cents per pound in 1998 dollars, yields a total treatment cost of $0.5 million to $0.9 million for this same set of imports. It is apparent that the use of irradiation for phytosanitary purposes is probably not a cost-competitive alternative to MB fumigation at present. However, the phase-out of MB as a soil fumigant may result in an increase in its unit cost of production, thereby making the cost of irradiation and other treatment alternatives more competitive.

This rule will broaden the choices among phytosanitary treatment alternatives for U.S. fruit and vegetable importers. No net societal gains and losses other than small price-related changes are expected from this rule if irradiation is used only to treat fruits and vegetables that would have been imported otherwise using an alternative treatment. Income earned by firms providing the irradiation services would be income forgone by the displaced fumigators or other treatment providers. But if irradiation enables importations that would not otherwise occur, then societal gains (increased imports) could be attributed to its phytosanitary use. Irradiation treatment most likely will both serve as an alternative treatment for a fraction of current imports and stimulate additional imports for certain fruits and vegetables, such as papaya, that need to be treated for fruit flies and have a high tolerance for irradiation.

Allowing irradiation to be used as a phytosanitary treatment for 11 fruit fly species and one seed weevil species would most immediately benefit four firms, three of which are small entities, that currently provide irradiation services on contract for sterilization and decontamination purposes. Participation of these firms, and entry of other firms, in the treatment of imported

[5] ''Costs and Benefits of Irradiation Versus Methyl Bromide Fumigation for Disinfestation of U.S. Fruit and Vegetable Imports,'' by Kenneth W. Forsythe, Jr. and Phylo Evangelou, ERS Staff Report No. AGES 9412, March 1994.

[6] ''Quarantine Uses of Methyl Bromide by the United States, Fiscal Year 1996'' (Draft), APHIS-PPD-PAD, April 1997; available in the APHIS reading room (see **ADDRESSES**).

[7] To adjust irradiation unit costs estimated in the 1994 study from 1987 dollars to 1998 dollars, values are multiplied by a factor of 1.23 (producer price index for capital equipment, series ID: WPSSOP3200, Bureau of Labor Statistics, U.S. Dept. of Labor).

[8] Ten percent of methyl bromide used annually in agriculture in the United States is for commodity and quarantine treatment, compared to 85 percent for soil fumigation and 5 percent for structural fumigation. The 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105–277) made specific changes to the Clean Air Act, to harmonize the U.S. phaseout of methyl bromide with the Montreal Protocol phaseout schedule for developed countries. This schedule requires U.S. methyl bromide production and importation reductions (from 1991 levels) of 25 percent in 1999, 50 percent in 2001, 70 percent in 2003, and 100 percent in 2005; exempted from this phaseout schedule are critical agricultural, emergency, and preshipment and quarantine uses. With respect to traded commodities, the amendment states that ''the [EPA] Administrator shall exempt the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State (or political subdivision thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements * * * '' *(www.epa.gov/ozone/mbr/mbrqa.html).*

[9] The 11 fruits are apricot, banana/plantain, grapefruit, orange, papaya, peach/ nectarine, pineapple, plum, strawberry, tangerine, and tomato. The combined weight of import shipments of these fruits that were fumigated with MB in fiscal year 1996 was approximately 78.3 million pounds. This represented only 2.43 percent, by weight, of total imports of these 11 fruits (see, *op. cit.,* ''Quarantine Uses of Methyl Bromide by the United States, Fiscal Year 1996'' [Draft], Table 1). The range of costs is probably underestimated, since it assumes economies of size would be captured in all cases.

fruits and vegetables will depend upon the demand that develops for irradiation in relation to alternative treatments.

The economic effects of the changes adopted from the supplemental proposed rule result from the establishment of trust fund agreements to reimburse APHIS for its activities monitoring irradiation facilities in foreign countries. We are requiring that the inspection and monitoring activities performed by a foreign plant protection service at irradiation facilities located overseas be recorded in an agreement signed by the foreign service and APHIS. The purpose of the agreement is to ensure appropriate levels of inspection and monitoring at the facilities, thereby reducing any pest risk due to misunderstandings or shortcomings in the oversight of irradiation and related processes at facilities.

When a foreign plant protection service establishes a trust fund agreement to reimburse APHIS for expenses, that service may or may not pass along the cost of depositing those funds to producers in that country, depending on the service's funding mechanisms. If it passes along that cost to foreign producers, those producers will likely raise the price of fruits and vegetables exported to the United States to cover the costs. However, we expect that trust fund agreement costs to have a negligible effect on the prices paid by U.S. merchants and consumers for the imported produce.

The benefits of the trust fund agreements accrue because the agreements will increase the reliability of irradiation as a phytosanitary treatment. Thus, benefits are evaluated in terms of preventing potential economic losses in U.S. fruit and vegetable markets that could occur if pests should enter the United States with articles that were not properly irradiated because trust fund agreements to monitor treatments were not in effect. These benefits cannot be readily quantified. As an example, however, averting the costs associated with a single fruit fly outbreak in the United States would save more than the total costs for trust fund agreements over many years.

The major alternative to this rule would be to not allow these irradiation treatments. In that case, importers and irradiation businesses would not accrue the benefits described above, and firms providing existing treatment alternatives would continue operating as at present (with MB fumigation becoming less competitive as its supply is constrained).

This final rule contains information collection requirements, which have been approved by the Office of Management and Budget (*see* ''Paperwork Reduction Act'' below).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the irradiation methods in this rule would not present a risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS'' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under ''**FOR FURTHER INFORMATION CONTACT**.''

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0155.

List of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations is amended as follows:

1. A new part 305 is added to read as follows:

PART 305—PHYTOSANITARY TREATMENTS

Sec.

Authority: 7 U.S.C. 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 305.1 Definitions.

The following definitions apply for the purposes of this part:

Administrator. The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person delegated to act for the Administrator in matters affecting this part.

APHIS. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

Dose mapping. Measurement of absorbed-dose within a process load using dosimeters placed at specified locations to produce a one-, two-, or three-dimensional distribution of absorbed dose, thus rendering a map of absorbed-dose values.

Dosimeter. A device that, when irradiated, exhibits a quantifiable change in some property of the device that can be related to absorbed dose in a given material using appropriate analytical instrumentation and techniques.

Dosimetry system. A system used for determining absorbed dose, consisting of dosimeters, measurement instruments and their associated reference standards, and procedures for the system's use.

Inspector. Any employee of the Animal and Plant Health Inspection Service or other person authorized by the Administrator to inspect and certify the plant health status of plants and products under this part.

§ 305.2 Irradiation treatment of imported fruits and vegetables for certain fruit flies and mango seed weevils.

(a) *Approved doses.* Irradiation at the following doses for the specified fruit flies and seed weevils, carried out in accordance with the provisions of this section, is approved as a treatment for all fruits and vegetables:

IRRADIATION FOR FRUIT FLIES AND SEED WEEVILS IN IMPORTED FRUITS AND VEGETABLES

Scientific name	Common name	Dose (gray)
(1) *Bactrocera dorsalis*	Oriental fruit fly	250
(2) *Ceratitis capitata*	Mediterranean fruit fly	225
(3) *Bactrocera cucurbitae*	Melon fly	210
(4) *Anastrepha fraterculus*	South American fruit fly	150
(5) *Anastrepha suspensa*	Caribbean fruit fly	150
(6) *Anastrepha ludens*	Mexican fruit fly	150
(7) *Anastrepha obliqua*	West Indian fruit fly	150
(8) *Anastrepha serpentina*	Sapote fruit fly	150
(9) *Bactrocera tryoni*	Queensland fruit fly	150
(10) *Bactrocera jarvisi*	(No common name)	150
(11) *Bactrocera latifrons*	Malaysian fruit fly	150
(12) *Sternochetus mangiferae* (Fabricus)	Mango seed weevil	300

(b) *Location of facilities.* Where certified irradiation facilities are available, an approved irradiation treatment may be conducted for any fruit or vegetable either prior to shipment to the United States or in the United States. Irradiation facilities certified under this section may be located in any State on the mainland United States except Alabama, Arizona, California, Florida, Georgia[1], Kentucky, Louisiana, Mississippi1, Nevada, New Mexico, North Carolina1, South Carolina, Tennessee, Texas, and Virginia. Prior to treatment, the fruits and vegetables to be irradiated may not move into or through any of the States listed in this paragraph, except that movement is allowed through Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into an authorized State by the shortest route.

(c) *Compliance agreement with importers and facility operators for irradiation in the United States.* If irradiation is conducted in the United States, both the importer and the operator of the irradiation facility must sign compliance agreements with the Administrator. In the facility compliance agreement, the facility operator must agree to comply with any additional requirements found necessary by the Administrator to prevent the escape, prior to irradiation, of any fruit flies that may be associated with the articles to be irradiated. In the importer compliance agreement, the importer must agree to comply with any additional requirements found necessary by the Administrator to ensure the shipment is not diverted to a destination other than treatment and to prevent escape of plant pests from the articles to be irradiated during their transit from the port of first arrival to the irradiation facility in the United States.

(d) *Compliance agreement with irradiation facilities outside the United States.* If irradiation is conducted outside the United States, the operator of the irradiation facility must sign a compliance agreement with the Administrator and the plant protection service of the country in which the facility is located. In this agreement, the facility operator must agree to comply with the requirements of this section, and the plant protection service of the country in which the facility is located must agree to monitor that compliance and to inform the Administrator of any noncompliance.

(e) *Certified facility.* The irradiation treatment facility must be certified by the Administrator. Recertification is required in the event of an increase or decrease in the amount of radioisotope, a major modification to equipment that affects the delivered dose, or a change in the owner or managing entity of the facility. Recertification also may be required in cases where a significant variance in dose delivery has been measured by the dosimetry system. In order to be certified, a facility must:

(1) Be capable of administering the minimum absorbed ionizing radiation doses specified in paragraph (a) of this section to the fruits and vegetables;[2]

(2) Be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables, except that fruits and vegetables traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons, or some other means approved during certification to prevent reinfestation of articles and spread of pests;

(3) If the facility is located in the United States, the facility will only be certified if the Administrator determines that regulated articles will be safely transported to the facility from the port of arrival without significant risk that plant pests will escape in transit or while the regulated articles are at the facility.

(f) *Monitoring and interagency agreements.* Treatment must be monitored by an inspector. This monitoring will include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation. Facilities that carry out irradiation

[1] Irradiation facilities may be located at the maritime ports of Gulfport, MS, or Wilmington, NC, or the airport of Atlanta, GA, if the following special conditions are met: The articles to be irradiated must be imported packaged in accordance with paragraph (g)(2)(i)(A) of this section; the irradiation facility and APHIS must agree in advance on the route by which shipments are allowed to move between the vessel on which they arrive and the irradiation facility; untreated articles may not be removed from their packaging prior to treatment under any circumstances; blacklight or sticky paper must be used within the irradiation facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the facility; and the facility must have contingency plans, approved by APHIS, for safely destroying or disposing of fruit.

[2] The maximum absorbed ionizing radiation dose and the irradiation of food is regulated by the Food and Drug Administration under 21 CFR part 179.

operations must notify the Director of Preclearance, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, of scheduled operations at least 30 days before operations commence, except where otherwise provided in the facility preclearance work plan. To ensure the appropriate level of monitoring, before articles may be imported in accordance with this section, the following agreements must be signed:

(1) *Irradiation treatment framework equivalency work plan.* The plant protection service of a country from which articles are to be imported into the United States in accordance with this section must sign a framework equivalency work plan with APHIS. In this plan, both the foreign plant protection service and APHIS will specify the following items for their respective countries:

(i) Citations for any requirements that apply to the importation of irradiated fruits and vegetables;

(ii) The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables into that country; and

(iii) Any other conditions that must be met to allow the importation of irradiated fruits and vegetables into that country.

(2) *Facility preclearance work plan.* Prior to commencing importation into the United States of articles treated at a foreign irradiation facility, APHIS and the plant protection service of the country from which articles are to be imported must jointly develop a preclearance work plan that details the activities that APHIS and the foreign plant protection service will carry out in connection with each irradiation facility to verify the facility's compliance with the requirements of this section. Typical activities to be described in this work plan may include frequency of visits to the facility by APHIS and foreign plant protection inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the requirements for separation of articles, packaging, labeling, and other requirements of this section. This facility preclearance work plan will be reviewed and renewed by APHIS and the foreign plant protection service on an annual basis.

(3) *Trust fund agreement.* Irradiated articles may be imported into the United States in accordance with this section only if the plant protection service of the country in which the irradiation facility is located has entered into a trust fund agreement with APHIS. That agreement requires the plant protection service to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection and treatment monitoring services at the irradiation facility during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement will describe the general nature and scope of APHIS services provided at irradiation facilities covered by the agreement, such as whether APHIS inspectors will monitor operations continuously or intermittently, and will generally describe the extent of inspections APHIS will perform on articles prior to and after irradiation. The agreement requires the plant protection service to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the plant protection service to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more articles irradiated in that country may be imported into the United States. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the plant protection service or held on account until needed, at the option of the plant protection service.

(g) *Packaging.* Fruits and vegetables that are irradiated in accordance with this section must be packaged in cartons in the following manner:

(1) All fruits and vegetables treated with irradiation must be shipped in the same cartons in which they are treated. Irradiated fruits and vegetables may not be packaged for shipment in a carton with nonirradiated fruits and vegetables.

(2) For all fruits and vegetables irradiated prior to arrival in the United States:

(i) The fruits and vegetables to be irradiated must be packaged either:

(A) In insect-proof cartons that have no openings that will allow the entry of fruit flies. The cartons must be sealed with seals that will visually indicate if the cartons have been opened. The cartons may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the articles in the carton;[3] or

(B) In noninsect-proof cartons that are stored immediately after irradiation in a room completely enclosed by walls or screening that completely precludes access by fruit flies. If stored in noninsect-proof cartons in a room that precludes access by fruit flies, prior to leaving the room each pallet of cartons must be completely enclosed in polyethylene, shrink-wrap, or another solid or netting covering that completely precludes access to the cartons by fruit flies.

(ii) To preserve the identity of treated lots, each pallet-load of cartons containing the fruits and vegetables must be wrapped before leaving the irradiation facility in one of the following ways:

(A) With polyethylene shrink wrap;

(B) With net wrapping; or

(C) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(iii) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment. Pallets that remain intact as one unit until entry into the United States may have one such label per pallet. Pallets that are broken apart into smaller units prior to or during entry into the United States must have the required label information on each individual carton.

(h) *Dosimetry systems at the irradiation facility.* (1) Dosimetry mapping must indicate the doses needed to ensure that all the commodity will receive the minimum dose prescribed.

(2) Absorbed dose must be measured using an accurate dosimetry system that ensures that the absorbed dose meets or exceeds the absorbed dose required by paragraph (a) of this section (150, 210, 225, 250, or 300 gray, depending on the target species of fruit fly or seed weevil).

(3) When designing the facility's dosimetry system and procedures for its operation, the facility operator must address guidance and principles from American Society for Testing and Materials (ASTM) standards[4] or an

[3] If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro Street, Oxford, NC 27565.

[4] Designation ISO/ASTM 51261–2002(E) , ''Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing,'' American Society for Testing and Materials, *Annual Book of ASTM Standards.*

equivalent standard recognized by the Administrator.

(i) *Records.* An irradiation processor must maintain records of each treated lot for 1 year following the treatment date and must make these records available for inspection by an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(j) *Request for certification and inspection of facility.* Persons requesting certification of an irradiation treatment facility must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro Street, Oxford, NC 27565. The initial request must identify the owner, location, and radiation source of the facility, and the applicant must supply additional information about the facility construction, treatment protocols, and operations upon request by APHIS if APHIS requires additional information to evaluate the request. Before the Administrator determines whether an irradiation facility is eligible for certification, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of this section.

(k) *Denial and withdrawal of certification.* (1) The Administrator will withdraw the certification of any irradiation treatment facility upon written request from the irradiation processor.

(2) The Administrator will deny or withdraw certification of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying certification, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend certification pending final determination in the proceeding if he or she determines that suspension is necessary to prevent the spread of any dangerous insect. The suspension will be effective upon oral or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(l) *Department not responsible for damage.* This treatment is approved to assure quarantine security against the listed fruit flies. From the literature available, the fruits and vegetables authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or monitored. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption. (Approved by the Office of Management and Budget under control number 0579–0155)

PART 319—FOREIGN QUARANTINE NOTICES

2. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

3. In § 319.56–2, a new paragraph (k) is added to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(k) Any fruit or vegetable that is required by this subpart or the Plant Protection and Quarantine Treatment Manual to be treated or subjected to other growing or inspection requirements to control one or more of the 11 species of fruit flies and one species of seed weevil listed in § 305.2(a) of this chapter as a condition of entry into the United States may instead be treated by irradiation in accordance with part 305 of this chapter.

4. In § 319.56–2x, paragraph (a), the introductory text preceding the table is revised to read as follows:

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) The following fruits and vegetables may be imported into the United States only if they have been treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. Treatment by irradiation in accordance with part 305 of this chapter may be substituted for treatments in the PPQ Treatment Manual for the mango seed weevil *Sternochetus mangiferae* (Fabricus) or for one or more of the following 11 species of fruit flies: *Anastrepha fraterculus, Anastrepha ludens, Anastrepha obliqua, Anastrepha serpentina, Anastrepha suspensa, Bactrocera cucurbitae, Bactrocera dorsalis, Bactrocera tryoni, Bactrocera jarvisi, Bactrocera latifrons,* and *Ceratitis capitata.*

* * * * *

Done in Washington, DC, this 18th day of October, 2002.

Bobby R. Acord,

Acting Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 02–27027 Filed 10–18–02; 4:38 pm]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Forage Seeding Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correcting amendment.

SUMMARY: This document contains corrections to the final regulation which was published Wednesday, August 15, 2001 (66 FR 42729–42730). This document pertains to the Forage Seeding Crop Provisions for 2004 and subsequent crop years.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Arden Routh, Risk Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Kansas City, MO, 64133, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background on Need for Correction

The final rule published on August 15, 2001, has a June 30 contract change date and a September 30 cancellation/sales closing date for South Dakota counties with both fall and spring seeded forage. The final planting date for fall seeded forage in these counties

is September 1. Thus, that final rule allows producers to purchase crop insurance 30 days beyond the final planting date. In order to maintain the integrity and actuarial soundness of the crop insurance program, it is necessary that producers' decisions regarding their participation in the program occur before they have any information on imminent or actual damages to their crops. Accordingly, for South Dakota counties with both fall and spring seeded forage, the cancellation/sales closing date is being changed to July 31 and the contact change date is being changed to April 30.

List of Subjects in 7 CFR Part 457

Crop Insurance.

Accordingly, 7 CFR part 457 is corrected by making the following correcting amendment:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

§ 457.151 [Corrected]

2. Revise sections 4 and 5 of the crop provisions in § 457.151 to read as follows:

* * * * *

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date and April 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination dates
California, Nevada, New Hampshire, New York, Pennsylvania, South Dakota counties for which the Special Provisions designate both fall and spring final planting dates, and Vermont.	July 31.
South Dakota counties for which the Special Provisions designate only a spring final planting date, and all other states	March 15.

* * * * *

Signed in Washington, DC, on October 16, 2002.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 02–26924 Filed 10–22–02; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–58–AD; Amendment 39–12907; AD 2002–21–01]

RIN 2120–AA64

Airworthiness Directives; Britax Sell GmbH & Co. OHG Water Boilers, Coffee Makers, and Beverage Makers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to Britax Sell GmbH & Co. OHG water boilers, coffee makers, and beverage makers. That AD currently requires inspecting the wiring for indications of overheating or electrical arcing, and if indications are found, replacing the wiring. This amendment requires replacing the wiring on those water boilers, coffee makers, and beverage makers whether or not they show indications of overheating or electrical arcing. This amendment is prompted by revisions to the manufacturer's service bulletin that were not incorporated in the proposed rule. The actions specified by this AD are intended to prevent a fire in the galley compartment due to inadequate crimping of the electrical terminal contact pins, which could result in smoke in the cockpit and cabin and loss of control of the airplane.

DATES: Effective November 27, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 27, 2002. The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the **Federal Register** as of June 15, 2002 (66 FR 29467; May 31, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from Britax Sell GmbH & Co. OHG, MPL Mr. H.D. Poggensee, P.O. Box 1161, 35721 Herborn Germany, telephone international code 49–2772–707–0; fax international code 49–2772–707–141. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street., NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–10–13, Amendment 39–12239 (66 FR 29467, May 31, 2001), which is applicable to Britax Sell GmbH & Co. OHG water boilers, coffee makers, and beverage makers was published in the **Federal Register** on June 7, 2002 (67 FR 39311). That action proposed to require replacing the wiring on those water boilers, coffee makers, and beverage makers whether or not they show indications of overheating or electrical arcing in accordance with Britax Sell GmbH & Co. OHG service bulletins (SB's) No. E33–4–010SB, Revision 1, dated August 1, 2001; No. E33–4–011SB, Revision 2, dated January 31, 2001; E33–4–012SB, Revision 1, dated November 20, 2000; and E33–4–015SB, Revision 1, dated November 15, 2000.

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

Requested Change to the Unsafe Condition Statement

One commenter, the manufacturer, considers the unsafe condition statement ''which could result in smoke in the cockpit and cabin and loss of control of the airplane'' to be exaggerated and not applicable.

The FAA does not agree. The commenter states that the unsafe condition can result in smoke in the cabin under certain circumstances. The FAA considers any smoke or possibility of fire in the cabin or cockpit to be a very serious condition. Therefore, no change will be made to the unsafe condition statement in the final rule.

Question About the Need To Issue This Final Rule

The same commenter questions the need to issue the rule again. The commenter feels that, since approximately one and one-half years have passed since the final rule was issued, all units should be in compliance.

The FAA partially agrees. The FAA agrees that, based on the compliance times specified in AD 2001–10–13, all units that were specified by serial number (SN) in AD 2001–10–13 should be in compliance. However, since that rule was issued, a service bulletin revision that was not incorporated by reference in the NPRM has been incorporated into the amendment and that revision expands the SN range of the water boilers in Table 1. Since the service bulletins are not mandatory to U.S. operators without an AD, the FAA must publish this rule to ensure that the unsafe condition has been eliminated from all affected U.S. registered airplanes.

Beverage Maker Corrections

The same commenter states that in Table 1, (4) Beverage Maker, Appliance Part Number (ii) 64771–001–003, the SN's are incorrectly called out as follows: * * *, 00–04–0042 thru 00–04–0042, * * *.

The FAA agrees. That SN series is corrected in this final rule to read * * *, 00–04–0040 thru 00–04–0042, * * *.

Economic Analysis Correction

The same commenter states that the number of work hours to perform the replacement of the wires is 1 work hour, not 10 work hours as stated in the proposal.

The FAA agrees. The FAA has adjusted the economic analysis in this final rule.

Water Boiler Serial Numbers Expanded

Service bulletin (SB) No. E33–4–010SB, dated October 20, 2000, specified in the NPRM, is not the latest revision. SB No. E33–4–010SB, Revision 1, dated August 1, 2001, expands the SN range listed in Table 1, (3). Table 1 (3) and reference to the revised SB have been changed.

Additional Changes to Table 1 of This AD

Additionally, the FAA has corrected the coffee maker appliance part number in Table 1 that was listed incorrectly in SB E33–4–012SB, Revision 1, dated November 20, 2000, from 64753–201–003 to 64763–201–003.

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

Economic Analysis

The FAA estimates that 175 products installed on airplanes of U.S. registry would be affected by this AD. The FAA has been notified that the manufacturer may provide the wiring kit free of charge. The FAA estimates that it would take approximately 1.0 work hour per product to do the wire replacement, that there are five products per airplane, that the required parts will cost approximately $20 per product, and that the average labor rate is $60 per work hour. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $14,000.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12239 (66 FR 29467, May 31, 2001) and by adding a new airworthiness directive, Amendment 39–12907, to read as follows:

2002–21–01 Britax Sell GmbH & Co OHG: Amendment 39–12907. Docket No. 2000–NE–58–AD. Supersedes AD 2001–10–13, Amendment 39–12239.

Applicability: This airworthiness directive (AD) is applicable to Britax Sell GmbH & Co. OHG water boilers, coffee makers, and beverage makers, listed by part number (P/N) and serial number (SN) in Table 1 of this AD. These products are installed on, but not limited to, Airbus Industrie A319, A320, A330, AVRO RJ, Bombardier DHC–8–400, and Boeing Company 717, 737, 747, 757, 767, 777 airplanes.

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

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

To prevent a fire in the galley compartment due to inadequate crimping of the electrical terminal contact pins, which could result in smoke in the cockpit and cabin and loss of control of the airplane, do the following:

(a) Replace wiring on temperature limiters of remote water boilers, coffee makers, water boilers, and beverage makers that are listed by P/N in Table 1 of this AD during the next repair, maintenance, or descaling of the product, during the next airplane check that allows for replacing the wiring, or within one

calendar year after the effective date of this AD, whichever occurs earlier, in accordance with the applicable service bulletin (SB) specified for the appliance in Table 1 as follows:

TABLE 1.—APPLIANCE P/N AND APPLICABLE SB FOR WIRE REPLACEMENT

Appliance	Appliance P/N	SN	Tank assembly P/N	Replace wiring in accordance with SB
(1) Remote Water Boiler	62204–001–029, 62204–001–031, 62204–001–037, 62204–001–043, 62204–001–047, and 62204–001–049.	00–04–0001 thru 00–07–0033 and 00–07–0038.	62203–001–005 6603–001–007	E33–4–007SB. Revision 2, dated December 4, 2000, Accomplishment Instructions 3.A through 3.0.
(2) Coffee Maker	(i) 64755	00–05–0001 and 00–09–0003.	64761–025–001	E33–4–009SB, dated October 24, 2000, Accomplish Instructions 3.A. through 3.J.
	(ii) 64753–001–003	00–01–0001 thru 00–09–0079, 00–09–0101.	64761–025–001	E33–4–011SB, Revision 2, dated January 31, 2001, Accomplish Instructions 3.A. through 3.J.
	(iii) 64763–201–003	00–05–0001, 00–05–0002, 00–07–0003, and 00–07–0004.	64761–025–001	E33–4–012SB, Revision 1, dated November 20, 2000, Accomplish Instructions 3.A. through 3.J.
	(iv) 64769–001–005 and 64769–001–007.	00–04–0001 thru 00–09–0033.	64769–025–003	E33–4–013SB, dated October 23, 2000, Accomplish Instructions 3.A. through 3.Q.
	(v) 64790–1	00–08–0001 thru 00–08–0003.	64790–393–101	E33–4–015SB. Revision 1, dated November 15, 2000. Accomplish Instructions 3.A. through 3.L.
(3) Water Boiler.	62197–001–001	00–04–0001 thru 00–09–0052 and 00–09–0055.	62197–015–001	E33–4–010SB. Revision 1, dated August 1, 2001. Accomplish Instructions 3.A. through 3.S
(4) Beverage Maker	(i) 64771–001–001	00–04–0013 thru 00–04–0039, 00–04–0043 thru 00–08–0302, 00–08–0307 thru 00–08–0346, and 00–09–0368 thru 00–09–0371.	64771–025–005	E33–4–014SB. Revision 1, dated November 6, 2000, Accomplishment Instructions 3.A. through 3.J.
	(ii) 64771–001–003	00–02–0001 thru 00–03–0005, 00–04–0007 thru 00–04–0012, 00–04–0040 thru 00–04–0042, 00–04–0053 thru 00–04–0057, 00–05–0087 thru 00–05–0094, 00–07–0135 thru 00–07–0138, 00–08–0303 thru 00–08–306, 00–08–0347 thru 00–08–0354, and 00–09–0365 thru 00–09–0367.	64771–025–001	E33–4–016SB. Revision 1, dated November 6, 2000. Accomplishment Instructions 3.A. through 3.J.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Documents That Have Been Incorporated By Reference

(d) The actions must be done in accordance with the following Britax Sell GmbH & Co. OHG service bulletins (SB's):

Document No.	Pages	Revision	Date
E33–4–007SB ..... Total pages: 7	All	2	December 4, 2000.

Document No.	Pages	Revision	Date
E33–4–009SB ..... Total pages: 5	All	Original	October 24, 2000.
E33–4–010SB ..... Total Pages: 5	All	1	August 1, 2001.
E33–4–011SB ..... Total pages: 5	All	2	January 31, 2001.
E33–4–012SB ..... Total pages: 5	All	1	November 20, 2000.
E33–4–013SB ..... Total pages: 5	All	Original	October 23, 2000.
E33–4–014SB ..... Total pages: 5	All	1	November 6, 2000.
E33–4–015SB ..... Total pages: 5	All	1	November 15, 2000.
E33–4–016SB ..... Total pages: 5	All	1	November 6, 2000.

The incorporation by reference of SB's E33–4–007SB, Revision 2, dated December 4, 2000; E33–4–009SB, dated October 24, 2000; E33–4–013SB, dated October 23, 2000; E33–4–014SB, Revision 1, dated November 6, 2000; and E33–4–016SB, Revision 1, dated November 6, 2000 was approved by the Director of the Federal Register on June 15, 2001 (66 FR 29467; May 31, 2001). The incorporation by reference of E33–4–010SB, Revision 1, dated August 1, 2001; E33–4–011SB, Revision 2, January 31, 2001; E33–4–012SB, Revision 1, dated November 20, 2000; and E33–4–015SB, Revision 1, dated November 15, 2000 was approved by the Director of the Federal Register on November 27, 2002, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Britax Sell GmbH & Co. OHG, MPL Mr. H.D. Poggensee, P.O. Box 1161, 35721 Herborn Germany, telephone international code 49–2772–707–0; fax international code 49–2772–707–141. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in LBA airworthiness directive 2000–379, dated November 13, 2000.

Effective Date

(e) This amendment becomes effective on November 27, 2002.

Issued in Burlington, Massachusetts, on October 7, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–26207 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–33–AD; Amendment 39–12923; AD 2002–21–16]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bombardier-Rotax GmbH Type 912 F, 912 S and 914 F series reciprocating engines. This action requires venting of the lubrication system and inspection of the valve train on all engines. This action also requires venting of the lubrication system of all engines on which the lubrication system has been opened, and any engine on which the propeller has been rotated one full turn in the reverse direction. This amendment is prompted by reports of several in-flight engine failures, all of which resulted in forced landings. The actions specified in this AD are intended to prevent damage to the engine valve train due to inadequate venting of the lubrication system which can result in an in-flight engine failure and forced landing.

DATES: Effective October 28, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 28, 2002.

Comments for inclusion in the Rules Docket must be received on or before December 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–33–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Bombardier-Rotax GmbH, Welser Strasse 32, A–4623 Gunskirchen, Austria; telephone 7246–601–232; fax 7246–601–370. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: Austro Control, which is the airworthiness authority for Austria, notified the FAA that an unsafe condition may exist on Bombardier-Rotax GmbH 912 F, 912 S and 914 F series reciprocating engines. Austro Control advises that there have been seven in-flight engine failures that occurred within 50 hours time-in-service (TIS) after installation of a new or overhauled engine. Investigations by Austro Control have indicated that the failures were due to inadequate venting

of the lubrication systems. Inadequate venting of the lubrication system can cause damage to the engine valve train as a result of low-pressure compression of trapped air while at maximum camshaft speed resulting in high impact stresses to valve train components.

Manufacturer's Service Information

Bombardier-Rotax GmbH has issued Mandatory Service Bulletin (MSB) No. SB–912–036/SB–914–022, Revision 1, dated August 2002, and Service Instruction SI–04–1997, Revision 3, dated September 2002. MSB No. SB SB–912–036/SB–914–022, Revision 1, dated August 2002, provides procedures for inspecting engines for correct venting of the oil system and procedures for inspecting the valve train for damage caused by inadequate venting. Austro Control has classified this service bulletin as mandatory and issued AD No.113R1 in order to assure the airworthiness of these Bombardier-Rotax GmbH engines in Austria. The manufacturer has also issued Service Instruction SI–04–1997 that provides instructions for venting the oil lubrication system after installation of the engine, after the lubrication system has been opened or drained during maintenance work, and after turning the propeller one full turn in the wrong direction of rotation.

Differences Between This AD and the Manufacturer's Service Information

Bombardier-Rotax GmbH MSB SB–912–036/SB–914–022 allows up to 5 hours TIS before venting and inspecting for correct venting of the oil system on engines with less than 50 TIS since the lubrication system has been opened and drained, since an oil change was performed, or since the propeller was rotated one full turn in the wrong direction of rotation. The FAA has determined that the venting and inspecting of the valve train must be done before further flight.

Bilateral Airworthiness Agreement

This engine model is manufactured in Austria and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Austro Control has kept the FAA informed of the situation described above. The FAA has examined the findings of Austro Control, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Bombardier-Rotax GmbH 912 F, 912 S and 914 F series reciprocating engines of the same type design, this AD is being issued to prevent damage to the engine valve train due to inadequate venting of the lubrication system which can result in an in-flight engine failure and forced landing. This AD requires:

- Before further flight, venting the lubrication system and inspecting for the correct venting of the oil system.
- Thereafter, before engine start, properly venting the lubrication system after initial installation of a new or overhauled engine, after opening the oil system, after an engine oil change, and after the propeller was rotated one full turn in the wrong direction of rotation.

The actions must be done in accordance with the mandatory service bulletin and service instruction described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–33–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–21–16 Bombardier-Rotax GmbH: Amendment 39–12923. Docket No. 2002–NE–33–AD.

Applicability: This airworthiness directive (AD) is applicable to Bombardier-Rotax GmbH 912 F, 912 S and 914 F series reciprocating engines. These engines are installed on, but not limited to, Diamond Aircraft Industries, DA20–A1, Diamond Aircraft Industries GmbH Model HK 36 TTS, Model HK 36TTC, and Model HK 36 TTC–ECO, Iniziative Industriali Italiane S.p.A. Sky Arrow 650 TC and Sky Arrow 650 TCN, Aeromot-Industria Mecanico Metalurgica ltda., Models AMT–300 and AMT–200S, and Stemme S10–VT aircraft.

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

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

To prevent damage to the engine valve train due to inadequate venting of the lubrication system which can result in an in-flight engine failure and forced landing, do the following:

Initial Venting and Inspection for Correct Venting

(a) Before further flight, for all Bombardier-Rotax GmbH 912 F, 912 S and 914 F series reciprocating engines, do the following:

(1) Perform venting and inspection for venting of the hydraulic valve tappets in accordance with section 3.1.1 through section 3.1.4 of the Accomplishment Instructions of Rotax Mandatory Service Bulletin (MSB) SB–912–036/SB–914–022, Revision 1, dated August 2002.

(2) Inspect the engine valve train in accordance with section 3.1.5 through section 3.2 of the Accomplishment Instructions of Rotax MSB SB–912–036/SB–914–022, Revision 1, dated August 2002.

Repetitive Venting of the Lubrication System

(b) Thereafter, for all Bombardier-Rotax GmbH 912 F, 912 S and 914 F series reciprocating engines, before starting the engine, vent the lubrication system in accordance with section 3 Accomplishment Instructions of Rotax Service Instruction, No. SI–04–1997, Revision 3, dated September 2002, after any of the following:

(1) The installation of a new or overhauled engine.

(2) The oil system has been opened allowing air to be ingested into the valve train (*e.g.* an oil change, or the oil pump, oil cooler, or suction line was removed and oil drained from the oil galleries).

(3) The engine oil was changed.

(4) The propeller was rotated one full turn in the wrong direction of rotation.

Alternative Methods of Compliance

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

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

Special Flight Permits

(d) Special flight permits are not permitted.

Manufacture's Service Information that has been Incorporated by Reference

(e) The venting and inspection must be done in accordance with the following Rotax mandatory service bulletin (MSB) and service instruction (SI):

Document No.	Pages	Revision	Date
MSB SB–912–036/SB–914–022 ..... Total pages: 6	All	1	August 2002.
SI SI–04–1997 ..... Total pages: 6	All	3	September 2002.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier-Rotax GmbH, Welser Strasse 32, A–4623 Gunskirchen, Austria; telephone 7246–601–232; fax 7246–601–370. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Austro Control airworthiness directive No. 113R1.

Effective Date

(f) This amendment becomes effective on October 28, 2002.

Issued in Burlington, Massachusetts, on October 17, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–26912 Filed 10–18–02; 2:39 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–06]

Amendment Class D Airspace; Huntington, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace at Tri-State/Milton J. Ferguson Field Airport, Huntington, WV. This action is necessary to insure continuous altitude coverage for Instrument Flight Rues (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On June 24, 2002 a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by extending Class D airspace upward from 3,300 feet mean sea level (MSL) to 3,400 feet MSL at Tri-State/Milton J. Ferguson Field Airport, Huntington, WV, was published in the **Federal Register** (67 FR 42511). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace area designations for airspace extending upward from the surface are published in Paragraph 5000 of FAA Order

7400.9K, dated August 30, 2002 and effective September 16, 2002. The Class D airspace designation listed in this document will be published in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) extends Class D airspace from the surface of the earth to and including 3,400 feet MSL for aircraft conducting IFR operations at Tri-State/Milton J. Ferguson Field Airport, Huntington, WV. The previous Class D airspace ceiling was 3,300 feet.

The FAA has determined that this regulations only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D airspace areas extending upward from the surface of the earth.

* * * * *

AEA WV D Huntington, WV [REVISED]

Tri-State/Milton J. Ferguson Field Airport, Huntington, WV

(Lat. 38°22′00″ N., long. 82°33′29″ W.)

That airspace extending upward from the surface to and including 3,400 feet MSL, within a 4-mile radius of Tri-State/Milton J. Ferguson Field Airport.

* * * * *

Issued in Jamaica, New York on October 8, 2002.

John G. McCartney,

Acting Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–27036 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30336; Amdt. No. 438]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, November 28, 2002.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on October 18, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows, effective at 0901 UTC.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 438, Effective Date: November 28, 2002]

From	To	MEA
§ 95.6001 Victor Routes—U.S.		
§ 95.6067 VOR Federal Airway 67 Is Amended to Read in Part		
Cedar Rapids, IA VOR/DME	Waterloo, IA VORTAC	2,900
Waterloo, IA VORTAC	Foyde, IA FIX	3,000
§ 95.6222 VOR Federal Airway 222 Is Amended to Read in Part		
Junction, TX VORTAC	Stonewall, TX VORTAC	4,000
§ 95.6222 VOR Federal Airway 556 Is Amended to Read in Part		
Junction, TX VORTAC	Stonewall, TX VORTAC	4,000

[FR Doc. 02–27037 Filed 10–22–02; 8:45 am]
BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–46667]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending its rules to delegate authority to the Director of the Division of Market Regulation (''Director'') to publish acknowledgments of receipt of notices filed with the Commission pursuant to Section 6(g) of the Securities Exchange Act of 1934 (''Exchange Act'') by exchanges registering as national securities exchanges to trade security futures products. This delegation of authority will facilitate the timely publication of such acknowledgments, which is required by Section 6(g)(3) of the Exchange Act.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Colihan, Special Counsel, at (202) 942–0735 or Mia Zur, Law Clerk, at (202) 942–7309, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Commission is adopting an amendment to Rule 30–3 of its Rules of Organization and Program Management governing Delegations of Authority to the Director.[1] The Commission is adding paragraph (a)(77) to Rule 30–3 to authorize the Director to publish acknowledgments of receipt of notices of registration submitted pursuant to Section 6(g) of the Exchange Act.[2]

Section 6(g) of the Exchange Act provides that an exchange may register as a national securities exchange solely for the purposes of trading security futures products by filing a written notice with the Commission if the exchange is designated as a contract market by the Commodity Futures Trading Commission or is registered as a derivative transaction execution facility under Section 5a of the Commodity Exchange Act. Rule 6a–4 under the Exchange Act provides that an exchange wishing to become registered under Section 6(g) must provide written notice on Form 1–N. Pursuant to Section 6(g)(2)(B) of the Exchange Act, such registrations are effective contemporaneously with the submission of the written notice.[3] Section 6(g)(3) of the Exchange Act directs the Commission to promptly publish acknowledgments of receipt of all such notices in the **Federal Register**. This delegation of authority to the Director is intended to conserve Commission resources by permitting the Division of Market Regulation to publish acknowledgments of receipt of Form 1–N. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate.

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedures Act,[4] that these amendments relate solely to agency organization, procedure, or practice, and do not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

List of Subjects in 17 CFR Part 200

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

Text of Amendment

In accordance with the preamble, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

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

Subpart A—Organization and Program Management

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

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

* * * * *

2. Section 200.30–3 is amended by adding paragraph (a)(77) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

[1] 17 CFR 200.30–3.

[2] 15 U.S.C. 78f(g).

[3] 15 U.S.C. 78f(g)(2)(B).

[4] 5 U.S.C. 553(b)(3)(A).

(a) * * *

(77) Pursuant to Section 6(g)(3) of the Act, 15 U.S.C. 78f(g)(3), to publish acknowledgement of receipt of a notice of registration as a national securities exchange for the sole purpose of trading security futures products under Section 6(g) of the Act and Rule 6a–4 of the Act (17 CFR 240.6a–4).

* * * * *

By the Commission.

Dated: October 16, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26883 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Carprofen

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for the veterinary prescription use of carprofen oral caplets in dogs for the control of postoperative pain associated with soft tissue and orthopedic surgery.

DATES: This rule is effective October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d Street, New York, NY 10017–5755, filed a supplement to NADA 141–053 for RIMADYL (carprofen) Caplets for Dogs. The supplemental NADA provides for the veterinary prescription use of carprofen oral caplets in dogs for the control of postoperative pain associated with soft tissue and orthopedic surgery. The supplemental application is approved as of July 8, 2002, and the regulations are amended in 21 CFR 520.309 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetics Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning July 8, 2002.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.309 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 520.309 Carprofen.

(a) *Specifications.* (1) Each caplet contains 25, 75, or 100 milligrams (mg) carprofen.

(2) Each chewable tablet contains 25, 75, or 100 mg carprofen.

(b) *Sponsor.* See No. 000069 in § 510.600(c) of this chapter for use of caplets described in paragraph (a)(1) of this section as in paragraphs (d)(1)(i), (d)(2), and (d)(3) of this section and chewable tablets described in paragraph (a)(2) of this section as in paragraphs (d)(1)(ii), (d)(2)(ii), and (d)(3) of this section.

* * * * *

(d) *Conditions of use in dogs*—(1) *Amount*—(i) 2 mg per pound (/lb) of body weight once daily or 1 mg/lb twice daily. For the control of postoperative pain, administer approximately 2 hours before the procedure.

(ii) 2 mg/lb of body weight once daily or 1 mg/lb twice daily.

(2) *Indications for use.* (i) For the control of postoperative pain associated with soft tissue and orthopedic surgery.

(ii) For the relief of pain and inflammation associated with osteoarthritis.

(3) *Limitations.* Federal Law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 30, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–26876 Filed 10–22–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD05–02–087]

RIN 2115–AA97 and 2115–AA98

Anchorage Grounds and Safety Zone; Delaware Bay and River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Army Corps of Engineers will begin dredging parts of the Delaware River including Anchorage 7 off Marcus Hook. Because of the dredging operations, temporary additional requirements will be imposed in Anchorage 6 off Deepwater Point and Anchorage 9 near the entrance to Mantua Creek. Vessels desiring to use these anchorage grounds will need to observe these temporary requirements and no vessels will be permitted in the safety zone without the permission of the Captain of the Port.

DATES: This rule is effective from October 12, 2002, to November 2, 2002.

ADDRESSES: Documents indicated in this preamble as available are available as part of docket CGD05–02–087 for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Brian Ly, Lieutenant Junior Grade Xaimara Vicencio-Roldan, or Lieutenant Junior Grade Kevin Sligh, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing a NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The U.S. Army Corps of Engineers, Philadelphia District, informed the Coast Guard on October 4, 2002, that dredging operations would commence on October 12, 2002. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to protect mariners against potential hazards associated with the dredging operations in Anchorage 7 off Marcus Hook and to modify the anchorage regulations to facilitate vessel traffic. In addition, notifications will be made via Notice to Mariners.

Background and Purpose

The U.S. Army Corps of Engineers (ACOE) notified the Coast Guard that it needed to conduct dredging operations on the Delaware River, in the vicinity of Anchorage 7 off Marcus Hook. The dredging is needed to maintain the project depth of the anchorage. During the dredging operations from October 12, 2002 through October 22, 2002, Marcus Hook Anchorage will be closed from Buoy ''A'' (LLNR 3165) to Buoy ''B'' (LLNR 3180). Then from October 22, 2002 through November 2, 2002, the Marcus Hook Anchorage will be closed from Buoy ''B'' (LLNR 3180) to Buoy ''C'' (LLNR 3205).

For the protection of mariners transiting in the vicinity of dredging operations, the Coast Guard is also establishing a safety zone around the dredging vessel PULLEN. The safety zone will ensure mariners remain a safe distance from the potentially dangerous dredging equipment.

Discussion of Rule

In 33 CFR 110.157(b)(2), vessels are allowed to anchor for up to 48 hours in the anchorage grounds listed in § 110.157(a), which includes Anchorage 7. However, because of the limited anchorage space available in Anchorage 7, the Coast Guard is adding a temporary paragraph in 33 CFR 110.157(b)(11) to provide additional requirements and restrictions on vessels utilizing Anchorage 7. During the effective period, vessels desiring to use Anchorage 7 must obtain permission from the Captain of the Port Philadelphia at least 24 hours in advance. The Captain of the Port will permit only two vessels at a time to anchor in Anchorage 7 and will grant permission on the ''first come, first serve'' basis. Vessels will be directed to a location within Anchorage 7 where it may anchor, and will not be permitted to remain in the Anchorage 7 from more than 12 hours.

The Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 will use Anchorage 6 off Deepwater (Anchorage 6) or Anchorage 9 near the entrance to Mantua Creek (Anchorage 9), because they are the closest anchorage grounds to Anchorage 7. To control access to Anchorage 7, the Coast Guard is requiring a vessel desiring to anchor in Anchorage 7 obtain advance permission from the Captain of the Port. To control access to Anchorage 6 and 9, the Coast Guard is requiring any vessel 700 feet or greater in length to obtain advance permission from the Captain of the Port before anchoring. The Coast Guard is also concerned that the holding grounds in Anchorage 6 and 9 are not as adequate as in Anchorage 7. Therefore, a vessel 700 to 750 feet in length is required to have one tug standing alongside while at anchor, and a vessel of over 750 feet in length must have two tugs standing alongside. The tug(s) must have sufficient horsepower to prevent the vessel they are attending from swinging into the channel.

The Coast Guard is also establishing a safety zone within a 150-yard radius of the dredging operations being conducted in the Marcus Hook Anchorage by the dredge vessel PULLEN. The safety zone will protect mariners transiting the area from the potential hazards associated with dredging operations. No vessel may enter the safety zone unless it receives permission from the Captain of the Port.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this rule requires certain vessels to have one or two tugs alongside while at anchor, the requirement only applies to vessels 700 feet or greater in length, that choose to anchor in Anchorage 6 and 9. Alternate anchorage grounds such as Anchorage A off the entrance to the Mispillion River (''Anchorage A,'' described in § 110.157(a)(1) or Anchorage 1 off Bombay Hook Point (''Anchorage 1,'' described in § 110.157(a)(2)) in Delaware Bay, are also reasonably close and generally available. Vessels anchoring in Anchorages A and 1 are not required to have tugs alongside, except when specifically directed to do so by the Captain of the Port because of a specific hazardous condition. Furthermore, few vessels 700 feet or greater are expected to enter the port during the effective period. The majority of the vessels expected are less than 700 feet and thus will not be required to have tugs alongside.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule's greatest impact is on vessels 700 feet and greater in length which choose to anchor in Anchorage 6 and 9 and will have virtually no impact on any small entities.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you

wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(f) and (g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation.

List of Subjects

33 CFR Part 110

Anchorage Grounds.

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

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

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

2. A new temporary § 110.157(b)(11) is added to read as follows:

§ 110.157 Delaware Bay and River.

* * * * *

(b) * * *

(11) Additional requirements and restrictions for the anchorage grounds defined in paragraphs (a)(7), (a)(8), and (a)(10) of this section.

(i) Prior to anchoring in Anchorage 7 off Marcus Hook, as described in paragraph (a)(8) of this section, vessels must first obtain permission from the Captain of the Port, Philadelphia, at least 24 hours in advance of arrival. Permission to anchor will be granted on a ''first-come, first-serve'' basis. The Captain of the Port will allow only two vessels at a time to anchor in Anchorage 7, and no vessel may remain within Anchorage 7 for more than 12 hours.

(ii) For Anchorage 6 off Deepwater Point as described in paragraph (a)(7) of this section, and Anchorage 9 near entrance to Mantua Creek as described in paragraph (a)(10) of this section.

(A) Any vessel 700 feet or greater in length requesting anchorage shall obtain permission from the Captain of the Port, Philadelphia, Pennsylvania, at least 24 hours in advance.

(B) Any vessel from 700 to 750 feet in length shall have one tug alongside at all times while the vessel is at anchor.

(C) Any vessel greater than 750 feet in length shall have two tugs alongside at all times while the vessel is at anchor.

(D) The master, owner or operator of a vessel at anchor shall ensure that a tug required by this section is of sufficient horsepower to assist with necessary maneuvers to keep the vessel clear of the navigation channel.

(iii) For the purposes of paragraph (b)(11) of this section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf. The Captain of the Port can be reached at (215) 271–4940.

(iv) *Effective dates.* Paragraph (b)(11) of this section is effective from October 12, 2002 until November 2, 2002.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

4. Add temporary § 165.T05–087 to read as follows:

§ 165.T05–087 Safety Zone; Delaware Bay and River.

(a) *Location.* The following area is a safety zone: All waters within the arc of a circle with a 150-yard radius of the dredging vessel PULLEN operating in the vicinity of Anchorage 7, Marcus Hook Anchorage.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4940.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definition.* For the purposes of this temporary section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) *Effective dates.* This section is effective from October 12, 2002 to November 2, 2002.

Dated: October 11, 2002.

A.E. Brooks,

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

[FR Doc. 02–26820 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–127]

Drawbridge Operation Regulations; Florida East Coast Railroad Bridge, St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Florida East Coast Railroad Bridge across the St. Johns River, mile 24.9, Jacksonville, Florida. This deviation allows the bridge to remain in the closed position from 11 p.m. until 7 a.m. each day from October 27, 2002 until November 2, 2002, for emergency repairs.

DATES: This deviation is effective from 11 p.m. on October 27 until 7 a.m. on November 2, 2002.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07–02–127] will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Florida East Coast Railroad Bridge across the St. Johns River, Jacksonville, Florida, is a single leaf bascule bridge with a vertical clearance of 9 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 195 feet. The current operating regulation in 33 CFR 117.325(c) requires that: (1) The bridge be constantly tended and have a mechanical override capability for the automated operation. A radiotelephone must be maintained at the bridge for the safety of navigation. (2) The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass. (3) When a train approaches, large signs on both the upstream and downstream sides of the bridge flash ''Bridge Coming Down,'' the lights go to flashing red, and siren signals sound. After an eight minute delay, the draw lowers and locks if there are no vessels under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied. (4) After the train has cleared, the draw opens and the lights return to flashing green.

On October 9, 2002, the bridge owner, Florida East Coast Railroad, requested a deviation from the current operating regulations to allow the owner and operator to keep this bridge in the closed position during certain times each day to facilitate emergency repairs. The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.325(c) to complete emergency repairs to the bridge. Under this deviation the Florida East Coast Railroad Bridge, across the St. Johns River, mile 24.9, Jacksonville, FL, need not open from 11 p.m. until 7 a.m., each day, from October 27, 2002 until November 3, 2002.

Dated: October 16, 2002.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–27031 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–001]

RIN 2115–AA97

Security Zones; Captain of the Port Chicago Zone, Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard published a final rule on August 16, 2002, creating a permanent security zone on the navigable waters of the Des Plaines River, the Kankakee River, the Rock River, and Lake Michigan. The section number for the security zones in that rule was incorrect. This document corrects the section number for the security zones.

DATES: This correction is effective October 23, 2002.

FOR FURTHER INFORMATION CONTACT: MST3 Kathryn Varela, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard published a permanent security zone in the **Federal Register** on August 16, 2002, (67 FR 53501), adding section 165.908.

Need for Correction

As published, the section number used in the amendatory instruction and regulatory text was incorrect.

Correction of Publication

In rule FR Doc. 02–20755 published on August 16, 2002 (67 FR 53501) make the following corrections. On page 53502, in the third column, in line 49 and in line 50, change ''165.908'' to read ''165.910''.

Dated: September 30, 2002.

L. M. Henderson,

Commander, U.S. Coast Guard, Acting Captain of the Port Chicago.

[FR Doc. 02–27032 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–522]

RIN 2115–AA97

Safety Zone; M/V ROY A. JODREY Shipwreck, Wellesley Island, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the St. Lawrence River around the shipwreck of the M/V ROY A. JODREY. This safety zone is necessary to ensure the safety of site workers, recreational divers and the general public from the hazards associated with a pollution cleanup operation being conducted on the M/V ROY A. JODREY. This safety zone is intended to restrict vessels from anchoring, and unauthorized individuals from diving, on or around the shipwreck.

DATES: This rule is effective from 11 a.m. (local) on October 10, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–522 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Craig Wyatt, U.S. Coast Guard Marine Safety Office Buffalo, at (716) 843–9574.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard just recently became aware of oil being released from the wreckage of the M/V ROY A. JODREY. Further investigation indicates that oil is located in spaces throughout the vessel and that a recovery operation is necessary to ensure against future oil pollution.

Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property. The safety zone will protect divers and individuals involved in the recovery process by creating an area free of vessels anchoring and unknown divers being in close proximity to recovery machinery. In addition, it will assist in protecting the integrity of the hull from possible damage due to vessels anchoring in the area or recreational divers inadvertently causing further discharge prior to the completion of the recovery operation. The recovery operation is planned to start immediately to prevent, as much as possible, future oil pollution.

Background and Purpose

This safety zone is necessary to ensure the safety of divers and the general public from exposure to oil or hazardous materials both at the wreck and at downstream sites to which oil and hazardous material may be liberated by recreational diving activity or anchors of other vessels. The Captain of the Port Buffalo has authorized all vessels transiting through this area to pass through the safety zone, all vessels intending to stop and any divers intending on visiting the wreckage of the M/V ROY A. JODREY must request permission from the Captain of the Port Buffalo or his designated on-scene representative prior to entry.

The safety zone will consist of all waters and adjacent shoreline of the St. Lawerence River encompassed by the arc of a circle with a 150-yard radius with its center in approximate position 44°19.55 N, 075°56.00 W. These coordinates are based upon North American Datum 1983 (NAD 83). This location is in close vicinity to U.S. Coast Guard Station Alexandria Bay.

Regulatory Evaluation

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (*see* **ADDRESSES.**)

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

List of Subject in 33 CFR Part 165

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

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

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

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

2. Add § 165.917 to read as follows:

§ 165.917 Safety Zone; M/V ROY A. JODREY, St. Lawrence River, Wellesley Island, New York.

(a) *Location.* The following area is safety zone: all waters and adjacent shoreline encompassed by the arc of a circle with a 150-yard radius of the wreck of the M/V ROY A. JODREY, with its center in approximate position 44°19.55 N, 075°56.00 W (NAD 83).

(b) *Regulations.*

(1) The regulations in § 165.23 apply to this section.

(2) Except as provided in this section, no vessel or person may enter or remain in this safety zone without the permission of the Captain of the Port.

(3) The Captain of the Port Buffalo has authorized all vessels to transit through the safety zone on the condition that they proceed directly through the zone without stopping.

(4) Any vessel wanting to stop, fish, anchor or discharge divers inside the zone, or any divers wanting to visit the wreckage of the M/V ROY A. JODREY, must request permission from the Captain of the Port Buffalo or his designated on-scene representative prior to entry into the zone.

Dated: October 10, 2002.

P.M. Gugg,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 02–26819 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–082–FOAa; FRL–7397–5]

Determination of Attainment of the 1-Hour Ozone Standard for San Diego County, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking contains EPA's final determination that the San Diego area has attained the 1-hour ozone national ambient air quality standard (NAAQS) by the deadline required by the Clean Air Act (CAA). Elsewhere in this **Federal Register**, we are withdrawing our prior direct final determination, because an adverse comment was submitted on that action. In this rulemaking, we are responding to that comment and issuing our final determination of attainment.

EFFECTIVE DATE: This determination is effective on November 22, 2002.

ADDRESSES: You can inspect the docket for this action at EPA's Region 9 office during normal business hours, at the following location: Air Planning Office, USEPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, U.S. EPA Region 9, at (415) 972–3957, or *jesson.david@epa.gov.*

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

I. Background

For background on the San Diego 1-hour ozone classification, status, and air quality, please refer to our direct final determination of attainment, which was published on August 23, 2002 (67 FR 54580). In that same issue, we published an accompanying proposed determination of attainment, whose public comment period expired on September 23, 2002 (67 FR 54601). Because we received an adverse comment during the public comment period, we are withdrawing the direct final determination elsewhere in this **Federal Register**, responding to the comment, and finalizing our determination of attainment. As stated in our proposal, we will not institute a second comment period on this action.

II. Response to Public Comment

We received one public comment from the Environmental Health Coalition of San Diego (EHC). We summarize the content of that comment and respond below.

Comment 1: EPA should clarify the definition of a 1-hour ozone exceedance. The 1-hour standard is 0.12 parts per million (ppm). It is EHC's position that any 1-hour ozone measurement greater than 0.120 ppm constitutes an exceedance.

Response: Although the 1-hour ozone NAAQS itself includes no discussion of specific data handling conventions, our publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 parts per million (ppm). 40 CFR 50.9(a) states that: ''The level of the national 1-hour primary and secondary ambient air quality standards for ozone . . . is 0.12 parts per million. . . . The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million . . . is equal to or less than 1, as determined by appendix H to this part.'' We have clearly communicated the data handling conventions for the 1-hour ozone NAAQS in regulation and guidance documents, as discussed below. In the 1990 CAA Amendments, Congress expressly recognized the continuing validity of EPA guidance.

As early as 1977, EPA issued guidance that the level of our NAAQS dictates the number of significant figures to be used in determining whether the standard was exceeded (*Guidelines for the Interpretation of Air Quality Standards,* OAQPS No. 1.2–008, February 1977). In addition, the regulations governing the reporting of annual summary statistics from ambient monitoring stations for use by EPA in determining national air quality status clearly indicate the rounding convention to be used for 1-hour ozone data.[1]

In 1979, EPA issued additional guidance specific to ozone in which EPA provided that ''the stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of .12 ppm means that measurements are to be rounded to two decimal places (.005 rounds up), and, therefore, .125 ppm is the smallest concentration value in excess of the level of the standard.'' *Guideline for the Interpretation of Ozone Air Quality Standards,* January 1979, EPA–450/4–79–003, p. 6. EPA's guidance on air quality modeling is consistent with the Guideline. See, for example, *Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS,* June 1996, EPA–454/G–95–007, pp. 1–3.

The level of the 1-hour ozone NAAQS is defined in 40 CFR 50.9 as 0.12 parts per million (ppm), not 120 parts per billion (ppb) as implied by the commenter. In other words, the 1-hour ozone NAAQS is specified as two significant digits and the data handling approach employed to compare ambient air quality data to the 1-hour ozone standard is to round to two decimal places as per the regulations and guidance referenced above.

In the 1990 Amendments to the CAA, Congress expressly provided that ''[e]ach regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this CAA, as in effect before the date of the enactment of the CAA Amendments of 1990 shall remain in effect according to its terms. . . .'' Section 193. Thus, under the amended CAA, Congress expressly carried forward EPA interpretations set forth in guidance such as the guideline documents interpreting the NAAQS.

Comment 2: The commenter requests a complete list of all 1-hour ozone measurements that exceeded 0.120 ppm during 1999–2001 within San Diego County, and an explanation of why any of these events was not counted as an exceedance.

Response: As discussed in response to Comment 1, we do not consider values less than 0.125 ppm to be exceedances of the 1-hour ozone NAAQS, since the standard is 0.12 ppm and standard rounding conventions apply. Nevertheless, for informational purposes we present below in Table 1—''San Diego Peak 1-Hour Ozone Concentrations and Design Values, 1999–2001,'' a list of all concentrations greater than 0.120 ppm recorded at each ozone monitor within San Diego County for the period 1999–2001, and the design value rounded to the third decimal point for each monitor.

TABLE 1.—SAN DIEGO PEAK 1-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES, 1999–2001

[Source: EPA's Aerometric Information Retrieval System]

Monitor	Concentrations > 0.120	Design value
Alpine (PAMS/SLAMS)	0.135 ppm (5/08/01) 0.124 ppm (6/13/99) 0.121 ppm (4/26/00)	0.118 ppm.
Camp Pendleton (PAMS/SLAMS)	None	0.098 ppm.
Chula Vista (SLAMS)	None	0.099 ppm.
Del Mar (SLAMS)	None	0.092 ppm.
El Cajon (PAMS/NAMS)	0.122 ppm (5/08/01)	0.104 ppm.
Escondido (SLAMS)	0.141 ppm (9/30/01) 0.124 ppm (9/16/00) 0.123 ppm (4/08/00)	0.110 ppm.
Oceanside (SLAMS)	None	0.091 ppm.
Otay Mesa (SLAMS)	None	0.089 ppm.
San Diego/Overland (PAMS/NAMS)	0.135 ppm (9/30/01)	0.106 ppm.
San Diego/12th St (SLAMS)	None	0.088 ppm.

According to our regulations and guidance, an area is in attainment if its design value does not exceed the 0.12 ppm 1-hour ozone standard and the area has averaged less than 1 exceedance per year at each monitor for the applicable

[1] ''The air quality concentration should be rounded to the number of significant digits used in specifying the concentration intervals. The digit to the right of the last significant digit determines the rounding process. If this digit is greater than or equal to 5, the last significant digit is rounded up. The insignificant digits are truncated. For example, 100.5 ug/m3 rounds to 101 ug/m3 and 0.1245 ppm rounds to 0.12 ppm.'' 40 CFR part 58, appendix F, 2 Required Information.

3-year period. Table 1 shows that no San Diego monitor had a design value greater than 0.120 ppm for the period 1999–2001. Table 1 also shows that only 3 exceedances of the NAAQS occurred during this period: the 0.135 ppm concentration recorded at Alpine on May, 8, 2001; the 0.141 ppm concentration recorded at Escondido on September 30, 2001; and the 0.135 ppm concentration recorded at Overland/San Diego on September 30, 2001. Thus, even assuming (as the commenter mistakenly does) that all values above 0.120 ppm are exceedances of the NAAQS, the San Diego area would have attained the standard during this period.

Comment 3: Any emission source exceeding its permitted NO_X emission limit by even 0.1 ppm would potentially be subject to a Notice of Violation. This same standard should be applied to the analysis of ambient ozone data.

Response: We determine an exceedance of the NAAQS according to our regulations and established policies, as summarized in response to Comment 1 above, not by analogy to a local air agency's application of its rules. Moreover, the San Diego County Air Pollution Control District (SDCAPCD) has indicated that the District applies to its compliance determinations the same significant digit interpretation and rounding conventions that we use for the NAAQS.[2]

Comment 4: The commenter expressed concern that the District is already acting to relax new source review (NSR) requirements to become effective when EPA redesignates the area to attainment. Given that the District does not yet have either an approved maintenance plan for the 1-hour ozone NAAQS or an approved attainment plan for the 8-hour ozone NAAQS, this relaxation is premature.

Response: The proposed relaxation is consistent with the Clean Air Act and EPA policy, which provide that the Prevention of Significant Deterioration permitting program may replace the NSR program when an area is redesignated to attainment.[3] EPA agrees with the commenter that a provision for continued offsets would be beneficial in positioning the area to attain expeditiously the 8-hour ozone NAAQS, and we believe that retention of the offset provisions could also contribute toward attainment of the fine particulate matter (PM–2.5) NAAQS in San Diego County. Consequently, EPA supports the SDCAPCD's intention to retain an offset requirement for purposes of State law, although such retention is not federally mandated.

[2] ''San Diego APCD Staff Responses to EHC Comments on EPA's Finding of Attainment.'' This document is included in the docket for this action.

[3] ''Generally, the requirements of the part D NSR permitting nonattainment program will be replaced by the PSD program once an area is redesignated to attainment * * *'' General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, April 16, 1992 (57 FR 13564).

III. Final Action

No comments were submitted that change our proposed finding. Under CAA section 181(b)(2)(A), we are therefore finalizing our finding that the San Diego area has attained the 1-hour ozone NAAQS by the applicable attainment deadline of November 15, 2001.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely determines that the San Diego area has attained a previously-established national ambient air quality standard based on an objective review of measured air quality data. As such, the action 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 does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 makes a determination based on air quality data, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This 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.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use voluntary consensus standards (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to today's final action because the action does not require the public to perform activities conducive to the use of VCS. 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.*).

List of Subjects in 40 CFR Part 81

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

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

Dated: October 9, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 02–26991 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA 082–FOAb; FRL–7397–6]

Withdrawal of Direct Final Determination of Attainment of the 1-Hour Ozone Standard for San Diego County, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On August 23, 2002 (67 FR 54580), EPA published a direct final determination that the San Diego area had attained the 1-hour ozone air quality standard by the deadline required by the Clean Air Act. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The

direct final rule stated that if adverse comments were received by September 23, 2002, EPA would publish a timely withdrawal in the **Federal Register**. EPA received a timely adverse comment and is, therefore, withdrawing the direct final approval. Elsewhere in this issue EPA addresses the comments in a final action based on the parallel proposal also published on August 23, 2002 (67 FR 54601). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

DATES: The direct final rule published on August 23, 2002 (67 FR 54580), is withdrawn as of October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region IX, (415) 972–3957 or *jesson.david@epa.gov.*

List of Subjects in 40 CFR Part 81

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

Dated: October 9, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 02–26989 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR 1002

[STB Ex Parte No. 542 (Sub–No. 9)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—Policy Statement

AGENCY: Surface Transportation Board, Transportation.

ACTION: Policy statement.

SUMMARY: The Surface Transportation Board (Board) clarifies the scope of its rule assessing a fee for filing an appeal to a Surface Transportation Board adjudicative decision or a petition to revoke a notice of exemption as including all forms of appeal from all types of adjudicative decisions on the merits. This fee applies to petitions to revoke and petitions to reject, even where the petitioning party has not had an earlier opportunity to present its views to the Board.

DATES: This policy statement is effective October 23, 2002 immediately.

FOR FURTHER INFORMATION CONTACT: Anne K. Quinlan, (202) 565–1727. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under the Independent Offices Appropriations Act, 31 U.S.C. 9701 (IOAA), federal agencies are obliged to establish fees for specific services provided to identifiable beneficiaries. Office of Management and Budget (OMB) Circular No. A–25 contains guidelines for agencies to apply in assessing and collecting those fees.

Pursuant to the IOAA and Circular No. A–25, the Board established a fee item, at 49 CFR 1002.2(f)(61), covering ''Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d).'' The $150 fee, which recovers only a small portion of the costs incurred in handling these types of matters, was proposed to apply to ''most appeals to the Board's decisions.'' To illustrate some examples, the Board stated:

> The fee would cover the following types of appeals: (1) An appeal of right to an initial decision as set forth [at] 49 CFR 1115.2; (2) a petition for administrative review as set forth [at] 49 CFR 1115.3; (3) a petition to reopen an administratively final decision as set forth in 49 CFR 1115.4; and (4) a petition to revoke an exemption pursuant to 49 U.S.C. 10502(d).

Regulations Governing Fees for Service, STB Ex Parte No. 542 (STB served Apr. 4, 1996), at 8–9.

In a different phase of the 1996 rulemaking proceeding in Ex Parte No. 542, some parties asked us not to apply fee item 61 to petitions to revoke filed in exemption proceedings in which the carrier seeking a license has already paid a fee, arguing that any expenses borne by the agency to consider the petition to revoke should already have been built into the fee paid by the carrier seeking the license. We rejected the argument and explicitly found that ''the costs for administrative appeals are [not] included in the costs for the initial proceeding. * * * Our costs for a proceeding do not include costs for staff time expended beyond issuance of the initial decision. * * *'' *Regulations Governing Fees for Service,* 1 S.T.B. 179, 202 (1996) (*1996 Fee Update*). The Board confirmed this ruling in denying a further request for reopening. *Regulations Governing Fees for Service,* 1 S.T.B. 883, 886 (1996), *aff'd sub nom. United Transp. Union-Illinois Legislative Bd.* v. *STB,* No. 97–1038 (D.C. Cir. Nov. 10, 1997), 1997 U.S. App. LEXIS 37560.

This matter apparently continues to produce some uncertainty, and we therefore wish to make it clear that fee item 61 was always intended to apply to petitions to revoke or to reject exemptions, even when the party has not had an earlier opportunity to present its views to us. As we indicated in our prior decisions, these appeals and petitions generate substantial work on our part—far more than is reflected by the nominal fee charged—and the costs have never been covered by the fees paid with the initial filing. Therefore, under the IOAA, we are obliged to establish a fee for these specific services provided to identifiable beneficiaries. Of course, as we stated in adopting fee item 61, any party for whom the nominal filing fee poses a hardship may seek a waiver of the fee in an individual case.

We do not propose a new rule or policy here, as we are simply confirming that we have always considered fee item 61 to cover appeals and petitions to revoke or reject an exemption, even when the petition is the filer's first opportunity to inform us of the filer's views. For that reason, we do not seek public comment on this announcement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: October 16, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–26965 Filed 10–22–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 101802A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 Pacific halibut bycatch allowance specified for the yellowfin sole fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 20, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.The 2002 halibut bycatch allowance specified for the BSAI trawl yellowfin sole fishery category, which is defined at § 679.21(e)(3)(iv)(B)(1), is 886 metric tons (67 FR 956, January 8, 2002).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 halibut bycatch allowance specified for the yellowfin sole fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

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 that the need to immediately implement this action to avoid exceeding 2002 halibut bycatch allowance specified for the yellowfin sole fishery in the BSAI constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B). These procedures are unnecessary and contrary to the public interest because of the need to implement these measures in a timely fashion to avoid exceeding 2002 halibut bycatch allowance specified for the yellowfin sole fishery in the BSAI. This constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

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

Dated: October 18, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–26977 Filed 10–18–02; 2:35 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 205
Wednesday, October 23, 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 AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA58

Review Inspection Requirements

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) published an advanced notice of proposed rulemaking in the **Federal Register** on August 21, 2002, asking for comments on amending the regulations the United States Grain Standards Act (Act), as amended. The revision will allow interested persons to specify the quality factor(s) that would be redetermined during a reinspection or appeal inspection for grade. The 60 day comment period will close October 21, 2002. It has been brought to our attention that several potential commenters need additional time to formulate their responses to the proposed rule. Therefore, we are reopening and extending the comment period to provide interested parties with additional time in which to comment.

DATES: Comments must be received on or before November 21, 2002.

ADDRESSES: Written comments must be submitted to Tess Butler, GIPSA, USDA, Room 1647–S, Stop 3604, Washington, DC 20250; FAX (202) 690–2755; e-mail, *comments.gipsadc@usda.gov*.

All comments received will be made available for public inspection in Room 1647-South Building, 1400 Independence Avenue, SW, Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John Giler, at (202) 720–1748.

SUPPLEMENTARY INFORMATION: GIPSA published a proposed rule in the **Federal Register** on August 21, 2002 (67 FR 54133), asking for comments to allow interested persons to specify the quality factor(s) that would be predetermined during a reinspection or appeal inspection for grade. The regulations to be amended are issued under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*)

Comments on the proposed rule were required to be received on or before October 21, 2002. Several potential commenters have indicated a need for additional time to formulate their responses to the proposed rule. Therefore, GIPSA is reopening and extending the comment period for the proposed rules for an additional 30 days. The action will allow interested persons additional time to prepare and submit comments.

Dated: October 17, 2002.

Donna Reifschneider,

Administrator.

[FR Doc. 02–26922 Filed 10–22–02; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM237; Notice No. 25–02–08–SC]

Special Conditions: Boeing Model 777–200 Series Airplanes; Overhead Crew Rest Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Boeing Model 777–200 series airplanes. This airplane will have novel or unusual design features associated with the installation of an overhead flightcrew rest and an overhead flight attendant rest. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before November 22, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM237, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM237. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On December 19, 2001, the Boeing Commercial Airplane Group (BCAG), P.O. Box 3707, Seattle, Washington, 98124, applied for a change to Type

Certificate No. T00001SE for a design change to install an overhead flightcrew rest (OFCR) and an overhead flight attendant rest (OFAR) in the Boeing Model 777–200 series airplanes. The Boeing Model 777–200 series airplanes are large twin engine airplanes with various passenger capacities and ranges depending upon airplane configuration.

The OFCR compartment, adjacent to Door 1, is located in the overhead above the main passenger cabin and will include a maximum of two private berths and two seats. Occupancy of the OFCR will be limited to a maximum of four occupants. Several different OFAR compartments are being proposed under this design change. The OFAR adjacent to Door 3 will have berths for a maximum of seven occupants. The OFAR adjacent to Door 5 will have three compartment options available, with berths for a maximum of six, eight or ten occupants.

Both crew rests, the OFCR and OFAR, will be accessed from the main deck by stairs. In addition, an emergency hatch that opens directly into the main passenger cabin area will be provided for each compartment. A smoke detection system, an oxygen system, and occupant amenities will also be provided. These compartments will only be occupied in flight, not during taxi, takeoff, or landing.

Overhead crew rest compartments have been previously installed and certified in the main passenger cabin area, above the main passenger area, and below the passenger cabin area adjacent to the cargo compartment of the Boeing Model 777–200, –300 series airplanes. Also, overhead crew rest compartments have been installed on the Boeing Model 747 series airplanes.

The FAA has previously issued special conditions that contain the additional safety standards that must be met for the overhead crew rests on Boeing Model 747 series airplanes. The FAA certified the lower lobe flight attendant rest on the Boeing Model 777–200 series airplanes by an equivalent level of safety finding to the requirements of § 25.819. In addition, the FAA recently issued Special Conditions No. 25–169–SC, dated December 1, 2000, amended on May 2, 2001, for Boeing Model 777–200 series airplanes for overhead crew rest compartments for Flight Structures Inc. of Arlington, Washington. The FAA also issued Special Conditions No. 25–192–SC, dated November 6, 2001, for Model 777–200 series airplanes for overhead crew rest compartments for the Boeing Commercial Airplane Group—Wichita Division Designated Alteration Station (DAS) of Wichita, Kansas.

Type Certification Basis

Under the provisions of § 21.101, Amendment 21–69, effective September 16, 1991, Boeing Commercial Airplane Group must show that the Model 777–200 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. T00001SE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777–200 series airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–82. The U.S. type certification basis for the Boeing Model 777–200 series airplanes is established in accordance with 14 CFR 21.17 and 21.29 and the type certification application date. The type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777–200 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2) Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

Compliance with these proposed special conditions does not relieve the applicant from the existing airplane certification basis requirements. One particular area of concern is that the overhead crew rest installation creates a smaller compartment volume within the overhead area of the airplane. The applicant must comply with the requirements of §§ 25.365(e), (f), and (g), for the overhead crew rest compartment, as well as any other airplane compartments whose decompression characteristics are affected by the installation of an overhead crew rest compartment. Compliance with § 25.831 must be demonstrated for all phases of flight where occupants will be present.

Novel or Unusual Design Features

While the installation of an overhead crew rest compartment is not a new concept for large transport category airplanes, each compartment design has unique features by virtue of its design, location, and use on the airplane. Previously, crew rest compartments have been installed and certified in the main passenger cabin area of the Boeing Model 777–200 and –300 series airplanes and the overhead area of the passenger compartment of the Model 777–200. Other crew rest compartments have been installed below the passenger cabin area adjacent to the cargo compartment. Similar overhead crew rest compartments have also been installed on the Boeing Model 747 series airplanes. The modification is evaluated with respect to the interior and assessed in accordance with the certification basis of the airplane. However, part 25 does not provide all of the requirements for crew rest compartments within the overhead area of the passenger compartment. Further, these special conditions do not negate the need to address other applicable part 25 regulations.

Due to the novel or unusual features associated with the installation of this overhead crew rest compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificate.

Operational Evaluations and Approval

These special conditions outline requirements for overhead crew rest compartment design approvals (*i.e.*, type design changes and supplemental type certificates) administered by the FAA's Aircraft Certification Service. Prior to operational use of an overhead crew rest compartment, the FAA's

Flight Standards Service must evaluate and approve the ''basic suitability'' of the overhead crew rest compartment for crew occupation. Additionally, if an operator wishes to utilize an overhead crew rest compartment as ''sleeping quarters,'' the crew rest compartment must undergo an additional evaluation and approval (Reference §§ 121.485(a), 121.523(b) and 135.269(b)(5)). Compliance with these special conditions does not ensure that the applicant has demonstrated compliance with the requirements of part 121 or part 135.

In order to obtain an operational evaluation, the type design holder must contact the Aircraft Evaluation Group (AEG) in the Flight Standards Service and request a ''basic suitability'' evaluation or a ''sleeping quarters'' evaluation of their crew rest. The results of these evaluations should be documented in a 777 Flight Standardization Board (FSB) Report Appendix. Individual operators may reference these standardized evaluations in discussions with their FAA Principal Operating Inspector (POI) as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved overhead crew rest compartment configuration that effect crewmember emergency egress or any other procedures affecting the safety of the occupying crewmembers and/or related training shall require a re-evaluation and approval. The applicant for a crew rest design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new crew rest evaluation is required.

Procedures must be developed to assure that a crewmember entering the overhead crew rest compartment through the vestibule to fight a fire will examine the vestibule and the lavatory areas for the source of the fire prior to entering the remaining areas of the crew rest compartment. These procedures are intended to assure that the source of the fire is not between the crewmember and the primary exit.

Discussion of the Proposed Special Conditions

In general, the requirements listed in these proposed special conditions are similar to those previously approved in earlier certification programs, such as for the Boeing Model 777–200 series airplanes and Boeing Model 747 overhead crew rest compartments. These proposed special conditions establish seating, communication, lighting, personal safety, and evacuation requirements for the overhead crew rest compartment. In addition, passenger information signs, supplemental oxygen, and a seat or berth for each occupant of the crew rest compartment would be required. These items are necessary because of turbulence and/or decompression. When applicable, the proposed requirements parallel the existing requirements for a lower deck service compartment and provide an equivalent level of safety to that provided for main deck occupants.

Proposed Special Condition No. 1

It is proposed that seats and berths must be certified to the maximum flight loads. Due to the location and configuration of the overhead crew rest compartment, it is proposed that occupancy during taxi, takeoff, and landing would be prohibited, and occupancy limited to crewmembers during flight. Occupancy would be limited to four in the overhead flightcrew rest (OFCR) or the combined total of approved seats and berths in the OFCR whichever is less. Occupancy would be limited to twelve in an overhead flight attendant rest (OFAR), or the combined total of approved seats and berths in the OFAR, whichever is less. Requirements are proposed for door access and locking and the installation of ashtrays. Appropriate placards are proposed to prohibit passenger access, access by crewmembers not trained in evacuation procedures, smoking and hazardous quantities of flammable fluids, explosives, or other dangerous cargo. The phrase ''hazardous quantities'' as used in this SC permits trained crewmembers to continue to carry baggage containing minute quantities of flammable fluids (*e.g.*, finger nail polish, aerosol hairspray, etc.) that would pose no threat to the airplane or its occupants. This wording is consistent with the existing wording of §§ 25.831(d), 25.855 (h)(2), 25.857 (b)(2), (c)(3) & (e)(4) and 25.1353(c)(3).

During a previous publication of substantially identical special conditions, a comment was received after the comment period closed. The commenter thought that requiring placards prohibiting storage of ''hazardous quantities of flammable fluids'' was unnecessary and a duplication of International Air Transport Association (IATA) Dangerous Goods Regulations, specifically, ''Provisions for Dangerous Goods Carried by Passengers or Crew.'' The FAA concurs with the commenter that the placard requirement is similar to the IATA requirement, however, based on several factors the FAA finds that the duplication is warranted and consistent with maintaining an equivalent level of safety. While flammable fluid placards are not required in the passenger cabin, it is also an occupied area with a high degree of monitoring by passengers and crew. By contrast the overhead crew rest compartment may go unoccupied for long periods of time. The fire protection methods employed for this type of remote area are predicated on minimization of flammable materials.

Proposed Special Condition No. 2

It is proposed that to preclude occupants from being trapped in the crew rest compartment in the event of an emergency, there must be at least two emergency evacuation routes that could be used by each occupant of the overhead crew rest compartment to rapidly evacuate to the main cabin. These two routes must be sufficiently separated to minimize the possibility of an event rendering both routes inoperative. The main entry route meeting the appropriate requirements may be utilized as one of the emergency evacuation routes, or alternatively two other emergency routes must be provided. The intent of Special Condition No. 2(b) is to ensure that one of the two routes would be clear of moving occupants under most foreseeable circumstances.

The following clarifies the intent of Special Condition No. 2(b) concerning the utility of the egress routes. There are three issues that should be considered. First, occupied passenger seats are not considered an impediment to the use of an egress route, (for example, the egress route drops into one row of seats by means of a hatch), provided that the seated occupants do not inhibit the opening of the egress route (for example, a hatch).

Second, an egress route may utilize areas where normal movement of passengers occurs if it is demonstrated that the passengers would not impede egress to the main deck. If the egress means (a hatch in this design) opens into a main aisle, cross aisle, or galley complex to an extent that it contacts a standing ninety-fifth percentile male, then the contact should only momentarily interrupt the opening of the egress hatch. The interruption to the egress means can be considered momentary if the egress means would continue to open normally once the person has moved out of the way.

Third, the escape hatch should be provided with a means to prevent it from being inadvertently closed by a passenger on the main deck. This will ensure main deck passengers can not prevent the overhead crew rest

occupants from using the escape route. The crew should be able to stow the escape hatch prior to landing.

Training requirements for the occupants of the overhead crew rest area are included in the proposal.

New qualitative and quantitative criteria have been added to this special condition since the issuance of Special Conditions No. 25–192–SC to clarify how compliance can be shown to Special Condition No. 2(a).

Proposed Special Condition No. 3

It is proposed that each evacuation route must be designed and procedures specified to allow for removal of an incapacitated person from the crew rest compartment to the main deck. Additional assistants to evacuate an incapacitated person may ascend up to one half the elevation change from the main deck to the overhead compartment, or to the first landing, whichever is lower. This proposed special condition allows for five passenger seats to be emptied for the purpose of demonstrating evacuation of an incapacitated person, where the escape route is over seats.

Proposed Special Condition No. 4

It is proposed that exit signs, placards for evacuation routes, illumination for signs, placards and door handles be required. This proposed special condition allows for exit signs with a reduced background area to be used. The material surrounding the sign must be light in color to more closely match and enhance the illuminated background of the sign that has been reduced in area (letter size stays the same). These reduced background area signs have been allowed under previous equivalent levels of safety for small transport executive jets.

Proposed Special Condition No. 5

An emergency lighting system is proposed to prevent the occupants from being isolated in a dark area due to loss of the crew rest compartment lighting. The emergency lighting must be activated under the same conditions as the main deck emergency lighting system.

Proposed Special Condition No. 6

It is proposed that a two-way voice communications and public address speaker(s) be required to alert the occupants to an in-flight emergency. Also, a system to alert the occupants of the overhead crew rest compartment in the event of decompression and to don oxygen masks is proposed.

Proposed Special Condition No. 7

It is proposed to inform occupants of each overhead crew rest of an emergency situation via emergency alarm means, use of the public address system, or crew interphone system. It is proposed that power is to be maintained to the emergency alarm system for a specific duration after certain failures.

Proposed Special Condition No. 8

It is proposed that a means be required that is readily detectable by seated or standing occupants of the overhead crew rest compartment to indicate when seat belts should be fastened. The requirement for visibility of the sign by standing occupants may be met by a general area sign that is visible to occupants standing in the main floor area or corridor of the crew rest compartment. It would not be essential that the sign be visible from every possible location in the crew rest compartment. However, the sign should not be remotely located or located where it may be easily obscured.

Proposed Special Condition No. 9

It is proposed that the overhead crew rest compartment, which is remotely located from the passenger cabin, be equipped with these tools specified to fight a fire should a fire occur: a hand-held fire extinguisher, protective breathing equipment, and a flashlight.

This proposed requirement has been modified from previously issued Special Conditions No. 25–192–SC to clarify how it should be interpreted relative to the requirements of § 25.1439(a). Amendment 25–38 modified the requirements of § 25.1439(a) by adding, ''In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation.'' The requirements of § 25.1439(a) apply to the overhead crew rest compartment, which is an isolated separate compartment. However, the PBE requirements for isolated separate compartments of § 25.1439(a) are not appropriate because the overhead crew rest compartment is novel and unusual in terms of the number of occupants. In 1976 when Amendment 25–38 was adopted, small galleys were the only isolated compartments that had been certificated with a maximum of two crewmembers expected to occupy those galleys. Special Condition No. 9 addresses overhead crew rest compartments that can accommodate up to 12 crewmembers. This large number of occupants in an isolated compartment was not envisioned at the time Amendment 25–38 was adopted. In the event of a fire, the occupant's first action should be to leave the confined space, unless the occupant(s) is fighting the fire. It is not appropriate for all overhead crew rest compartment occupants to don PBE. Taking the time to don the PBE would prolong the time for the occupant's emergency evacuation and possibly interfere with efforts to extinguish the fire.

Proposed Special Condition No. 10

A smoke detection system and appropriate warnings are proposed since the overhead crew rest compartment is remotely located from the main passenger cabin and will not always be occupied. The smoke detection system must be capable of detecting a fire in each area of the compartment created by the installation of a curtain or door.

Proposed Special Condition No. 11

It is proposed that the overhead crew rest compartment be designed such that fires within the compartment can be controlled without having to enter the compartment; or, the design of the access provisions must allow crew equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the firefighting equipment, and to gain access must not exceed the time for the crew rest compartment to become smoke filled, making it difficult to locate the fire source.

Proposed Special Condition No. 12

The proposed special condition requirement concerning fires within the compartment was developed for, and applied to, Boeing Model 777–200 and –300 series airplanes lower lobe crew rest compartments. It was not applied to the overhead crew rest compartment in earlier certification programs such as the Boeing Model 747 airplanes. The Model 747 special conditions were issued before the new flammability requirements were developed. This requirement originated from a concern that a fire in an unoccupied overhead crew rest compartment could spread into the passenger compartment or affect other vital systems, before it could be extinguished. The proposed special conditions would require either the installation of a manually activated fire containment system that is accessible from outside the overhead crew rest compartment, or a demonstration that the crew could satisfactorily perform the

function of extinguishing a fire under the prescribed conditions. A manually activated built-in fire extinguishing system would be required only if a crewmember could not successfully locate and extinguish the fire during a demonstration where the crewmember is responding to the alarm.

The overhead crew rest compartment smoke or fire detection and fire suppression systems (including airflow management features which prevent hazardous quantities of smoke or fire extinguishing agent from entering any other compartment occupied by crewmembers or passengers) is considered complex in terms of paragraph 6d of Advisory Circular (AC) 25.1309–1A, ''System Design and Analysis.'' In addition, the FAA considers failure of the overhead crew rest compartment fire protection system (*i.e.*, smoke or fire detection and fire suppression systems) in conjunction with an overhead crew rest fire to be a catastrophic event. Based on the ''Depth of Analysis Flowchart'' shown in Figure 2 of AC 25.1309–1A, the depth of analysis should include both qualitative and quantitative assessments (reference paragraphs 8d, 9, and 10 of AC 25.1309–1A). In addition, it should be noted that hazardous quantities of flammable fluids, explosives, or other dangerous cargo are prohibited from being carried in the overhead crew rest compartment, a prohibition addressed in proposed Special Condition No. 1(a)(5).

The requirements to enable crewmember(s) quick entry to the overhead crew rest compartment and to locate a fire source inherently places limits on the amount of baggage that may be carried and the size of the overhead crew rest compartment. The overhead crew rest compartment is limited to stowage of crew personal luggage and it is not intended to be used for the stowage of cargo or passenger baggage. The design of such a system to include cargo or passenger baggage would require additional requirements to ensure safe operation.

The FAA accepts the fact that during the one-minute smoke detection time that penetration of a small quantity of smoke from this overhead crew rest design into an occupied area on this airplane configuration would be acceptable based upon the limitations placed in this and other associated special conditions. The FAA position is predicated on the fact that these special conditions place sufficient restrictions in the quantity and type of material allowed in crew carry-on bags that the threat from a fire in this remote area would be equivalent to that experienced on the main cabin.

Proposed Special Condition No. 13

It is proposed that the oxygen equipment and a supplemental oxygen deployment warning for the overhead crew rest compartment must be equivalent to that provided for main deck passengers.

Proposed Special Condition No. 14

Requirements are proposed for a divided overhead crew rest compartment to address supplemental oxygen equipment and deployment means, signs, placards, curtains, doors, emergency illumination, alarms, seat belt fasten signals, and evacuation routes.

The wording in the Special Condition No. 14(g) was modified from previously issued special conditions to clarify that oxygen masks are not required in common areas where seats or berths are not installed. A visual indicator to don oxygen masks is required in these areas. The visual indicator is in addition to the aural alert for donning oxygen masks.

Proposed Special Condition No. 15

It is proposed to eliminate the requirements for flight deck communication as required by Special Condition No. 6, and emergency fire fighting and protective equipment as required by Special Condition No. 9, for lavatories or other small areas within an overhead crew rest compartment.

Proposed Special Condition No. 16

It is proposed that where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher.

Proposed Special Condition No. 17

It is proposed that the materials in the crew rest compartment must meet the flammability requirements of § 25.853(a), and the mattresses must meet the fire blocking requirements of § 25.853(c).

Proposed Special Condition No. 18

This proposed requirement is a reiteration of existing main deck lavatory requirements to provide clear applicability. Overhead crew rest compartment lavatories would be required to comply with the existing rules on lavatories in the absence of other specific requirements. In addition, any lavatory located in the crew rest compartment must also meet the requirements of Special Condition No. 10 for smoke detection due to placement within this remote area.

Proposed Special Condition No. 19

This special condition proposes fire protection requirements for overhead crew rest stowage compartments as a function of size (compartment interior volume). The special condition has been revised from the special conditions previously issued due to the introduction of larger stowage compartments into the overhead crew rest compartment. The fire protection requirements proposed for stowage compartments in the overhead crew rest compartment are more stringent than those for stowage in the main passenger cabin because the overhead crew rest compartment is a remote area that can remain unoccupied for long periods of time in contrast to the main cabin that is under continuous monitoring by the cabin crew and passengers. For stowage compartments less than 25 ft^3 the safety objective of these proposed requirements is to contain the fire. The FAA research indicates that properly constructed compartments meeting the proposed material requirements will prevent burn through. For stowage compartments greater than 25 ft^3 but less than 200 ft^3 the safety of objective of these proposed requirements is to detect and contain the fire for sufficient time to allow it to be extinguished by the crew. The requirements for these sizes of compartments are comparable to the requirements for Class B cargo compartments. The proposed fire protection requirements are intended to provide a level of safety for the overhead crew rest compartment that is equivalent the level of safety established by the existing regulations for the main cabin.

These proposed special conditions along with the original type certification basis provide the regulatory requirements necessary for certification of this modification. Other special conditions may be developed, as needed, based on further FAA review and discussions with the applicant, manufacturer, and civil aviation authorities.

The addition of galley equipment or a kitchenette incorporating a heat source (*e.g.*, cook tops, microwaves, coffee pots, etc.), other than a conventional lavatory or kitchenette hot water heater, within the overhead crew rest compartment, may require further special conditions to be considered. A hot water heater is acceptable without further special conditions consideration.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777–200 series airplanes. Should the Boeing Commercial Airplane Group apply at a later date for a change to the type certificate to include another model incorporating the same novel or

unusual design features, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 777–200 series airplanes with overhead crew rest compartments. These special conditions apply to both overhead flightcrew rest (OFCR) compartments and/or overhead flight attendant rest (OFAR) compartments, unless specifically stated otherwise.

1. Occupancy of the overhead crew rest compartment is limited to the total number of installed bunks and seats in each compartment. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the overhead crew rest compartment. The maximum occupancy is four in the OFCR and twelve in the OFAR.

(a) There must be appropriate placards, inside and outside each entrance to the overhead crew rest compartment to indicate:

(1) The maximum number of occupants allowed,

(2) That occupancy is restricted to crewmembers that are trained in the evacuation procedures for the overhead crew rest compartment,

(3) That occupancy is prohibited during taxi, take-off and landing,

(4) That smoking is prohibited in the overhead crew rest compartment, and

(5) That hazardous quantities of flammable fluids, explosives, or other dangerous cargo are prohibited from the overhead crew rest compartment.

(b) There must be at least one ashtray on the inside and outside of any entrance to the overhead crew rest compartment.

(c) There must be a means to prevent passengers from entering the overhead crew rest compartment in the event of an emergency or when no flight attendant is present.

(d) There must be a means for any door installed between the overhead crew rest compartment and passenger cabin to be capable of being quickly opened from inside the compartment, even when crowding occurs at each side of the door.

(e) For all doors installed, there must be a means to preclude anyone from being trapped inside the overhead crew rest compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the compartment at any time.

2. There must be at least two emergency evacuation routes, which could be used by each occupant of the overhead crew rest compartment to rapidly evacuate to the main cabin and be able to be closed from the main passenger cabin after evacuation. In addition—

(a) The routes must be located with sufficient separation within the overhead crew rest compartment, and between the evacuation routes, to minimize the possibility of an event rendering both routes inoperative.

Compliance to the requirements of Special Condition No. 2(a) may be shown by inspection or by analysis. Regardless which method is used, the maximum acceptable exit separation is 60 feet measured between exit openings.

Compliance by Inspection

An overhead crew rest compartment in which the evacuation routes are located such that each occupant of the seats and berths has an unobstructed route to at least one of the evacuation routes regardless of the location of a fire would be acceptable by inspection. A fire within a berth that only blocks the occupant of that berth from exiting the berth need not be considered. Therefore, exits which are located at absolute opposite ends (*i.e.,* adjacent to opposite end walls) of the crew rest would require no further review or analysis with regard to exit separation.

Compliance by Analysis

Analysis must show the overhead crew rest compartment configuration and interior features provide for all occupants of the overhead crew rest to escape the compartment in the event of a hazard inside or outside of the compartment. Elements to consider in this evaluation are as follows:

(1) Fire inside or outside the overhead crew rest compartment considered separately and the design elements used to reduce the available fuel for the fire,

(2) Design elements to reduce the fire ignition sources in the overhead crew rest compartment,

(3) Distribution and quantity of emergency equipment within the overhead crew rest compartment,

(4) Structural failure or deformation of components that could block access to the available evacuation routes (*e.g.*, seats, folding berths, contents of stowage compartments, etc),

(5) An incapacitated person blocking the evacuation routes,

(6) Any other foreseeable hazard not identified above that could cause the evacuation routes to be compromised.

Analysis must consider design features affecting access to the evacuation routes. The design features that should be considered include but are not limited to seat back break over, the elimination of rigid structure that reduces access from one part of the compartment to another, the elimination of items that are known to be the cause of potential hazards, the availability of emergency equipment to address fire hazards, the availability of communications equipment, supplemental restraint devices to retain items of mass that could hinder evacuation if broken loose and load path isolation between components that contain the evacuation routes.

Analysis of the fire threats should be used in determining the placement of required fire extinguishers and PBEs and should take into consideration the possibility of fire in any location in the overhead crew rest compartment. The location and quantity of PBEs and fire extinguishers should allow occupants located in any approved seats or berths access to the equipment necessary to fight a fire in the overhead crew rest compartment.

The intent of this special condition is to provide sufficient exit separation, therefore the exit separation analysis described above should not be used to approve exits which have less physical separation (measured between the centroid of each exit opening) than the minimums prescribed below, unless compensating features are identified and submitted to the FAA for evaluation and approval.

For overhead crew rest compartments with one exit located near the forward or aft end of an overhead crew rest compartment (as measured by having the centroid of the exit opening within 20 percent of the forward or aft end of the total overhead crew rest compartment length) the exit separation should not be less than 50 percent of the total overhead crew rest compartment length.

For overhead crew rest compartments with neither required exit located near the forward or aft end of the overhead crew rest compartment (as measured by not having the centroid of either exit opening within 20 percent of the forward or aft end of the total overhead

crew rest compartment length) the exit separation should not be less than 30 percent of the total overhead crew rest compartment length.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the escape route. One of the two evacuation routes should not be located where, during times in which occupancy is allowed, normal movement by passengers occurs (*i.e.*, main aisle, cross aisle or galley complex) that would impede egress from the overhead crew rest compartment. If an evacuation route utilizes an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants (of the overhead crew rest compartment) from head injury. The use of evacuation routes must not be dependent on any powered device. If the evacuation path is over an area where there are passenger seats, a maximum of five passengers may be displaced from their seats temporarily during the evacuation process of an incapacitated person(s). If the evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures, including the emergency evacuation of an incapacitated occupant from the overhead crew rest compartment, must be established. All of these procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

(d) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

3. There must be a means for the evacuation of an incapacitated person (representative of a ninety-fifth percentile male) from the overhead crew rest compartment to the passenger cabin floor.

(a) The evacuation must be demonstrated for all evacuation routes. A crewmember (a total of one assistant within the overhead crew rest compartment) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes having stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the overhead crew rest compartment, or to the first landing, whichever is lower.

4. The following signs and placards must be provided in the overhead crew rest compartment:

(a) At least one exit sign, located near each exit, meeting the requirements of § 25.812(b)(1)(i), except that a sign with reduced background area of no less than 5.3 square inches (excluding the letters) may be utilized, provided that it is installed such that the material surrounding the exit sign is light in color (*e.g.*, white, cream, light beige). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters would also be acceptable.

(b) An appropriate placard located near each exit defining the location and the operating instructions for each evacuation route.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The exit handles and evacuation path operating instruction placards must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. There must be a means in the event of failure of the aircraft's main power system, or of the normal overhead crew rest compartment lighting system, for emergency illumination to be automatically provided for the overhead crew rest compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the overhead crew rest compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

6. There must be means for two-way voice communications between crewmembers on the flight deck and occupants of the overhead crew rest compartment. There must also be two-way communications between the occupants of the overhead crew rest compartment and each flight attendant station required to have a public address system microphone per § 25.1423(g) in the passenger cabin.

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor level emergency exits to alert occupants of the overhead crew rest compartment of an emergency situation. Use of a public address or crew interphone system will be acceptable, providing an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units (APU), or the disconnection or failure of all power sources dependent on their continued operation (*i.e.*, engine & APU), for a period of at least ten minutes.

8. There must be a means, readily detectable by seated or standing occupants of the overhead crew rest compartment, which indicates when seat belts should be fastened. In the event there are no seats, at least one means must be provided to cover anticipated turbulence (*e.g.* sufficient handholds). Seat belt type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. There must be a placard on each berth requiring that seat belts must be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position.

9. In lieu of the requirements specified in § 25.1439(a) that pertain to isolated compartments and to provide a level of safety equivalent to that which is provided occupants of a small isolated galley, the following equipment must be provided in the overhead crew rest compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur, (b) Two protective breathing equipment (PBE) devices approved to Technical Standard Order (TSO)–C116 or equivalent, suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater, and

(c) One flashlight.

Note: Additional PBEs and fire extinguishers in specific locations, (beyond the minimum numbers prescribed in Special Condition No. 9 may be required as a result of the egress analysis accomplished to satisfy Special Condition No. 2(a).

10. A smoke or fire detection system (or systems) must be provided that monitors each occupiable area within the overhead crew rest compartment,

including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication to the flightdeck within one minute after the start of a fire;

(b) An aural warning in the overhead crew rest compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. The overhead crew rest compartment must be designed such that fires within the compartment can be controlled without a crewmember having to enter the compartment, or the design of the access provisions must allow crewmembers equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the firefighting equipment, and to gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source.

12. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the overhead crew rest compartment from entering any other compartment occupied by crewmembers or passengers. This means must include the time periods during the evacuation of the overhead crew rest compartment and, if applicable, when accessing the overhead crew rest compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers when the access to the overhead crew rest compartment is opened, during an emergency evacuation, must dissipate within five minutes after the access to the overhead crew rest compartment is closed. Hazardous quantities of smoke may not enter any other compartment occupied by crewmembers or passengers during subsequent access to manually fight a fire in the overhead crew rest compartment (the amount of smoke entrained by a firefighter exiting the overhead crew rest compartment through the access is not considered hazardous). During the one-minute smoke detection time, penetration of a small quantity of smoke from the overhead crew rest compartment into an occupied area is acceptable. Flight tests must be conducted to show compliance with this requirement.

If a built-in fire extinguishing system is used in lieu of manual firefighting, then the fire extinguishing system must be designed so that no hazardous quantities of extinguishing agent will enter other compartments occupied by passengers or crew. The system must have adequate capacity to suppress any fire occurring in the overhead crew rest compartment, considering the fire threat, volume of the compartment and the ventilation rate.

13. There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the overhead crew rest compartment. The system must provide an aural and visual warning to warn the occupants of the overhead crew rest compartment to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously for a minimum of five minutes or until a reset push button in the overhead crew rest compartment is depressed. Procedures for crew rest occupants in the event of decompression must be established. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

Procedures for overhead crew rest compartment occupants in the event of decompression must be established. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

14. The following requirements apply to overhead crew rest compartments that are divided into several sections by the installation of curtains or partitions:

(a) To compensate for sleeping occupants, there must be an aural alert that can be heard in each section of the overhead crew rest compartment that accompanies automatic presentation of supplemental oxygen masks. A visual indicator that occupants must don an oxygen mask is required in each section where seats or berths are not installed. A minimum of two supplemental oxygen masks are required for each seat or berth. There must also be a means by which the oxygen masks can be manually deployed from the flight deck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the overhead crew rest compartment into small sections. The placard must require that the curtain(s) remains open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(c) For each section of the overhead crew rest compartment created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) No smoking placard (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Emergency alarm system (Special Condition No. 7),

(4) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8), and

(5) The smoke or fire detection system (Special Condition No. 10).

(d) Overhead crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate section of the overhead crew rest compartment, and must meet the requirements of § 25.812(b)(1)(i).

(e) Sections within an overhead crew rest compartment that are created by the installation of a rigid partition with a door physically separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment. Removal of an incapacitated occupant within this area must be considered. A secondary evacuation route from a small room designed for only one occupant for short time duration, such as a changing area or lavatory, is not required. However, removal of an incapacitated occupant within a small room, such as a changing area or lavatory, must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway exit. An exit sign with reduced background area as described in Special Condition No. 4(a) may be used to meet this requirement.

(f) For each smaller section within the main overhead crew rest compartment created by the installation of a partition with a door, the following requirements of these special conditions must be met with the door open or closed:

(1) No smoking placards (Special Condition No. 1);

(2) Emergency illumination (Special Condition No. 5);

(3) Two-way voice communication (Special Condition No. 6);

(4) Emergency alarm system (Special Condition No. 7);

(5) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8);

(6) Emergency firefighting and protective equipment (Special Condition No. 9); and

(7) Smoke or fire detection system (Special Condition No. 10).

15. The requirements of two-way voice communication with the flight deck and provisions for emergency firefighting and protective equipment are not applicable to lavatories or other small areas that are not intended to be occupied for extended periods of time.

16. Where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

17. Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853(a) as amended by Amendment 25–83. Mattresses must comply with the flammability requirements of § 25.853(c), as amended by Amendment 25–83.

18. The addition of a lavatory within the overhead crew rest compartment would require the lavatory to meet the same requirements as those for a lavatory installed on the main deck except with regard to Special Condition No. 10 for smoke detection.

19. All enclosed stowage compartments within the overhead crew rest compartment that are not limited to stowage of emergency equipment or airplane supplied equipment (*i.e.*, bedding) must meet the design criteria given in the table below. Enclosed stowage compartments greater than 200 ft^3 in interior volume are not addressed by this special condition. The in flight accessibility of very large enclosed stowage compartments and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand fire extinguisher will require additional fire protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

Fire protection features	Stowage compartment interior volumes		
	Less than 25 ft^3	25 ft^3 to 57 ft^3	57 ft^3 200 ft^3
Materials of construction [1]	Yes	Yes	Yes.
Detectors [2]	No	Yes	Yes.
Liner [3]	No	Yes	Yes.
Locating Device [4]	No	Yes	Yes.

[1] *Material.* The material used to construct each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components (*i.e.*, 14 CFR part 25 Appendix F, parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft^3 in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] *Detectors.* Enclosed stowage compartments equal to or exceeding 25 ft^3 in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication in the flight deck within one minute after the start of a fire,

(b) An aural warning in the overhead crew rest compartment, and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

[3] *Liner.* If it can be shown that the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment (*i.e.*, § 25.855 at Amendment 25–93, and Appendix F, part I, paragraph (a)(2)(ii)), then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft^3 in interior volume but less than 57 ft^3 in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft^3 in interior volume but less than or equal to 200 ft^3, a liner must be provided that meets the requirements of § 25.855 for a Class B cargo compartment.

[4] *Location Detector.* Overhead crew rest compartment which contain enclosed stowage compartments exceeding 25 ft^3 interior volume and which are located away from one central location such as the entry to the overhead crew rest compartment or a common area within the overhead crew rest compartment would require additional fire protection features and/or devices to assist the firefighter in determining the location of a fire.

Issued in Renton, Washington on October 15, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27035 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. FHWA–2002–11819]

RIN 2125–AE94

Designation of Dromedary Equipped Truck Tractor-Semitrailers as Specialized Equipment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is requesting comments on a proposal to include as specialized equipment, dromedary equipped truck tractor-semitrailer combination vehicles when hauling munitions for the U.S. Department of Defense (DOD). This proposal is in response to a petition from the U.S. DOD, specifically the Department of the Army (DA) that would help to expedite the movement of munitions for the military, especially in times of national emergency.

DATES: Comments must be received on or before November 22, 2002.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dmses.dot.gov/submit.* All comments

should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgement page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Forjan, Office of Freight Management and Operations (202–366–6817), or Mr. Raymond W. Cuprill, Office of the Chief Counsel (202–366–1377), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit.* Acceptable formats include: MSWord (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software, from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

On June 22, 2001, the FHWA received a petition from the U.S. Department of the Army (DA), to amend 23 CFR 658.13 to include as ''specialized equipment,'' dromedary equipped truck tractor-semitrailer combination vehicles, when transporting Class 1 explosives [1] for the U.S. Department of Defense (DOD). A copy of the petition is included in the docket.

The U.S. DOT regulations require Class 1 explosives, such as ammunition shells, to be transported separately from the fuses or detonators (49 CFR 177.848). The most efficient way for Military Traffic Management Command (MTMC) munitions carriers to comply with this regulation is to use dromedary containers to carry ammunition-fuses, with the ammunition in the semitrailer. A dromedary, also known as a ''drom,'' is a box, deck, or plate mounted behind the cab and forward of the fifth wheel on the frame of the power unit of a truck tractor-semitrailer combination. With drom equipment, a single shipment of fuses and ammunition requires only one vehicle, but without drom equipment, the same shipment requires two vehicles. Shipping these non-compatible explosives in the same vehicle combination reduces the number of vehicles needed to transport munitions, increases military readiness and reduces the number of vehicles on the road.

Under the Surface Transportation Assistance Act of 1982 (STAA) [49 U.S.C. 31111(b)(1)(B), formerly 49 U.S.C. App. 2311(b)] States may not enforce an overall length limit against truck tractor-semitrailer combination vehicles operating on the National Network [2] or under reasonable access thereto. The same STAA also defined a truck tractor as a noncargo carrying power unit that operates in combination with a semitrailer or trailer. Drom equipped truck tractors are obviously cargo carrying, and, as a result, any combination vehicle that includes one of these units may be subjected to an overall length limit at the discretion of any State. In implementing the STAA during the mid-1980s, the FHWA chose to ''grandfather'' existing drom equipped units by allowing any such unit that could show that it was in use on December 1, 1982, to be considered a truck tractor for regulatory purposes. The reason for doing this was to allow an existing fleet of equipment to use up its useful life. By now the presumption must be that the vast majority of the units that would have met the 1982 grandfather requirement, are no longer in service, and those few that might remain, could not begin to satisfy the demands of the Defense Department for moving munitions. More importantly, the improvements in safety features and fuel efficiency of truck tractors over the last 20 years, pragmatically rule out use of older equipment by any carrier in the business today.

The FHWA received a similar petition [3] in 1989 from a group representing munitions carriers. While the petition was under consideration, the military action in the Middle East called Operation Desert Storm began. Because of the extreme urgency of moving munitions destined for U.S. military forces in the Persian Gulf, the FHWA issued an emergency rule (56 FR 4164, February 1, 1991) valid for six months, that declared vehicle combinations consisting of truck tractors equipped with dromedary units not exceeding 65 inches in length pulling semitrailers to be specialized equipment when hauling muntions, thus exempting these vehicles from State enforcement of overall length regulations. After the conclusion of Operation Desert Storm, the emergency rule was allowed to expire in August 1991. Subsequently, the FHWA again focused on the merits of the petition and ultimately denied it. The basic reasoning for denial was that since only one or two States were enforcing overall length limits at the time, the FHWA felt it would be inconsistent with the Executive Order on Federalism (E.O. 12612) in effect at the time to preempt State authority for what was considered a local problem, limited in scope. Although denying the petition, the FHWA recognized that even localized enforcement could interrupt this vital Defense Department activity of moving ammunition to where it could support our troops. Shortly after expiration of the emergency rule, the FHWA, through its field offices, asked States to continue to allow dromedary equipped munitions carriers as they had under the provisions of the emergency rule.

According to the current petition, some of the States that voluntarily refrained from imposing fines (after being approached by the FHWA following the Gulf War) have gone back to imposing fines. In addition, even if the States have enacted remedial legislation, it is not always consistent with neighboring States.

The major point of the 2001 petition is that a Federal standard is the only long-term solution to a growing problem

[1] As defined in 49 CFR 173.50. As noted in 49 CFR 173.53, prior to January 1, 1991, Class 1 explosives were known as Class A, B, or C explosives.

[2] As defined in 23 CFR 658, the National Network is the composite of the individual network of highways in each State on which vehicles authorized by the provisions of the STAA are allowed to operate. The network in each State includes the Interstate System, exclusive of those portions excepted under § 658.11(f) or deleted under § 658.11(d), and those portions of the Federal-aid Primary System in existence on June 1, 1991, set out by the FHWA in appendix A to this part.

[3] December 22, 1989, from the North American Transportation Consultants, Inc. A copy of the petition and FHWA action are included in the docket.

that directly affects the manner and efficiency with which the U.S. DOD carries out its mission with respect to supporting our troops and defending the country. The U.S. DOD indicates that there is a constant need to move munitions in support of smaller contingencies (other than the Gulf War/ Desert Storm) such as actions in Iraq, Kosovo, Haiti, and Somalia. Taken individually, these do not generate the high visibility public interest that may result in the issuance of emergency rules.

The solution to this problem, as proposed by the U.S. DOD and included in the proposed rule published today, is to provide a specialized equipment designation for the combination vehicle in question. A truck tractor equipped with a dromedary unit operating in combination with a semitrailer is proposed to be designated ''specialized equipment,'' when transporting Class 1 explosives, and/or any munitions related security material, as specified by the U.S. DOD in compliance with 49 CFR part 177. This designation would require States to allow operation of this combination on the National Network (NN), and provide reasonable access between the NN and service facilities and terminals. In order to accommodate the typical equipment in use today for this type of operation, the proposal includes a requirement that all States allow these combinations up to an overall length of 75 feet.

This designation would apply only to combinations directly used in carrying munitions for the U.S. DOD. When operating empty, the designation would continue to apply if the carrier can document that hauling munitions is the company's business, or that the most recent load consisted of a qualifying munitions load. The designation would not apply if any other cargo were being carried in either the semitrailer or dromedary unit. For those instances, the combination would no longer be considered ''specialized equipment,'' and would become subject to State regulations for drom equipped truck truck-semitrailers.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. We will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. We may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, we will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

We have determined that this proposed action is a significant regulatory action within the meaning of Executive Order 12866 and the U.S. DOT regulatory policies and procedures. This proposed action comes in response to a request from, and would directly affect activities under the direct control, of the U.S. Department of Defense (DOD): supplying munitions to the military. The proposed action will improve the shipment of munitions by standardizing the regulatory control that States apply to the vehicles typically used for this activity. The anticipated result will be an improvement in the efficiency with which munitions are shipped. This potential improvement will aid the national security effort with respect to the armed forces, as well as activities associated with homeland security.

The proposed rule provides, at the Federal level, a regulatory standard that already exists in many States. Although it would preempt restrictions imposed by about 10 States, it would not affect any State's ability to discharge a traditional State government function, *i.e.*, issuing citations to illegally overlength vehicles.

The vehicles covered by this proposal are already operating in most States, and will not have to be modified in any way to achieve compliance. Accordingly, the anticipated annual economic effect of this rulemaking will be negligible. The proposed action will not have an adverse effect on any other governmental agency, any level of government, the industry, or the public, nor will it change any compliance or reporting requirements that already exist. The agency has decided that a 30-day comment period is needed for this proposal because of the critical need to implement the regulation in a timely manner. On going military actions require a continuous supply of munitions. It is critical that this supply stream is not interrupted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entitles and has determined that the action would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive order 13132, dated August 4, 1999, and the FHWA has determined that this proposed action has sufficient federalism implications to warrant the preparation of a Federalism summary impact statement.

The proposal would provide a consistent national regulation applying only to vehicles hauling munitions for the Department of Defense in support of military activities. The proposal is based on the authority provided by 49 U.S.C. 31111(g) that allows the Secretary to make the decisions necessary to accommodate specialized equipment. The FHWA has also determined that, while this proposed action would preempt any inconsistent State law or State regulation, it would not affect the State's ability to discharge traditional State government function. The States would continue to be able to enforce length restrictions against these vehicles. What might change, however, depending on existing State law, would be the threshold at which an enforcement action is taken.

By allowing the vehicle described in this proposal to transport munitions, the total number of trucks needed to perform this task would be reduced. This reduction, in turn, improves the safety climate on the highway system and in a small way slows infrastructure wear. Only a small number of States (less than 10) would be affected by this rule, as most States already allow the combination vehicle covered by this proposed rule. However, due to the needs of the military and the nature of the cargo, it is imperative that all States allow the combination vehicle under discussion to operate. Even if only one or two States can prohibit, or deter this vehicle and its cargo, timely support of the military can be severely impacted.

The FHWA has engaged in consultation with States over this issue in past years. In February 1991, as a result of the activities surrounding the Desert Shield/Desert Storm campaign, the FHWA issued an emergency rule allowing the use of dromedary units to transport munitions (56 FR 4164, February 1, 1991) for many of the same reasons used in support of the current petition. That rule was in effect for 6 months, and was not renewed for various reasons deemed important in responding to the conditions at that time. After the emergency rule expired,

in place of a regulatory solution the FHWA urged all States and in particular those where enforcement actions were taking place to recognize the importance of the situation, and to try and accommodate munitions haulers in some manner. According to the U.S. DOD's petitions, this ''persuasion'' method appeared to work, at least for a few years into the mid-1990's. As this verbal agreement method of handling the issue began to breakdown, a few States again began to enforce length rules on these combinations, causing interruptions in munitions delivery. While inconvenient, these actions did not become critically disruptive until the current activities aimed at terrorist actions around the world became a national priority.

Recently, the FHWA solicited comment on the Federalism implications of this proposed rule from the National Governors' Association (NGA) as representatives for the State officials. On May 9, 2002, the FHWA sent a letter seeking comment on the Federalism implications of this proposed rule to the NGA[4]. To date, the FHWA has received no response or indication of concerns about the Federalism implications of this rulemaking from the NGA. The FHWA will continue to adhere to Executive Order 13132 when issuing a final rule in this proceeding. Comment is solicited specifically on the Federalism implications of this proposal.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Programs Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). What is being proposed in each issue of this proposed rule would reduce the regulatory requirements that must be complied with. This proposed rule does not add any regulatory requirement that would require any expenditure by any private sector party, or governmental agency.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

National Environmental Policy Act

The Agency has analyzed this proposal for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposal under Executive Order 13175, dated November 6, 2000, and believes that the proposed action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs in Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grants Program—transportation, Highways and roads, Motor carrier—size and weight.

Issued on: October 17, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend 23 CFR part 658 as follows:

PART 658—TRUCK SIZE AND WEIGHT; ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for part 658 continues to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111–31114; 49 CFR 1.48(b).

2. Amend § 658.5 by adding the term ''dromedary unit'', and amending the definition of ''tractor or truck tractor'', placing them in alphabetical order, to read as follows:

§ 658.5 Definitions.

* * * * *

Dromedary unit. A box, deck, or plate mounted behind the cab and forward of the fifth wheel on the frame of the power unit of a truck tractor-semitrailer combination.

* * * * *

Tractor or Truck Tractor. The noncargo carrying power unit that operates in combination with a semitrailer or trailer, except that a truck tractor and semitrailer engaged in the transportation of automobiles may

[4] A copy of this letter is included in the docket.

transport motor vehicles on part of the power unit, and a truck tractor equipped with a dromedary unit operating in combination with a semitrailer hauling munitions for the U.S. Department of Defense may use the dromedary unit to carry a portion of the cargo.

3. Add § 658.13(e)(6) to read as follows:

§ 658.13 Length.

* * * * *

(e) *Specialized equipment*— * * *

(6) *Munitions carriers using dromedary equipment.* A truck tractor equipped with a dromedary unit operating in combination with a semitrailer is considered to be specialized equipment, providing the combination is transporting Class 1 explosives and/or any munitions related security material as specified by the U.S. Department of Defense. No State shall impose an overall length limitation of less than 75 feet on the combination while in operation.

[FR Doc. 02–27040 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131478–02]

RIN 1545–BB25

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain dispositions and deconsolidations of such stock. In addition, this document contains proposed regulations that suspend certain losses recognized on the disposition of such stock. The regulations apply to corporations filing consolidated returns. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by January 21, 2003. Outlines of topics to be discussed at the public hearing scheduled for January 15, 2003, at 10 a.m. must be received by December 27, 2002.

ADDRESSES: Send submissions to CC:ITA:RU (REG–131478–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–131478–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at www.irs.gov/regs. The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Aimee K. Meacham, (202) 622–7530; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya M. Cruse, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by December 23, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in § 1.1502–35(c) and § 1.1502–35(f). This information is required by the IRS to verify compliance with section 1502. This information will be used to determine whether the amount of tax has been calculated correctly. The collection of information is required to properly determine the amount permitted to be taken into account as a loss. The respondents are corporations filing consolidated returns. The collection of information is required to obtain a benefit.

Estimated total annual reporting and/or recordkeeping burden: 10,500 hours.

Estimated average annual burden per respondent: 2 hours.

Estimated number of respondents: 5,250.

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 1502 of the Internal Revenue Code (Code) states that—

> [t]he Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

The legislative history regarding that grant of authority states that ''[a]mong the regulations which it is expected that the commissioner will prescribe are [regulations addressing the] extent to which gain or loss shall be recognized upon the sale by a member of the affiliated group of stock issued by any other member of the affiliated group [and] the basis of property * * * acquired, during the period of affiliation, by a member of the affiliated group, including the basis of such property after such period of affiliation.'' S. Rep. No. 960, 70th Cong., 1st Sess. 15 (1928).

In 1991, the IRS and Treasury Department promulgated § 1.1502–20, which set forth rules regarding the extent to which a loss recognized by a member of a consolidated group on the disposition of stock of a subsidiary member of the same group was allowed. Section 1.1502–20 provided that a loss recognized by a group member on the disposition of subsidiary member stock was allowable only to the extent it exceeded the sum of ''extraordinary gain dispositions,'' ''positive investment adjustments,'' and ''duplicated loss.'' The rule not only implemented section 337(d), which directed the Secretary to promulgate regulations to prevent the circumvention of corporate tax on appreciated property through the filing of a consolidated return, but also was intended to further single entity principles by preventing the deduction of stock losses that reflected a subsidiary member's loss carryforwards, deferred deductions, and unrecognized losses inherent in its assets.

In Rite Aid Corp. v. *United States,* 255 F.3d 1357 (Fed. Cir. 2001), the United States Court of Appeals for the Federal Circuit considered the validity of the duplicated loss component of § 1.1502–20. The court held that the duplicated loss component of § 1.1502–20 was an invalid exercise of regulatory authority.

In response to the *Rite Aid* decision, the IRS and Treasury Department issued Notice 2002–11 (2002–7 I.R.B. 526), stating that the interests of sound tax administration would not be served by the continued litigation of the validity of the duplicated loss component of § 1.1502–20. Notice 2002–11 announced that, because of the interrelationship in the operation of all of the loss disallowance factors of § 1.1502–20, the IRS and Treasury Department had decided that new rules governing loss disallowance on sales of subsidiary stock by members of consolidated groups should be implemented.

On March 7, 2002, the IRS and Treasury Department filed with the **Federal Register** temporary regulations under sections 337(d) and 1502 governing the determination of a consolidated group's allowable stock loss on a disposition of subsidiary member stock. Those regulations included § 1.337(d)–2T, which generally allows a loss on the disposition of subsidiary member stock only to the extent that a taxpayer can establish that the stock loss is not attributable to the recognition of built-in gain. Section 1.337(d)–2T does not disallow stock loss that reflects loss carryforwards, deferred deductions, or built-in asset losses of the subsidiary member.

Concurrently with the filing of § 1.337(d)–2T with the **Federal Register**, the IRS and Treasury Department issued Notice 2002–18 (2002–12 I.R.B. 644), which stated that regulations would be promulgated that would defer or otherwise limit the utilization of a loss on stock (or another asset that reflects the basis of stock) in transactions that facilitate the group's utilization of a single economic loss more than once. Notice 2002–18 is based on the principle that a consolidated group should not be able to obtain more than one tax benefit from a single economic loss. See *Charles Ilfeld Co.* v. *Hernandez,* 292 U.S. 62 (1934) (disallowing a worthless stock deduction recognized on a liquidation of a subsidiary member because the group had already obtained the tax benefit from the operating losses that gave rise to the deduction). The Notice stated that the regulations would apply to dispositions occurring on or after March 7, 2002.

Explanation of Provisions

These proposed regulations reflect the principle set forth in Notice 2002–18 that a consolidated group should not be able to obtain more than one tax benefit from a single economic loss. The proposed regulations consist primarily of two rules: a basis redetermination rule and a loss suspension rule. The proposed regulations also include a basis reduction rule to address certain cases not within the scope of the loss suspension rule. Finally, the proposed regulations include certain anti-avoidance rules to address certain transactions designed to avoid the application of the basis redetermination and loss suspension rules.

The rules in these proposed regulations are intended to address at least two types of transactions that may allow a group to obtain more than one tax benefit from a single economic loss. In the first type of transaction, a group absorbs an inside loss (*e.g.*, a loss carryforward, a deferred deduction, or a loss inherent in an asset) of a subsidiary member and then a member of the group recognizes a loss on a disposition of stock of that subsidiary member that is duplicative of the inside loss. For example, assume that in Year 1, P, a member of a group, forms S with a contribution of $80 in exchange for 80 shares of common stock of S (representing all of the outstanding stock of S). In Year 2, P contributes Asset A with a basis of $70 and a value of $20 to S in exchange for an additional 20 shares of S common stock. In Year 3, S sells Asset A and recognizes a $50 loss, which offsets income of P on the group's return. Under the investment adjustment rules of § 1.1502–32, P's basis in each share of S common stock it holds is reduced by a pro rata share of the $50 loss, with the result that the shares acquired in Year 1 have a basis of $40 and the shares acquired in Year 2 have a basis of $60. In Year 4, P sells the shares acquired in Year 2 for $20 and recognizes a $40 loss, which offsets income of P on the group's return. In this transaction, the group has obtained a total of $90 tax benefit from the single $50 loss.

Alternatively, assume that, in Year 1, P forms S with a contribution of $100 in exchange for all of the common stock of S. In Year 2, P contributes Asset A with a basis of $50 and a value of $20 to S in exchange for all of the preferred stock of S. In Year 3, S sells Asset A and recognizes a $30 loss, which offsets income of P on the group's return. Under the investment adjustment rules of § 1.1502–32, P's basis in each share of S common stock it holds is reduced by a pro rata share of the $30 loss. P's basis in its preferred shares, however, is not reduced. In Year 4, P sells the preferred stock of S for $20 and recognizes a $30 loss, which offsets income of P on the group's return. In this transaction, the group has obtained a $60 tax benefit from the single $30 economic loss in Asset A.

Although, in both cases, a taxable disposition of the S common stock acquired in Year 1 would offset the excess tax benefit, the group has various non-taxable alternatives by which to ensure that the excess tax benefit is not reduced, including retention of the remaining shares of S or the liquidation of S in a transaction described in section 332.

In the second type of transaction, a member of the group recognizes a loss on a disposition of subsidiary member stock that is duplicative of an inside loss of the subsidiary member, the subsidiary remains a member of the group, and the group subsequently recognizes the inside loss of that subsidiary member. For example, assume that in Year 1, P forms S with a contribution of $80 in exchange for 80 shares of the common stock of S. In Year 2, P contributes Asset A with a basis of $50 and a value of $20 to S in exchange for an additional 20 shares of S common stock. In Year 3, P sells the 20 shares of S common stock that it acquired in Year 2 for $20 and recognizes a $30 loss, which offsets income of P on the group's return. The sale of the 20 shares of S common stock does not result in the deconsolidation of S. In Year 4, S sells Asset A and recognizes a $30 loss, which also offsets income of P on the

group's return. In this transaction, the group has obtained the use of two losses from the single economic loss in Asset A. Again, although a taxable disposition by P of its remaining S common stock would offset the tax benefit of one of the losses, the group has various non-taxable alternatives by which to ensure that the excess tax benefit is not reduced, including retention of the remaining shares of S or the liquidation of S in a transaction described in section 332.

A. Basis Redetermination Rule

The investment adjustment rules of § 1.1502–32 are premised on certain assumptions regarding the shareholders' interests in the subsidiary. One assumption is that the subsidiary's losses are borne by the holders of the common stock before the holders of the preferred stock. Another assumption is that each share within a class is entitled to an equal portion of the subsidiary's items of income and gain, and, in the case of common stock, of deduction and loss. The investment adjustment rules, therefore, generally allocate basis adjustments without regard to differences in members' bases in their shares of the stock of the subsidiary member and without regard to whether a basis adjustment reflects an item of income, gain, deduction, or loss that was built-in with respect to contributed property. These assumptions can give rise to the results illustrated in the transactions described above.

The basis redetermination rule attempts to mitigate the effect of the assumptions underlying the investment adjustment rules by reversing certain investment adjustments to take into account the source of certain items of deduction and loss. In addition, where the subsidiary member remains a member of the group, the basis redetermination rule equalizes members' bases in subsidiary stock such that the loss suspension rule, described below, need not include inordinately complex rules to address the method by which inside losses reduce stock basis under § 1.1502–32.

The proposed regulations require the redetermination of the basis of subsidiary member stock held by members of the group immediately before a disposition or deconsolidation of a share of subsidiary member stock when the basis of such stock exceeds its value. The rule applies differently when the subsidiary remains a member of the group after its stock is disposed of or deconsolidated from when the subsidiary does not remain a member of the group.

If a subsidiary remains a member of the group, the basis redetermination rule requires that all members of the group aggregate their bases in all shares of the subsidiary member. That basis is then allocated first to the shares of the subsidiary member's preferred stock that are owned by the members of the group in proportion to, but not in excess of, their value on the date of the disposition or deconsolidation. After the allocation of the aggregated basis to all shares of the preferred stock of the subsidiary member held by members of the group, any remaining basis is allocated among all common shares of subsidiary member stock held by members of the group in proportion to their value on the date of the disposition or deconsolidation. This rule reallocates past adjustments to reflect an economic allocation of the built-in items of deduction and loss with respect to contributed property. The rule also reallocates stock basis that arose from capital contributions of property and stock basis that arose as a result of positive investment adjustments. The reallocation of basis obviates the need for complex rules addressing basis adjustments resulting from an inside loss that was reflected in a stock loss that is suspended pursuant to the loss suspension rule described below.

If the subsidiary is no longer a member of the group immediately after the disposition or deconsolidation of its stock, the basis redetermination rule requires a reallocation of a certain amount of the basis of the stock of the subsidiary member owned by group members. In particular, the amount of basis subject to reallocation is equal to the lesser of (1) the loss inherent in the stock disposed of or deconsolidated, and (2) the subsidiary member's items of deduction and loss that were taken into account in computing the adjustment to the basis of any share of stock of the subsidiary member, other than the shares disposed of or deconsolidated, during the time such subsidiary member was a member of the group. However, only those items of deduction and loss that are attributable to formerly unrecognized or unabsorbed items reflected in the basis of the subsidiary member stock disposed of or deconsolidated are included in the computation of the amount of basis subject to reallocation. For example, if a share of stock has a basis in excess of value because the stock was acquired in exchange for a built-in loss asset, the stock's basis reflects that unrecognized loss. If that loss is later recognized, the basis adjustment resulting from that recognition is an item of loss attributable to a formerly unrecognized item reflected in the basis of such stock. The proposed regulations contain a presumption that all items of deduction and loss included in the computation of prior investment adjustments to the basis of members' shares of the subsidiary member are attributable to the recognition and absorption of a deduction or loss reflected in the basis of the shares that are disposed of or deconsolidated. The regulations do, however, permit groups to establish that particular items of deduction and loss are not reflected in the basis of the shares disposed of or deconsolidated, and, therefore, are not reallocated to other shares.

If the subsidiary is no longer a member of the group immediately after the disposition or deconsolidation of its stock, the basis in the shares of subsidiary member stock disposed of or deconsolidated is reduced by the amount of basis subject to reallocation. Then, to the extent of the amount of basis subject to reallocation, the basis of all preferred shares of stock of the subsidiary member that are held by members of the group immediately after the disposition or deconsolidation is increased such that the basis of each such share equals, but does not exceed, its value immediately before the disposition or deconsolidation. Finally, to the extent that the amount of basis subject to reallocation does not increase the basis of such preferred shares of the subsidiary member, such amount increases the basis of all common shares of stock of the subsidiary member held by members of the group immediately after the disposition or deconsolidation in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such share to be the same.

The basis redetermination rule does not apply if the group disposes of all its stock of the subsidiary member within a single taxable year, in one or more fully taxable transactions, or is allowed a worthless stock deduction with respect to all of the subsidiary member stock owned by the members. Under those circumstances, if a second tax benefit has been derived from an economic loss, the second tax benefit will be recaptured in the taxable year in which it was obtained.

The proposed regulations also include a look-through rule that applies the basis redetermination rule to stock of lower-tier subsidiary members when there is a disposition or deconsolidation of stock of a higher-tier member. In addition, the proposed regulations provide that basis adjustments made pursuant to the basis redetermination

rule result in basis adjustments to higher-tier member stock.

While the basis redetermination rule may prevent the recognition of a current loss on a particular share of subsidiary member stock, it does not prevent a group from obtaining a benefit from its investment in the subsidiary member. The basis redetermination rule affects only the timing of the group's loss and, in so doing, prevents the group from inappropriately duplicating a single economic loss.

B. Loss Suspension Rule

The loss suspension rule prevents duplication of an economic loss by effectively disallowing a stock loss if the economic loss giving rise to that stock loss is later reflected on the group's return as in the second type of transaction described above.

1. Suspension of Stock Loss

Under the loss suspension rule, if, after application of the basis redetermination rule, a member of a consolidated group recognizes a loss on the disposition of stock of a subsidiary member of the same group, and the subsidiary member is a member of the same group immediately after the disposition, then the selling member's stock loss is suspended to the extent of the duplicated loss with respect to such stock. The proposed regulations also include a special rule that applies the loss suspension rule in cases of a disposition of stock of a subsidiary member that leaves the group where the subsidiary owns stock of another subsidiary that remains a member of the group. In addition, the proposed regulations include a substitute asset rule that suspends a member's loss recognized on a disposition of an asset other than stock of a subsidiary member where such member's basis in the asset disposed of was determined, directly or indirectly, in whole or in part, by reference to the basis of stock of a subsidiary member with respect to which there was a duplicated loss, and immediately after the disposition, the subsidiary member is a member of such group.

The amount of duplicated loss is the excess of (1) the sum of the aggregate basis of the subsidiary member's assets (excluding stock in other subsidiary members of the group), the subsidiary member's losses that are carried to its first taxable year after the disposition, and the subsidiary member's deductions that have been recognized but deferred under another provision, over (2) the sum of the value of stock of the subsidiary member and the subsidiary member's liabilities that have been taken into account for tax purposes. Each of these items in the computation (except stock value) includes the subsidiary member's allocable share of the same items of any lower-tier subsidiary. This definition of duplicated loss is substantially identical to the one in former § 1.1502–20, except that securities of other members of the group are not excluded from the computation of the subsidiary's aggregate asset basis.

The application of the loss suspension rule can be illustrated as follows. Assume P, the common parent of a consolidated group, forms S in Year 1 by contributing $100 to S in exchange for all 10 shares of S's outstanding stock. Immediately after the contribution, S purchases a building for $100. In Year 2, the value of the building declines to $10. At the end of Year 2, P sells one share of S stock for $1 and recognizes a $9 loss. (Because the basis of P's shares of S stock is uniform at the time of the disposition, the basis redetermination rule does not alter P's basis in the share sold.) Immediately after the sale, S is still a member of the P group because P continues to own 90% of the S stock. On the date of the stock sale, S's duplicated loss is $90, the excess of its asset basis ($100) over the value of the assets (deemed to be equal to the aggregate stock value, $10). Of the total duplicated loss, 10%, or $9, is allocable to the share sold. Thus, under the loss suspension rule the $9 stock loss is suspended.

2. Reduction of Suspended Stock Loss

Because a suspended stock loss reflects the subsidiary member's unrecognized or unabsorbed deductions and losses, the suspended loss is reduced, with the result that it will not later be allowed, as the subsidiary member's deductions and losses are taken into account (i.e., absorbed) in determining the group's consolidated taxable income (or loss). The reduction of suspended loss is appropriate because, once the group takes the inside loss into account in determining consolidated taxable income (or loss), the group should not be able to take such loss (in the form of the stock loss or otherwise) into account again in determining consolidated taxable income or loss. Using the facts of the above example, assume that, in Year 3, S sells its building for $10 and recognizes a $90 loss. The P group uses the entire $90 loss to offset income of another member of the group. Under these proposed regulations, the absorbed loss ($90) reduces the suspended loss amount ($9), but not below zero. Thus, P will benefit from the economic loss once on its return, no suspended stock loss will remain, and P's basis in its remaining S stock will be reduced by its allocable share of the loss ($81).

The proposed regulations generally presume that all deductions and losses are attributable first to the duplicated loss that gave rise to a suspended stock loss. The presumption, however, is rebuttable. If a taxpayer can establish that an item of deduction or loss was not part of the duplicated loss that gave rise to a suspended stock loss, the taxpayer will not be required to reduce its suspended stock loss. To illustrate, assume that, instead of selling the building, S retained the building and, in Year 3, earned $50 which it then used to purchase a truck. In Year 4, S sells the truck, recognizing a $25 loss. That loss offsets income of another member of the P group. Assuming that P and S have kept adequate records, P should be able to establish that the loss on the truck was not reflected in the stock loss (because it was attributable to an asset that was acquired after the disposition of stock that gave rise to the suspended stock loss). In that case, P would not be required to reduce its suspended stock loss. The IRS and Treasury Department are concerned about, and specifically request comments regarding, the administrability aspects of this exception.

3. Allowance of Suspended Stock Loss

The proposed regulations provide that any suspended stock loss remaining at the time the subsidiary member leaves the group is allowed, to the extent otherwise allowable under applicable provisions of the Code and regulations thereunder. The loss is allowed on a return filed for the taxable year that includes the last day that the subsidiary member is a member of the group. Once the subsidiary member is no longer a member of the group, the group will not typically be able to use the subsidiary member's deductions or losses on the group's return. Accordingly, it is appropriate to allow any suspended stock loss remaining at the time the subsidiary member leaves the group.

The proposed regulations also provide that any suspended stock loss remaining is allowed at the time the group is allowed a worthless stock deduction with respect to all of the subsidiary member stock owned by members. In such cases, the basis reduction rule, described below, may reduce a worthless stock deduction effectively to prevent any second tax benefit that could be derived from the economic loss that gave rise to the suspended stock loss.

The proposed regulations require that in order for a group to be allowed a loss that was recognized on the disposition of a subsidiary member and that was suspended, the group must file a statement of allowable loss with the consolidated return for the year in which the loss is allowable.

C. Application of the Basis Redetermination and Loss Suspension Rules Generally

The IRS and Treasury Department do not expect that the basis redetermination and the loss suspension rules will apply frequently. This expectation is based on the assumption that, when a group seeks to raise capital, the common parent will typically issue stock directly or sell all of the stock of a subsidiary member. Alternatively, groups sometimes seek to raise capital by creating minority interests in a subsidiary member. In such cases, however, the group will typically cause the subsidiary member to issue shares directly to the nonmember. Thus, the IRS and Treasury Department believe that a member's sale of less than all of the stock of a subsidiary member to a nonmember, which may trigger application of the basis redetermination and loss suspension rules, is not a common transaction in the absence of tax incentives.

D. Basis Reduction Rule

The loss suspension rule apples only if there has been a disposition of subsidiary member stock and the subsidiary member is a member of the group immediately after the disposition. The IRS and Treasury Department, however, are concerned that a group may obtain more than one tax benefit from a single economic loss in certain cases in which a group member recognizes a loss with respect to subsidiary member stock and, in connection with such recognition event, the subsidiary member ceases to exist. For example, suppose P owns all of the stock of S. P's basis in its S stock is $100 and the value of the S stock is $0 because S is insolvent. S liquidates into P. In that case, P will recognize a loss of $100 on the disposition of the S stock. Because S is not a member of the P group immediately after the disposition of S stock, the loss suspension rule will not apply. The portion of the group's consolidated net operating and net capital loss carryforwards attributable to S, however, may remain with the P group. Therefore, to that extent, any loss on the stock of the subsidiary duplicates those losses. To address this case, these proposed regulations provide that if a member disposes of subsidiary member stock and on the following day the subsidiary is not a member of the group and does not have a separate return year, then the basis of the subsidiary member stock is reduced to the extent of the consolidated net operating loss and net capital loss carryforwards attributable to such subsidiary member, as though they were absorbed immediately prior to the disposition.

Similarly, where the subsidiary becomes worthless under the standards of § 1.1502–80(c), the group may be allowed a worthless stock loss while consolidated net operating and net capital loss carryforwards attributable to the worthless subsidiary member remain unabsorbed. Although the subsidiary may be viewed as remaining in the group, rather than rely on existing rules, including the excess loss account recapture rules, to prevent the possible duplication of the unabsorbed losses, these proposed regulations provide for a negative stock basis adjustment similar to that described above in such cases.

E. Anti-avoidance Rules

The IRS and Treasury Department are concerned that, in certain cases, taxpayers may structure transactions to avoid the application of the basis redetermination and loss suspension rules in a manner that is not consistent with the purpose of the proposed regulations to prevent a consolidated group from obtaining more than one tax benefit from a single economic loss. In particular, suppose P acquires 80 shares of S common stock in exchange for $80. In a later year, P contributes an asset with a basis of $50 and a value of $20 to S in exchange for 20 shares of S preferred stock. The following year, S sells the contributed asset, recognizing a loss of $30. As a result of the sale of the asset, P's basis in the S common stock is reduced by $30 from $80 to $50. In contemplation of the sale of the S preferred stock, P contributes the 80 shares of S common stock to PS, a partnership, in a transaction described in section 721. Because P's basis in the S common stock does not exceed the value of such stock, the deconsolidation of the S common stock does not trigger the application of the basis redetermination rule. In the same year, but after the contribution of the S common stock to PS, P sells the S preferred stock, recognizing $30 of loss. Absent the application of an anti-avoidance rule, the P group will have obtained more than one tax benefit from the single economic loss inherent in the contributed asset. Accordingly, the proposed regulations provide that if a share of subsidiary member stock is deconsolidated and such deconsolidation is with a view to avoiding application of the basis redetermination rule prior to the disposition of loss stock of the subsidiary member, then the basis redetermination rule will apply immediately prior to the deconsolidation.

In addition, suppose in Year 1, P forms S with a contribution of $100 in exchange for 100 shares of common stock of S which at that time represents all of the outstanding stock of S. In Year 2, P contributes 20 shares of common stock of S to PS, a partnership, in a transaction described in section 721. In Year 3, P contributes an asset with a basis of $50 and a value of $20 to PS in a transaction described in section 721. Also in Year 3, PS contributes the built-in loss asset to S and P contributes an additional $80 to S in transfers to which section 351 applies. In Year 4, S sells the built-in loss asset for $20, recognizing a loss of $30. The P group uses that loss to offset income of P. Also in Year 4, P sells its entire interest in PS for $40, recognizing a loss of $30, or PS sells its S stock for $20, recognizing a loss of $30. In either case, the P group would obtain more than one tax benefit from the single economic loss in the contributed asset. Accordingly, the proposed regulations provide that where a member of a consolidated group contributes a built-in loss asset to a partnership or a deconsolidated corporation, that partnership or deconsolidated corporation subsequently contributes the built-in loss asset to a subsidiary member of the group, and those contributions are with a view to avoiding the application of the basis redetermination rule or the loss suspension rule, adjustments must be made to prevent the consolidated group from obtaining more than one tax benefit from a single economic loss in the case.

The IRS and Treasury Department are also concerned that it may be possible to avoid the loss suspension rule by disposing of a sufficient amount of subsidiary member stock to cause a deconsolidation of the subsidiary member, but then engage in a transaction that has the effect of re-importing to the group losses of that subsidiary member. To address this concern, the proposed regulations include an anti-avoidance rule that prevents the group from obtaining the tax benefit of the re-imported loss. The rule applies whenever (1) a group recognizes and is allowed a loss on the disposition of subsidiary member stock with respect to which there is a duplicated loss, (2) as a result of that

disposition or another disposition, the subsidiary member leaves the group, and (3) within ten (10) years after the date the subsidiary member leaves the group, a loss of the subsidiary member is re-imported into the group. A loss of a subsidiary may be re-imported into the group when the subsidiary member rejoins the group at a time when it has losses or deferred deductions that it had on the date of the disposition or has losses or deferred deductions that are attributable to built-in loss assets held by the subsidiary member on the date of the disposition, or has built-in loss assets that were built-in loss assets of the subsidiary member on the date of the disposition. A loss of a subsidiary member may also be re-imported into the group when a member of the group succeeds to losses or deferred deductions of the subsidiary member that were losses or deferred deductions of the subsidiary member on the date of the disposition, or losses or deferred deductions that are attributable to assets that were built-in loss assets of the subsidiary member on the date of the disposition, or acquires built-in loss assets that were built-in loss assets of the subsidiary member on the date of the disposition. If the anti-avoidance rule applies, then these proposed regulations generally prohibit the use of the re-imported item of deduction or loss to offset income of the group.

F. Application of Anti-Abuse Rules

Finally, the proposed regulations make clear that the proposed rules do not preclude the application of anti-abuse rules of the Code and regulations thereunder, including to a transaction entered into to invoke the basis redetermination rule to avoid the effect of any other provision of the Code or regulations.

G. Request for Comments

The IRS and Treasury Department are considering alternative approaches to the basis redetermination rule that would mitigate basis disparities in stock of a subsidiary member. In this regard, the IRS and Treasury Department are considering an approach that would adjust the bases of all shares of subsidiary member stock held by group members upon any acquisition of subsidiary member stock. Comments are requested regarding the appropriateness and desirability of such an approach as well as suggestions for alternative approaches.

In addition, under the proposed regulations, the basis redetermination and loss suspension rules apply only to certain events involving stock that has a basis in excess of value. The IRS and Treasury Department, however, are considering the appropriateness and feasibility of a rule that applies the principles of the basis redetermination and loss suspension rules to certain events involving stock that has a value in excess of basis. With respect to the application of the principles of the loss suspension rule to dispositions of stock that has a value in excess of basis and that reflects duplicated gain, a rule might require taking into account the stock gain upon the disposition of the stock but would eliminate gain recognized on the disposition of assets that had a built-in gain at the time of the stock transaction. The IRS and Treasury Department request comments on appropriate and administrable applications of the principles of the basis redetermination and loss suspension rules to dispositions and deconsolidations of stock that has a built-in gain.

Finally, as an alternative or supplement to the rule providing for basis reduction for unabsorbed losses in certain cases where the subsidiary member ceases to exist or the group is allowed a worthless stock deduction with respect to the stock of such subsidiary member, the IRS and Treasury Department are considering whether it would be more appropriate to restrict the losses pursuant to the approach set forth in section 382(g)(4)(D). Comments are requested regarding whether such an approach would be appropriate, desirable and administrable, as well as the application of such an approach in the context of consolidated attributes.

Proposed Effective Date

These regulations, other than the anti-avoidance rule that relates to the re-importing of losses, are proposed to apply to transactions that occur on or after March 7, 2002, but only if such transactions occur during a taxable year the original return for which is due (without regard to extensions) after the date these regulations are published as temporary or final regulations in the **Federal Register**. The anti-avoidance rule that relates to the re-importing of loss is proposed to apply to losses re-imported as a result of an event that occurs on or after October 18, 2002, that triggers the application of such rule, but only if such event occurs during a taxable year the original return for which is due (without regard to extensions) after the date these regulations are published as temporary or final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 15, 2003, beginning at 10 a.m. in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments and an outline of the topics to be discussed and

the time to be devoted to each topic (a signed original and eight (8) copies) by December 27, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Aimee K. Meacham of the Office of the Associate Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

2. Section 1.1502–32 is amended by:

1. Revising paragraph (a)(2).

2. Adding paragraphs (b)(3)(iii)(C), (b)(3)(iii)(D), and (b)(3)(vi).

The revision and additions read as follows:

§ 1.1502–32 Investment adjustments.

(a) * * *

(2) *Application of other rules of law.* The rules of this section are in addition to other rules of law. See, e.g., section 358 (basis determinations for distributees), section 1016 (adjustments to basis), § 1.1502–11(b) (limitations on the use of losses), § 1.1502–19 (treatment of excess loss accounts), § 1.1502–31 (basis after a group structure change), and § 1.1502–35 (additional rules relating to stock loss). P's basis in S's stock must not be adjusted under this section and other rules of law in a manner that has the effect of duplicating an adjustment. For example, if pursuant to § 1.1502–35(c)(3) and paragraph (b)(3)(iii)(C) of this section the basis in stock is reduced to take into account a loss suspended under § 1.1502–35(c)(1), such basis shall not be further reduced to take into account such loss, or a portion of such loss, if any, that is later allowed pursuant to § 1.1502–35(c)(5). See also paragraph (h)(5) of this section for basis reductions applicable to certain former subsidiaries.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(C) *Loss suspended under § 1.1502–35(c).* Any loss suspended pursuant to § 1.1502–35(c) is treated as a noncapital, nondeductible expense incurred during the tax year that includes the date of the disposition to which such section applies. See § 1.1502–35(c)(3). Consequently, the basis of a higher-tier member's stock of P is reduced by the suspended loss in the year it is suspended.

(D) *Loss disallowed under § 1.1502–35(g)(3)(iii).* Any loss the use of which is disallowed pursuant to § 1.1502–35(g)(3)(iii)(A) or (B) is treated as a noncapital, nondeductible expense incurred during the taxable year that includes the date on which such loss is recognized. Any loss the use of which is disallowed pursuant to § 1.1502–35(g)(3)(iii)(C) and with respect to which no waiver described in paragraph (b)(4) of this section is filed is treated as a noncapital, nondeductible expense incurred during the taxable year that includes the day after the event described in § 1.1502–35(g)(3)(iii)(C) that gives rise to the application of § 1.1502–35(g)(3). See § 1.1502–35(g)(3)(iv).

* * * * *

(vi) *Special rules in the case of certain transactions subject to § 1.1502–35.* If a member of a group disposes of a share of subsidiary member stock or a share of subsidiary member stock is deconsolidated, and, at the time of such disposition or deconsolidation, the basis of such share exceeds its value, all members of the group are subject to the provisions of § 1.1502–35, which generally require a redetermination of members' basis in all shares of subsidiary stock.

3. Section 1.1502–35 is added to read as follows:

§ 1.1502–35 Disposition or deconsolidation of subsidiary member stock.

(a) *Purpose.* The purpose of this section is to prevent a group from obtaining more than one tax benefit from a single economic loss. The provisions of this section shall be construed in a manner consistent with that purpose and in a manner that reasonably carries out that purpose.

(b) *Redetermination of basis on disposition or deconsolidation of subsidiary member stock*—(1) *Application.* Except as provided in paragraph (b)(4) of this section, this paragraph (b) applies if a member of a consolidated group disposes of stock of a subsidiary member or a share of subsidiary member stock is deconsolidated, and such disposed of or deconsolidated stock has a basis that exceeds it value immediately prior to such disposition or deconsolidation. If, immediately after such disposition or deconsolidation, the subsidiary member remains a member of the group, then, immediately before such disposition or deconsolidation, the basis in each share of subsidiary member stock owned by each member of the group shall be redetermined in accordance with the provisions of paragraph (b)(2) of this section. If, immediately after such disposition or deconsolidation, the subsidiary is not a member of the group, then immediately before such disposition or deconsolidation, the basis in each share of subsidiary member stock owned by each member of the group shall be redetermined in accordance with the provisions of paragraph (b)(3) of this section.

(2) *Redetermination of subsidiary member stock basis if subsidiary member remains a member of the same group.* If the subsidiary member the stock of which is disposed of or deconsolidated remains a member of the group, all of the members' basis in the shares of subsidiary member stock shall be aggregated. Such aggregated basis shall be allocated first to the shares of the subsidiary member's preferred stock that are owned by the members of the group, in proportion to, but not in excess of, the value of those shares on the date of the disposition or deconsolidation that gave rise to the application of this paragraph (b). After allocation of the aggregated basis to all shares of the preferred stock of the subsidiary member held by members of the group, any remaining basis shall be allocated among all common shares of subsidiary member stock held by members of the group in proportion to the value of such shares on the date of the disposition or deconsolidation that gave rise to the application of this paragraph (b).

(3) *Redetermination of subsidiary member stock basis if subsidiary member does not remain a member of the group*—(i) *Calculation of Reallocable Basis Amount.* The reallocable basis amount shall equal the lesser of—

(A) The amount by which the basis of the disposed of or deconsolidated stock exceeds the value of such stock immediately prior to the disposition or deconsolidation that gave rise to the application of this paragraph (b); and

(B) The total of the subsidiary member's (and any predecessor's) items of deduction and loss, and the subsidiary member's (and any predecessor's) allocable share of items of deduction and loss of all lower-tier subsidiary members, that were taken into account in computing the adjustment to the basis of any share of stock of the subsidiary member (and any predecessor) under § 1.1502–32 other than the stock of the subsidiary member the disposition or deconsolidation of which gave rise to the application of this paragraph (b), during the time such subsidiary member (or any predecessor) was a member of the group, except to the extent the group can establish that all or a portion of such items would not have been reflected in a computation of the duplicated loss with respect to the disposed of or deconsolidated stock of the subsidiary member (or any predecessor) at any time prior to such disposition or deconsolidation.

(ii) *Allocation of reallocable basis amount.* If the subsidiary member the stock of which is disposed of or deconsolidated does not remain a member of the group, the basis in the shares of subsidiary member stock that were disposed of or deconsolidated shall be reduced by the reallocable basis amount. Then, to the extent of the reallocable basis amount, the basis of all the preferred shares of stock of the subsidiary member that are held by members of the group immediately after the disposition or deconsolidation shall be increased such that the basis of each such share shall equal, but not exceed, its value immediately before the disposition or deconsolidation. If the reallocable basis amount is not sufficient to increase the basis of each such share of preferred stock to its value immediately before the disposition or deconsolidation, the basis of each such share shall be increased in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such share to be the same. Then, to the extent the reallocable basis amount does not increase the basis of shares of subsidiary member preferred stock pursuant to the second sentence of this paragraph (b)(3)(ii), such amount shall increase the basis of all common shares of subsidiary member stock held by members of the group immediately after the disposition or deconsolidation in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such other share to be the same.

(4) *Exception to application of redetermination rules.* This paragraph (b) shall not apply to a disposition of subsidiary member stock if, within the taxable year of such disposition, in one or more fully taxable transactions, the group disposes of its entire equity interest in the subsidiary member or is allowed a worthless stock loss under section 165(g) (taking into account the provisions of § 1.1502–80(c)) with respect to all of the subsidiary member stock owned by members.

(5) *Special rule for lower-tier subsidiaries.* If—

(i) A member of a consolidated group disposes of stock of a subsidiary member of the same group or a share of subsidiary member stock is deconsolidated, and, immediately before the disposition or deconsolidation, the member's basis in the disposed of or deconsolidated share of subsidiary member stock exceeds its value;

(ii) The subsidiary member owns stock of another subsidiary member of the same group and, immediately before the disposition or deconsolidation, the basis of some or all of such stock exceeds its value; and

(iii) Immediately after the disposition or deconsolidation, another member of the same group owns stock of such other subsidiary member, then the basis in each share of such other subsidiary member shall be redetermined pursuant to this paragraph (b) as if the stock of such other subsidiary member owned by the subsidiary member had been disposed of or deconsolidated. This paragraph (b)(5) shall not apply in the case of a disposition of subsidiary member stock if, within the taxable year of the disposition of subsidiary member stock, in one or more fully taxable transactions, the group disposes of its remaining equity interests in the other subsidiary member or is allowed a worthless stock loss under section 165(g) (taking into account the provisions of § 1.1502–80(c)) with respect to such other subsidiary member. These same principles shall apply to stock of subsidiary members of the same group that are owned by such other subsidiary member.

(6) *Stock basis adjustments for higher-tier stock.* The basis adjustments required under this paragraph (b) result in basis adjustments to higher-tier member stock. The adjustments are applied in the order of the tiers, from the lowest to highest. For example, if a common parent owns stock of a subsidiary member that owns stock of a lower-tier subsidiary member and the subsidiary member recognizes a loss on the disposition of a portion of its shares of the lower-tier subsidiary member stock, the common parent must adjust its basis in its subsidiary member stock under the principles of § 1.1502–32 to reflect the adjustments that the subsidiary member must make to its basis in its stock of the lower-tier subsidiary member.

(7) *Ordering rule.* The rules of this paragraph (b) apply after the rules of § 1.1502–32 are applied. Paragraph (b)(5) of this section (and any resulting basis adjustments to higher-tier member stock made pursuant to paragraph (b)(6) of this section) applies prior to paragraph (b)(2) or (b)(3) of this section (and any resulting basis adjustments to higher-tier member stock made pursuant to paragraph (b)(6) of this section).

(c) *Loss suspension*—(1) *General rule.* Any loss recognized by a member of a consolidated group with respect to the disposition of a share of subsidiary member stock shall be suspended to the extent of the duplicated loss with respect to such share of stock if, immediately after the disposition, the subsidiary is a member of the consolidated group of which it was a member immediately prior to the disposition (or any successor group).

(2) *Special rule for lower-tier subsidiaries.* This paragraph (c)(2) applies if neither paragraph (c)(1) nor (f) of this section applies to a member's disposition of a share of stock of a subsidiary member (the departing member), a loss is recognized on the disposition of such share, and the departing member owns stock of one or more other subsidiary members (a remaining member) that is a member of such group immediately after the disposition. In that case, such loss shall be suspended to the extent the duplicated loss with respect to the departing member stock disposed of is attributable to the remaining member or members.

(3) *Treatment of suspended loss.* For purposes of the rules of § 1.1502–32(b)(3)(iii), any loss suspended pursuant to paragraph (c)(1) or (c)(2) of this section is treated as a noncapital, nondeductible expense of the member that disposes of subsidiary member stock incurred during the taxable year that includes the date of the disposition of stock to which paragraph (c)(1) or (c)(2) of this section applies. See § 1.1502–32(b)(3)(iii)(C). Consequently, the basis of a higher-tier member's stock of the member that disposes of subsidiary member stock is reduced by the suspended loss in the year it is suspended.

(4) *Reduction of suspended loss*—(i) *General rule.* The amount of any loss suspended pursuant to paragraphs (c)(1) and (c)(2) of this section shall be reduced, but not below zero, by the subsidiary member's (and any successor's) items of deduction and loss,

and the subsidiary member's (and any successor's) allocable share of items of deduction and loss of all lower-tier subsidiary members, that are allocable to the period beginning on the date of the disposition that gave rise to the suspended loss and ending on the day before the first date on which the subsidiary member (or any successor) is not a member of the group of which it was a member immediately prior to the disposition (or any successor group), and that are taken into account in determining consolidated taxable income (or loss) of such group for any taxable year that includes any date on or after the date of the disposition and before the first date on which the subsidiary member (or any successor) is not a member of such group. The preceding sentence shall not apply to items of deduction and loss to the extent that the group can establish that all or a portion of such items was not reflected in the computation of the duplicated loss with respect to the subsidiary member stock on the date of the disposition of such stock.

(ii) *Operating rules*—(A) *Year in which deduction or loss is taken into account.* For purposes of paragraph (c)(4)(i) of this section, a subsidiary member's (or any successor's) deductions and losses are treated as taken into account when and to the extent they are absorbed by the subsidiary member (or any successor) or any other member. To the extent that the subsidiary member's (or any successor's) deduction or loss is absorbed in the year it arises or is carried forward and absorbed in a subsequent year (*e.g.*, under section 172, 465, or 1212), the deduction is treated as taken into account in the year in which it is absorbed. To the extent that a subsidiary member's (or any successor's) deduction or loss is carried back and absorbed in a prior year (whether consolidated or separate), the deduction or loss is treated as taken into account in the year in which it arises and not in the year in which it is absorbed.

(B) *Determination of items that are allocable to the post-disposition, pre-deconsolidation period.* For purposes of paragraph (c)(4)(i) of this section, the determination of whether a subsidiary member's (or any successor's) items of deduction and loss and allocable share of items of deduction and loss of all lower-tier subsidiary members are allocable to the period beginning on the date of the disposition of subsidiary stock that gave rise to the suspended loss and ending on the day before the first date on which the subsidiary member (or any successor) is not a member of the consolidated group of which it was a member immediately prior to the disposition (or any successor group) is determined pursuant to the rules of § 1.1502–76(b)(2), without regard to § 1.1502–76(b)(2)(ii)(D), as if the subsidiary member ceased to be a member of the group at the end of the day before the disposition and filed separate returns for the period beginning on the date of the disposition and ending on the day before the first date on which it is not a member of such group.

(5) *Allowable loss*—(i) *General rule.* To the extent not reduced under paragraph (c)(4) of this section, any loss suspended pursuant to paragraph (c)(1) or (c)(2) of this section shall be allowed, to the extent otherwise allowable under applicable provisions of the Internal Revenue Code and regulations thereunder, on a return filed by the group of which the subsidiary was a member on the date of the disposition of subsidiary stock that gave rise to the suspended loss (or any successor group) for the taxable year that includes the day before the first date on which the subsidiary (or any successor) is not a member of such group or the date the group is allowed a worthless stock loss under section 165(g) (taking into account the provisions of § 1.1502–80(c)) with respect to all of the subsidiary member stock owned by members.

(ii) *No tiering up of certain adjustments.* No adjustments shall be made to a member's basis of stock of a subsidiary member (or any successor) for a suspended loss that is taken into account under paragraph (c)(5)(i) of this section. See § 1.1502–32(a)(2).

(iii) *Statement of allowed loss.* Paragraph (c)(5)(i) of this section applies only if the separate statement required under this paragraph (c)(5)(iii) is filed with, or as part of, the taxpayer's return for the year in which the loss is allowable. The statement must be entitled ''ALLOWED LOSS UNDER § 1.1502–35(c)(5)'' and must contain the name and employer identification number of the subsidiary the stock of which gave rise to the loss.

(6) *Special rule for dispositions of certain carryover basis assets.* If—

(i) A member of a group recognizes a loss on the disposition of an asset other than stock of a subsidiary member;

(ii) Such member's basis in the asset disposed of was determined, directly or indirectly, in whole or in part, by reference to the basis of stock of a subsidiary member and, at the time of the determination of the member's basis in the assets disposed of, there was a duplicated loss with respect such stock of the subsidiary member; and

(iii) Immediately after the disposition, the subsidiary member is a member of such group, then such loss shall be suspended pursuant to the principles of paragraphs (c)(1) and (c)(2) of this section to the extent of the duplicated loss with respect to such stock at the time of the determination of basis of the asset disposed of. Principles similar to those set forth in paragraphs (c)(3), (4), and (5) of this section shall apply to a loss suspended pursuant to this paragraph (c)(6).

(7) *Coordination with loss deferral, loss disallowance, and other rules*—(i) *In general.* Loss recognized on the disposition of subsidiary member stock or another asset is subject to redetermination, deferral, or disallowance under other applicable provisions of the Internal Revenue Code and regulations thereunder, including sections 267(f) and 482. Paragraphs (c)(1), (c)(2), and (c)(6) of this section do not apply to a loss that is disallowed under any other provision. If loss is deferred under any other provision, paragraphs (c)(1), (c)(2), and (c)(6) of this section apply when the loss would otherwise be taken into account under such other provision. However, if an overriding event described in paragraph (c)(7)(ii) of this section occurs before the deferred loss is taken into account, paragraphs (c)(1), (c)(2), and (c)(6) of this section apply to the loss immediately before the event occurs, even though the loss may not be taken into account until a later time.

(ii) *Overriding events.* For purposes of paragraph (c)(7)(i) of this section, the following are overriding events—

(A) The stock ceases to be owned by a member of the consolidated group;

(B) The stock is canceled or redeemed (regardless of whether it is retired or held as treasury stock); or

(C) The stock is treated as disposed of under § 1.1502–19(c)(1)(ii)(B) or (c)(1)(iii).

(d) *Definitions*—(1) *Disposition. Disposition* means any event in which gain or loss is recognized, in whole or in part.

(2) *Deconsolidation. Deconsolidation* means any event that causes a share of stock of a subsidiary member that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

(3) *Value. Value* means fair market value.

(4) *Duplicated loss*—(i) *In general.* Duplicated loss is determined immediately after a disposition and equals the excess, if any, of—

(A) The sum of—

(*1*) The aggregate adjusted basis of the subsidiary member's assets other than any stock that subsidiary member owns in another subsidiary member; and

(*2*) Any losses attributable to the subsidiary member and carried to the subsidiary member's first taxable year following the disposition; and

(*3*) Any deductions of the subsidiary member that have been recognized but are deferred under a provision of the Internal Revenue Code (such as deductions deferred under section 469); over

(B) The sum of—

(*1*) The value of the subsidiary member's stock; and

(*2*) Any liabilities of the subsidiary member that have been taken account for tax purposes.

(ii) *Special rules.* (A) The amounts determined under paragraph (d)(4)(i) of this section with respect to a subsidiary member include its allocable share of corresponding amounts with respect to all lower-tier subsidiary members. If 80 percent or more in value of the stock of a subsidiary member is acquired by purchase in a single transaction (or in a series of related transactions during any 12-month period), the value of the subsidiary member's stock may not exceed the purchase price of the stock divided by the percentage of the stock (by value) so purchased. For this purpose, stock is acquired by purchase if the transferee is not related to the transferor within the meaning of sections 267(b) and 707(b)(1), using the language ''10 percent'' instead of ''50 percent'' each place that it appears, and the transferee's basis in the stock is determined wholly by reference to the consideration paid for such stock.

(B) The amounts determined under paragraph (d)(4)(i) of this section are not applied more than once to suspend a loss under this section.

(5) *Predecessor and Successor.* A predecessor is a transferor of assets to a transferee (the successor) in a transaction—

(i) To which section 381(a) applies;

(ii) In which substantially all of the assets of the transferor are transferred to members in a complete liquidation;

(iii) In which the successor's basis in assets is determined (directly or indirectly, in whole or in part) by reference to the transferor's basis in such assets, but the transferee is a successor only with respect to the assets the basis of which is so determined; or

(iv) Which is an intercompany transaction, but only with respect to assets that are being accounted for by the transferor in a prior intercompany transaction.

(6) *Successor group.* A surviving group is treated as a successor group of a consolidated group (the terminating group) that ceases to exist as a result of—

(i) The acquisition by a member of another consolidated group of either the assets of the common parent of the terminating group in a reorganization described in section 381(a)(2), or the stock of the common parent of the terminating group; or

(ii) The application of the principles of § 1.1502–75(d)(2) or (3).

(7) *Preferred stock, common stock. Preferred stock* and *common stock* shall have the meanings set forth in § 1.1502–32(d)(2) and (3), respectively.

(8) *Lower-tier.* A subsidiary member is *lower-tier* with respect to a member if or to the extent investment basis adjustments under § 1.1502–32 with respect to the stock of the former member would affect investment basis adjustments with respect to the stock of the latter.

(e) *Examples.* For purposes of the examples in this section, unless otherwise stated, all groups file consolidated returns on a calendar-year basis, the facts set forth the only corporate activity, all transactions are between unrelated persons, and tax liabilities are disregarded. The principles of paragraphs (a) through (d) of this section are illustrated by the following examples:

Example 1. (i) P owns 100 percent of the common stock of each of S1 and S2. S1 and S2 each have only one class of stock outstanding. P's basis in the stock of S1 is $100 and in the stock of S2 is $120. P, S1, and S2 are all members of the P group. S1 and S2 form S3. In Year 1, in transfers to which section 351 applies, S1 contributes $100 to S3 in exchange for all of the common stock of S3 and S2 contributes an asset with a basis of $50 and a value of $20 to S3 in exchange for all of the preferred stock of S3. S3 becomes a member of the P group. In Year 3, in a transaction that is not part of the plan that includes the formation of S3, S2 sells the preferred stock of S3 for $20. Immediately after the sale, S3 is a member of the P group.

(ii) Under paragraph (b)(1) of this section, because S2's basis in the preferred stock of S exceeds the value of such shares immediately prior to the sale and S is a member of the P group immediately after the sale, all of the P group members' bases in the stock of S3 is redetermined pursuant to paragraph (b)(2) of this section. Of the group members' total basis of $150 in the S3 stock, $20 is allocated to the preferred stock, the fair market value of the preferred stock on the date of the sale, and $130 is allocated to the common stock. S2's sale of the preferred stock results in the recognition of $0 of gain/loss. Pursuant to paragraph (b)(6) of this section, the redetermination of S1's and S2's bases in the stock of S3 results in adjustments to P's basis in the stock of S1 and S2. In particular, P's basis in the stock of S1 is increased by $30 to $130 and its basis in the stock of S2 is decreased by $30 to $90.

Example 2. (i) P owns 75 shares of common stock of S each with a basis and value equal to $1. S is a member of the P group. On January 1st of Year 1, in a transfer to which section 351 applies, P contributes Asset A, which has a basis of $100 and value of $25, to S in exchange for 25 shares of common stock of S. In Year 1, S incurs $40 of ordinary operating expenses and takes a depreciation deduction in the amount of $10 with respect to Asset A. Those deductions offset income of P in Year 1. Pursuant to § 1.1502–32, the negative investment adjustment of $50 with respect to the stock of S reduces the basis of each share of S common stock by $0.50. Therefore, P's original 75 shares of S common stock each has a basis of $0.50 and each of the 25 shares of S common stock that P acquired in Year 1 has a basis of $3.50. In Year 3 in a transaction that is not part of a plan that includes the Year 1 contribution, P sells the 25 shares of common stock it acquired in Year 1 for $12.50. As a result of that sale, S ceases to be a member of the P group.

(ii) Under paragraph (b)(1) of this section, because P's basis in the 25 shares of common stock it acquired in Year 1 exceeds its value immediately prior to the sale and S is not a member of the P group immediately after the disposition, P's basis in its shares of S common stock is redetermined pursuant to paragraph (b)(3) of this section. Pursuant to paragraph (b)(3)(i) of this section, the reallocable basis amount is $37.50 (the lesser of the amount by which P's basis in the S common stock sold exceeds the value of such stock immediately prior to the sale ($87.50 minus $12.50, or $75) and the aggregate amount of S's items of deduction and loss that were previously taken into account in the computation of the adjustment to the basis of the S common stock other than the stock disposed of, under § 1.1502–32, during the time that S was a member of the P group ($37.50)). P, however, may be able to establish that $30 of the $37.50 of items of deduction and loss taken into account in computing the adjustment to the basis of the S common stock (other than the S common stock disposed of) in Year 1 was not attributable to a loss that was already reflected in P's basis in its shares of S common stock disposed of. Assuming that P can establish this fact, pursuant to paragraph (b)(3)(i) of this section, the reallocable basis amount would be $7.50. In that case, P's basis in the 25 shares of S common stock sold would be reduced from $87.50 to $80 pursuant to paragraph (b)(3)(ii) of this section. Accordingly, P would recognize a loss of $67.50 on the sale of the 25 shares of S common stock for $12.50. In addition, the basis of each remaining share of S common stock would be increased in an aggregate amount of $7.50 in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such other share to be equal. In this case, the basis of each of the 75 shares of S common stock retained would be increased by $0.10 to $0.60.

Example 3. (i) In Year 1, P forms S by contributing Asset A with a basis of $90 and

a value of $10 in exchange for one share of S common stock (CS1) in a transfer to which section 351 applies. In Years 2 and 3, in successive but unrelated transfers to which section 351 applies, P transfers $10 to S in exchange for one share of S common stock (CS2), Asset B with a basis of $2 and a value of $10 in exchange for one share of S common stock (CS3), and Asset C with a basis of $100 and a value of $10 in exchange for one share of S common stock (CS4). In Year 4, S sells Asset A, recognizing $80 of loss that is used to offset income of P recognized during Year 4. As a result of the sale of Asset C, the basis of each of P's four shares of S common stock is reduced by $20. Therefore, the basis of CS1 is $70. CS2 has an excess loss account of $10. CS3 has an excess loss account of $18. CS4 has a basis of $80. In Year 5 in a transaction that is not part of a plan that includes the Year 1 contribution, P sells CS1 for $10. Immediately after the sale of CS1, S is not a member of the P group.

(ii) Under paragraph (b)(1) of this section, because P's basis in CS1 exceeds its value immediately prior to the sale and S is not a member of the P group immediately after the disposition, P's basis in its shares of S common stock is redetermined pursuant to paragraph (b)(3) of this section. Pursuant to paragraph (b)(3)(i) of this section, the reallocable basis amount is $60 (the lesser of the amount by which P's basis in the S common stock sold exceeds the value of such stock immediately prior to the sale ($60) and the aggregate amount of S's items of deduction and loss that were previously taken into account in the computation of the adjustment to the basis of the S common stock other than the stock disposed of, under § 1.1502–32, during the time that S was a member of the P group ($60)). Pursuant to paragraph (b)(3)(ii) of this section, P's basis in CS1 is reduced from $70 to $10. On the sale of CS1, therefore, P recognizes $0 gain/loss. Then, P's basis in the remaining S common stock is increased in an aggregate amount of $60 in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such share to be same. In this case, $20 of the reallocable basis amount is allocated to CS2 and $28 of the reallocable basis amount is allocated to CS3 so as to increase the basis of such shares to $10, the basis of CS1. The remaining $12 of the reallocable basis amount is allocated equally to CS2 and CS3 so as to increase the basis of each such share from $10 to $16.

Example 4. (i) In Year 1, P forms S with a contribution of $80 in exchange for 80 shares of the common stock of S, which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes Asset A with a basis of $50 and a value of $20 in exchange for 20 shares of the common stock of S in a transfer to which section 351 applies. In Year 3, in a transaction that is not part of the plan that includes the Year 2 contribution, P sells the 20 shares of the common stock of S that it acquired in Year 2 for $20. At that time, S has $80 and Asset A, the basis and value of which have not changed. In Year 4, S sells Asset A for $20, recognizing a $30 loss. That $30 loss is used on the P group return to offset income of P. In Year 5, P sells its remaining S common stock for $80.

(ii) Under paragraph (b)(1) of this section, because P's basis in the common stock sold exceeds its value immediately prior to the sale and S is a member of the P group immediately after the sale, P's basis in all of the stock of S is redetermined pursuant to paragraph (b)(2) of this section. Of P's total basis of $130 in the S common stock, a proportionate amount is allocated to each of the 100 shares of S common stock. Accordingly, $26 is allocated to the common stock of S that is sold and $104 is allocated to the common stock of S that is retained. On P's sale of the 20 shares of the common stock of S for $20, P recognizes a loss of $6. Because the sale of the 20 shares of common stock of S does not result in the deconsolidation of S, under paragraph (c)(1) of this section, that loss is suspended to the extent of the duplicated loss with respect to the shares sold. The duplicated loss with respect to the shares sold is $6. Therefore, the entire $6 loss is suspended. Pursuant to paragraph (c)(4) of this section, the amount of the suspended loss is reduced, but not below zero, by S's items of deduction and loss that are allocable to the period beginning on the date of the Year 2 disposition of the S stock and ending on the day before the first date on which S is not a member of the P group and that are taken into account in determining consolidated taxable income (or loss) of the P group for any taxable year that includes any date on or after the date of the Year 2 disposition and before the first date on which S is not a member of the P group, except to the extent the P group can establish that all or a portion of such items was not included in the calculation of the duplicated loss with respect to the shares of S sold on the date of the Year 2 disposition. Because the loss recognized on the sale of Asset A was included in the calculation of the duplicated loss with respect to the S common stock sold on the date of the sale and is absorbed by the P group, the suspended loss is reduced to zero pursuant to paragraph (c)(4) of this section. Accordingly, no amount of suspended loss is allowed under paragraph (c)(5) of this section. Under § 1.1502–32, P's basis in its S stock is reduced by $24. Accordingly, such basis is reduced from $104 to $80. P recognizes $0 gain/loss on the Year 5 sale of its remaining S common stock.

Example 5. (i) The facts are the same as in *Example 4,* except that instead of selling Asset A for $20, S sells Asset A for $45, recognizing a $5 loss. In addition in Year 5, P sells its remaining S common stock for $100.

(ii) As in *Example 4,* P recognizes a loss of $6 on the sale of the 20 shares of the common stock of S and that loss is suspended under paragraph (c)(1) of this section. Pursuant to paragraph (c)(4) of this section, assuming the P group cannot establish that only a portion of the loss recognized on the sale Asset A was reflected in the computation of the duplicated loss with respect to the 20 shares of S common stock sold, the amount of the suspended loss is reduced by the $5 loss recognized on the sale of Asset A to $1. Under § 1.1502–32, P's basis in its S stock is reduced by $4 from $104 to $100. In Year 5, when P sells its remaining S common stock for $100, it recognizes $0 gain/loss. Pursuant to paragraph (c)(5) of this section, the remaining $1 of the suspended loss is allowed on the P group's return for Year 5.

Example 6. (i) The facts are the same as in *Example 4,* except that S does not sell Asset A prior to the sale of its remaining S common stock.

(ii) As in *Example 4,* P recognizes a loss of $6 on the sale of the 20 shares of the common stock of S and that loss is suspended under paragraph (c)(1) of this section. In Year 5 when P sells its remaining S common stock for $80, it recognizes a loss of $24. Pursuant to paragraph (c)(5) of this section, for the year that includes the date of the deconsolidation of S, the suspended loss attributable to its Year 2 sale of S common stock is allowed to the extent it has not been reduced pursuant to paragraph (c)(4) of this section. Because S had no items of loss and deduction that are allocable to the period beginning on the date of the Year 2 disposition of the S stock and ending on the day before the first date on which S is not a member of the of the P group, the suspended loss is not reduced pursuant to paragraph (c)(4) of this section. Accordingly, pursuant to paragraph (c)(5) of this section, the entire $6 suspended loss is allowed on the P group's return for Year 5.

Example 7. (i) In Year 1, P forms S1 with a contribution of $200 in exchange for all of the common stock of S1, which represents all of the outstanding stock of S1. In the same year, S1 forms S2 with a contribution of $80 in exchange for 80 shares of the common stock of S2, which at that time represents all of the outstanding stock of S2. S1 and S2 become members of the P group. In the same year, S2 purchases Asset A for $80. In Year 2, S1 contributes Asset B with a basis of $50 and a value of $20 in exchange for 20 shares of the common stock of S2 in a transfer to which section 351 applies. In Year 3, S1 sells the 20 shares of the common stock of S2 that it acquired in Year 2 for $20. At that time, the bases and values of Asset A and Asset B are unchanged. In Year 4, S2 sells Asset A for $50, recognizing a $30 loss. That $30 loss is used on the P group return to offset income of P. In Year 5, S1 sells its remaining S2 common stock for $56.

(ii) Under paragraph (b)(1) of this section, because S1's basis in the S2 common stock sold exceeds its value immediately prior to the sale and S2 is a member of the P group immediately after the sale, S1's basis in all of the stock of S2 is redetermined pursuant to paragraph (b)(2) of this section. Of S1's total basis of $130 in the S2 common stock, a proportionate amount is allocated to each of the 100 shares of S2 common stock. Accordingly, a total of $26 is allocated to the common stock of S2 that is sold and $104 is allocated to the common stock of S2 that is retained. On S1's sale of the 20 shares of the common stock of S2 for $20, S1 recognizes a loss of $6. Because the sale of the 20 shares of common stock of S2 does not result in the deconsolidation of S2, under paragraph (c)(1) of this section, that loss is suspended to the extent of the duplicated loss with respect to

the shares sold. The duplicated loss with respect to the shares sold is $6. Therefore, the entire $6 loss is suspended. Pursuant to paragraph (c)(3) of this section and § 1.1502–32(b)(3)(iii)(C), the suspended loss is treated as a noncapital, nondeductible expense incurred by S1 during the tax year that includes the date of the disposition of stock to which paragraph (c)(1) of this section applies. Accordingly, P's basis in its S1 stock is reduced from $200 to $194. Pursuant to paragraph (c)(4) of this section, the amount of the suspended loss is reduced, but not below zero, by S2's items of deduction and loss that are allocable to the period beginning on the date of the Year 3 disposition of the S2 stock and ending on the day before the first date on which S2 is not a member of the P group, and that are taken into account in determining consolidated taxable income (or loss) of the P group for any taxable year that includes any date on or after the date of the Year 3 disposition and before the first date on which S2 is not a member of the P group, except to the extent the P group can establish that all or a portion of such items was not included in the calculation of the duplicated loss with respect to the S2 stock sold on the date of the disposition. Assuming the P group can establish that the $30 loss generated by S2 on the sale of Asset A was not included in the calculation of the duplicated loss with respect to the S2 stock sold on the date of the disposition, such loss does not reduce the suspended loss. In that case, for the taxable year that includes the day before the first date in Year 5 on which S is not a member of the P group, the P group is allowed to take into account the $6 suspended loss. On the other hand, if the P group cannot establish that the $30 loss generated by S2 on the sale of Asset A was not included in the calculation of the duplicated loss with respect to the S2 stock sold on the date of the disposition, pursuant to paragraph (c)(4) of this section, such loss reduces the suspended loss to zero, and no amount of suspended loss is allowed under paragraph (c)(5) of this section. In either case, under § 1.1502–32, S1's basis in its remaining S2 stock is reduced by $24 from $80 to $56. S1 recognizes $0 gain/loss on the sale of its remaining S2 stock.

Example 8. (i) In Year 1, P forms S1 with a contribution of Asset A with a basis of $50 and a value of $20 in exchange for 100 shares of common stock of S1 in a transfer to which section 351 applies. Also in Year 1, P and S1 form S2. P contributes $80 to S2 in exchange for 80 shares of common stock of S2. S1 contributes Asset A to S2 in exchange for 20 shares of common stock of S2 in a transfer to which section 351 applies. In Year 3, in a transaction that is not part of a plan that includes the Year 1 contributions, P sells its 100 shares of S1 common stock for $20. At that time, S1 owns 20 shares of common stock of S2 and S2 has $80 and Asset A, the basis and value of which have not changed. In Year 4, S2 sells Asset A for $20, recognizing a $30 loss. That $30 loss is used on the P group return to offset income of P. In Year 5, P sells its S2 common stock for $80.

(ii) Because the P group disposes of its entire equity interest in S1 within a single taxable year, pursuant to paragraph (b)(4) of this section, paragraph (b) of this section does not apply immediately prior to the disposition to cause a redetermination of P's basis in its S1 common stock. Pursuant to paragraph (b)(5) of this section, however, because, immediately prior to the disposition of the S1 stock, P's basis in such stock exceeds its value, S1 owns stock of S2 (another subsidiary member of the same group) and, immediately prior to the disposition of the S1 stock, such S2 stock has a basis that exceeds its value, and, immediately after the disposition of the S1 stock, P owns stock of S2, the basis in each share of S2 that is owned by members of the P group must be redetermined as provided in paragraph (b) of this section as if S1's S2 stock had been disposed of or deconsolidated. Because S2 is a member of the group immediately after the disposition of the S1 stock, the group member's basis in the S2 stock is redetermined pursuant to paragraph (b)(2) of this section immediately prior to the sale of the S1 stock. Of the group members' total basis of $130 in the S2 stock, $26 is allocated to S1's 20 shares of S2 common stock and $104 is allocated to P's 80 shares of S2 common stock. Pursuant to paragraph (b)(6) of this section, the redetermination of S1's basis in the stock of S2 results in an adjustment to P's basis in the stock of S1. In particular, P's basis in the stock of S1 is decreased by $24 to $26. On P's sale of its 100 shares of S1 common stock for $20, S1 recognizes a loss of $6. Because S1 is not a member of the P group immediately after S1's disposition of the S2 stock, paragraph (c)(1) of this section does not apply to suspend such loss. Pursuant to paragraph (c)(2) of this section, however, because P recognizes a loss with respect to the disposition of the S1 stock and S1 owns stock of S2 (which is a member of the P group immediately after the disposition), such loss is suspended up to $6, an amount equal to the amount by which the duplicated loss with respect to the stock of S1 sold is attributable to S2's adjusted basis in its assets, loss carryforwards and deferred deductions. Pursuant to paragraph (c)(4) of this section, the amount of the suspended loss is reduced, but not below zero, by S2's items of deduction and loss that are allocable to the period beginning on the date of the Year 3 disposition of the S1 stock and ending on the day before the first date on which S2 is not a member of the P group and that are taken into account in determining the consolidated taxable income (or loss) of the P group for any taxable year that includes any date on or after the date of the Year 3 disposition and before the first date on which S2 is not a member of the P group, except to the extent the P group can establish all or a portion of such items were not included in the calculation of the duplicated loss with respect to the S1 stock sold or were not attributable to S2's adjusted basis in its assets, loss carryforwards, or deferred deductions. Because the loss recognized on the sale of Asset A was included in the calculation of the duplicated loss with respect to the S1 stock on the date of the sale of the S1 stock and is absorbed by the P group, the suspended loss is reduced to zero pursuant to paragraph (c)(4) of this section. Accordingly, no amount of suspended loss is allowed under paragraph (c)(5) of this section. Under § 1.1502–32, P's basis in its S2 stock is reduced by $24 from $104 to $80. P recognizes $0 gain/loss on the sale of its S2 common stock.

Example 9. (i) In Year 1, P forms S with a contribution of $80 in exchange for 80 shares of common stock of S which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes Asset A with a basis of $50 and a value of $20 in exchange for 20 shares of common stock of S in a transfer to which section 351 applies. In Year 3, in a transaction that is not part of a plan that includes the Year 1 and Year 2 contributions, P contributes the 20 shares of S common stock it acquired in Year 2 to PS, a partnership, in exchange for a 20 percent capital and profits interest in a transaction described in section 721. In Year 4, P sells its interest in PS for $20, recognizing a $30 loss.

(ii) Under paragraph (b)(1) of this section, because P's basis in the S common stock contributed to PS exceeds its value immediately prior to its deconsolidation and S is a member of the P group immediately after the deconsolidation, P's basis in all of the S stock is redetermined pursuant to paragraph (b)(2) of this section. Of P's total basis of $130 in the common stock of S, a proportionate amount is allocated to each share of S common stock. Accordingly, $26 is allocated to the S common stock that is contributed to PS and, under section 722, P's basis in its interest in PS is $26. P recognizes a $6 loss on its disposition of its interest in PS. Because P's basis in its interest in PS was determined by reference to the basis of S stock and at the time of the determination of P's basis in its interest in PS such S stock had a duplicated loss of $6, and, immediately after the disposition, S is a member of the P group, such loss is suspended to the extent of such duplicated loss. Principles similar to those of paragraphs (c)(3), (4), and (5) of this section shall apply to such suspended loss.

(f) *Basis reduction on worthlessness and certain dispositions not followed by separate return years.* If a member of a group disposes of subsidiary member stock and on the following day the subsidiary is not a member of the group and does not have a separate return year, then, immediately prior to the recognition of any gain or loss with respect thereto, and immediately after all other adjustments under § 1.1502–32 with respect thereto, the basis of upper-tier members in the stock of the subsidiary member shall be reduced to the extent of the consolidated net operating losses and net capital losses that would be treated as attributable to such subsidiary member (and lower-tier members) under the principles of § 1.1502–21(b)(2)(iv), as though such losses were absorbed by the group. In addition, if, taking into account the provisions of § 1.1502–80(c), stock of a

subsidiary member is treated as worthless under section 165, then, immediately prior to the allowance of any loss or inclusion of an excess loss account with respect thereto, and immediately after all other adjustments under § 1.1502–32 with respect thereto, the basis of upper-tier members in the stock of the worthless member shall be reduced to the extent of the consolidated net operating losses and net capital losses that would be treated as attributable to such subsidiary member (and lower-tier members) under the principles of § 1.1502–21(b)(2)(iv), as though such losses were absorbed by the group.

(g) *Anti-avoidance rules.* (1) *Disposition or deconsolidation of gain share in avoidance.* If a share of subsidiary member stock has a basis that does not exceed its value and the share is deconsolidated with a view to avoiding application of the rules of paragraph (b) of this section prior to the disposition of a share of subsidiary member stock that has a basis that does exceed its value, the rules of paragraph (b) of this section shall apply immediately prior to the deconsolidation.

(2) *Transfers of loss property in avoidance.* If a member of a consolidated group contributes an asset with a basis that exceeds its value to a partnership in a transaction described in section 721 or a corporation that is not a member of such group in a transfer described in section 351, such partnership or corporation contributes such asset to a subsidiary member in a transfer described in section 351, and such contributions are undertaken with a view to avoiding the rules of paragraph (b) or (c) of this section, adjustments must be made to carry out the purposes of this section.

(3) *Anti-loss reimportation*—(i) *Application.* This paragraph (g)(3) applies if—

(A) A member of a group recognizes and is allowed a loss on the disposition of a share of stock of a subsidiary member with respect to which there is a duplicated loss;

(B) As a result of that disposition or another disposition, the subsidiary member ceases to be a member of such group; and

(C) Within the 10-year period beginning on the date the subsidiary member ceases to be a member of such group—

(*1*) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) owns any asset that has a basis in excess of value at such time and that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of value on such date;

(*2*) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) owns any asset that has a basis in excess of value at such time and that has a basis that reflects, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of value on such date;

(*3*) In a transaction described in section 381 or section 351, any member of such group (or any successor group) acquires any asset of the subsidiary member (or any successor) that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of its value on such date, or any asset that has a basis that reflects, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of its value on such date, and, immediately after the acquisition of such asset, such asset has a basis in excess of its value;

(*4*) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) has any losses or deferred deductions that were losses or deferred deductions of the subsidiary member on the date of the disposition;

(*5*) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) has any losses or deferred deductions that are attributable to any asset that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of value on such date;

(*6*) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) has any losses or deferred deductions that are attributable to any asset that had a basis that reflected, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of value on such date; or

(*7*) Any member of such group (or any successor group) succeeds to any losses or deferred deductions of the subsidiary member (or any successor) that were losses or deferred deductions of the subsidiary member on the date of the disposition, that are attributable to any asset that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of value on such date, or that are attributable to any asset that had a basis that reflected, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of value on such date.

(ii) *Operating rules*—(A) For purposes of paragraph (g)(3)(i)(C) of this section, assets shall include stock and securities and the subsidiary member (or any successor) shall be treated as having its allocable share of losses and deferred deductions of all lower-tier subsidiary members and as owning its allocable share of each asset of all lower-tier subsidiary members.

(B) For purposes of paragraphs (g)(3)(i)(C)(*4*), (*5*), and (*6*) of this section, unless the group can establish otherwise, if the subsidiary member (or any successor) again becomes a member of such group (or any successor group) at a time when the subsidiary member (or any successor) has any losses or deferred deductions, such losses and deferred deductions shall be treated as losses or deferred deductions that were losses or deferred deductions of the subsidiary member on the date of the disposition, losses or deferred deductions that are attributable to assets that were owned by the subsidiary member on the date of the disposition and that had bases in excess of value on such date, or losses or deferred deductions that are attributable to assets that had bases that reflected, directly or indirectly, in whole or in part, the bases of assets that were owned by the subsidiary member on the date of the disposition and that had bases in excess of value on such date.

(C) For purposes of paragraph (g)(3)(i)(C)(*7*) of this section, unless the group can establish otherwise, if a member of such group (or any successor group) succeeds to any losses or deferred deductions of the subsidiary member (or any successor), such losses and deferred deductions shall be treated as losses or deferred deductions that were losses or deferred deductions of the subsidiary member on the date of the disposition, losses or deferred deductions that are attributable to assets that were owned by the subsidiary member on the date of the disposition and that had bases in excess of value on such date, or losses or deferred deductions that are attributable to assets that had bases that reflected, directly or indirectly, in whole or in part, the bases of assets that were owned by the subsidiary member on the date of the

disposition and that had bases in excess of value on such date.

(iii) *Loss disallowance.* If paragraph (g)(3) of this section applies, then, to the extent that the aggregate amount of loss recognized by members of the group (and any successor group) on dispositions of the subsidiary member stock was attributable to a duplicated loss of such subsidiary member, and such loss was allowed, such group (or any successor group) will be denied the use of—

(A) Any loss recognized that is attributable to, directly or indirectly, an asset that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of value on such date, to the extent of the lesser of the loss inherent in such asset on the date of the disposition of the subsidiary member stock and the loss inherent in such asset on the date of the event described in paragraph (g)(3)(i)(C) of this section that gives rise to the application of this paragraph (g)(3); and

(B) Any loss recognized that is attributable to, directly or indirectly, an asset that has a basis that reflects, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary on the date of the disposition and that had a basis in excess of its value on such date, to the extent of the lesser of the loss inherent in the asset that was owned by the subsidiary on the date of the disposition the basis of which is reflected, directly or indirectly, in whole or in part, in the basis of such asset on the date of the disposition and the loss inherent in such asset on the date of the event described in paragraph (g)(3)(i)(C) of this section that gives rise to the application of this paragraph (g)(3); and

(C) Any loss or deferred deduction described in paragraph (g)(3)(i)(C)(*4*), (*5*), (*6*), or (*7*) of this section.

(iv) *Treatment of disallowed loss.* For purposes of § 1.1502–32(b)(3)(iii), any loss the use of which is disallowed pursuant to paragraph (g)(3)(iii)(A) or (B) of this section is treated as a noncapital, nondeductible expense incurred during the taxable year that includes the date on which such loss is recognized. See § 1.1502–32(b)(3)(iii)(D). In addition, any loss or deferred deduction the use of which is disallowed pursuant to paragraph (g)(3)(iii)(C) of this section and with respect to which no waiver described in § 1.1502–32(b)(4) is filed is treated as a noncapital, nondeductible expense incurred during the taxable year that includes the day after the event described in paragraph (g)(3)(iii) of this section that gives rise to the application of this paragraph (g)(3).

(4) *Examples.* The principles of this paragraph (g) are illustrated by the following examples.

Example 1. (i) In Year 1, P forms S with a contribution of $80 in exchange for 80 shares of common stock of S which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes Asset A with a basis of $50 and a value of $20 in exchange for 20 shares of preferred stock of S in a transfer to which section 351 applies. In Year 3, S sells Asset A for $20, recognizing a loss of $30. Under § 1.1502–32, P's basis in its common stock of S is reduced from $80 to $50. With a view to avoiding the application of the basis redetermination rule prior to a sale of the S preferred stock, in Year 4, P contributes the 80 shares of S common stock it acquired in Year 1 to PS, a partnership, in exchange for a 20 percent capital and profits interest in a transaction described in section 721. Also in Year 4, P sells its preferred stock of S for $20, recognizing a $30 loss.

(ii) Under paragraph (g)(1) of this section, the rules of paragraph (b) of this section shall apply immediately prior to the deconsolidation of the S common stock.

Example 2. (i) In Year 1, P forms S with a contribution of $100 in exchange for 100 shares of common stock of S which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes 20 shares of common stock of S to PS, a partnership, in exchange for a 20 percent capital and profits interest in a transaction described in section 721. In Year 3, P contributes Asset A with a basis of $50 and a value of $20 to PS in exchange for an additional capital and profits interest in PS in a transaction described in section 721. Also in Year 3, PS contributes Asset A to S and P contributes an additional $80 to S in transfers to which section 351 applies. In Year 4, S sells Asset A for $20, recognizing a loss of $30. The P group uses that loss to offset income of P. Also in Year 4, P sells its entire interest in PS for $40, recognizing a loss of $30.

(ii) Pursuant to paragraph (g)(2) of this section, if P's contributions of S stock and Asset A to PS were undertaken with a view to avoiding the basis redetermination or the loss suspension rule, adjustments must be made such that the group does not obtain more than one tax benefit from the $30 loss inherent in Asset A.

Example 3. (i) In Year 1, P forms S with a contribution of Asset A with a value of $100 and a basis of $120, Asset B with a value of $50 and a basis of $70, Asset C with a value of $90 and a basis of $100 in exchange for all of the common stock of S and S becomes a member of the P group. In Year 2, in a transaction that is not part of a plan that includes the contribution, P sells the stock of S for $240, recognizing a loss of $50. At such time, the bases and values of Assets A, B, and C have not changed since their contribution to S. In Year 3, S sells Asset A, recognizing a $20 loss. In Year 3, S merges into M in a reorganization described in section 368(a)(1)(A). In Year 4, P purchases all of the stock of M for $300. At that time, M has a $10 net operating loss. In addition, M owns Asset D, which was acquired in an exchange described in section 1031 in connection with the surrender of Asset B. Asset C has a value of $80 and a basis of $100. Asset D has a value of $60 and a basis of $70. In Year 5, P has operating income of $100 and M recognizes $20 of loss on the sale of Asset C. In Year 6, P has operating income of $50 and M recognizes $50 of loss on the sale of Asset D.

(ii) P's $50 loss on the sale of S stock is entirely attributable to duplicated loss. Therefore, pursuant to this paragraph (g)(3), assuming the P group cannot establish otherwise, M's $10 net operating loss is treated as attributable to assets that were owned by S on the date of the disposition and that had bases in excess of value on such date. Without regard to any other limitations on the group's use of M's net operating loss, the P group cannot use M's $10 net operating loss pursuant to paragraph (g)(3)(iii)(C) of this section. Pursuant to paragraph (g)(3)(iv) of this section and § 1.1502–32(b)(3)(iii)(D), such loss is treated as a noncapital, nondeductible expense of M incurred during the taxable year that includes the day after the reorganization. In addition, the P group is denied the use of $10 of the loss recognized on the sale of Asset C. Finally, the P group is denied the use of $10 of the loss recognized on the sale of Asset D. Pursuant to paragraph (g)(3)(iv) of this section and § 1.1502–32(b)(3)(iii)(D), each such disallowed loss is treated as a noncapital, nondeductible expense of M incurred during the taxable year that includes the date of the disposition of the asset with respect to which such loss was recognized.

(h) *Application of anti-abuse rules.* The rules of this section do not preclude the application of anti-abuse rules under other provisions of the Internal Revenue Code and regulations thereunder, including to a transaction that is entered into to invoke the basis redetermination rule to avoid the effect of any provision of the Internal Revenue Code or regulations thereunder.

(i) [Reserved].

(j) *Effective date.* This section, except for paragraph (g)(3) of this section, applies with respect to dispositions and deconsolidations occurring on or after March 7, 2002, but only if such transactions occur during a taxable year the original return for which is due (without regard to extensions) after the date these regulations are published as temporary or final regulations in the **Federal Register**. Paragraph (g)(3) of this section applies to events described in paragraph (g)(3)(iii) of this section occurring on or after October 18, 2002, but only if such events occur during a taxable year the original return for which is due (without regard to extensions) after the date these regulations are published as temporary

or final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–26835 Filed 10–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 02–011]

RIN 2115–AA97

Security Zone; Port Valdez and Valdez Narrows, Valdez, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a security zone encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska and TAPS Tank Vessels and a security zone in the Valdez Narrows, Port Valdez, Alaska. The security zones are necessary to protect the Alyeska Marine Terminal and Vessels from damage or injury from sabotage, destruction or other subversive acts. Entry of vessels into these security zones is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: Comments and related material must reach the Coast Guard on or before December 23, 2002.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office, P.O. Box 486, Valdez, Alaska 99686. Marine Safety Office Valdez, AK, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Valdez, AK between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lt. Chris Beadle, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7222.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Prince William Sound 02–011), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81/2 by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Valdez at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The Coast Guard is taking this action for the immediate protection of the national security interests in light of terrorist acts perpetrated on September 11, 2001. The port of Valdez is a vital national commercial port, supporting the transfer and transport of a significant percentage of oil used in the United States. As such, it is crucial that actions be taken to protect the flow of commerce from possible terrorist or subversive acts designed to damage maritime facilities and vessels transiting to and from the Port of Valdez. The proposed rule would replace existing regulations in 33 CFR 165.1701 and the temporary rule issued in July, which will expire December 31, 2002, that created temporary § 165.T17–010, entitled ''Port Valdez and Valdez Narrows, Valdez, Alaska.'' The proposed rule would work to safely control the flow of commercial traffic and protect vital maritime facilities by creating security zones and check-in procedures designed to identify threats for response by appropriate law enforcement resources.

On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these security zone regulations are—

§ 165.T17–003—Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska,

§ 165.T17–004—Security zone; Port Valdez, and

§ 165.T17–005—Security zones; Captain of the Port Zone, Prince William Sound, Alaska.

Then on June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace those security zones that expired June 1, 2002. That rule issued in June, which expired July 30, 2002, created temporary § 165.T17–009, entitled ''Port Valdez and Valdez Narrows, Valdez, Alaska''.

Then on July 26, 2002 we published a temporary final rule (67 FR 49582–84) that established security zones to replace temporary § 165.T17–009 that expired July 30, 2002. That rule issued in July, which will expire December 31, 2002, created temporary § 165.T17–010, entitled ''Port Valdez and Valdez Narrows, Valdez, Alaska''. This proposed rule would remove the temporary security zones in § 165.T17–010 and add permanent security zones in a new 33 CFR 165.1701.

Comments received regarding the temporary final rules currently in place will be taken into consideration.

Discussion of Proposed Rule

This proposed rule would establish three security zones in new 33 CFR 165.1701(a) and move the current safety zone in existing 33 CFR 165.1701 to new 33 CFR 165.1701(b). This proposed rule also would establish procedures for vessel entry into the security and safety zones for management of the natural resources administered by the Alaska Department of Natural Resources.

The Trans-Alaska Pipeline (TAPS) Valdez Marine Terminal security zone encompasses the waters of Port Valdez between Allison Creek to the east and Sawmill Spit to the west and offshore to marker buoys A and B (approximately 1.5 nautical miles offshore from the TAPS Terminal). The Tank Vessel moving security zone encompasses the waters within 200 yards of a TAPS tanker within the Captain of the Port, Prince William Sound Zone. The Valdez Narrows security zone encompasses the waters 200 yards either side of the Tanker Optimum Trackline through Valdez Narrows between Entrance Island and Tongue Point. This zone is enforced only when a TAPS tanker is in the zone. The TAPS safety zone encompasses all waters within 200 yards of on shore and off shore facilities of the TAPS Terminal and is a safety buffer between potentially hazardous terminal operating areas and areas to which vessels may be permitted entry by the Captain of the Port, Prince William Sound, during State of Alaska managed fisheries openings and/or closings.

The Coast Guard has worked closely with local and regional users of Port Valdez and Valdez Narrows waterways to develop these security zones and the NPRM in order to mitigate the impact on commercial and recreational users. The limited size of the terminal security zone is designed to minimize impact on mariners while ensuring public safety by preventing interference with terminal operations. The Tank Vessel moving security zone and the Valdez Narrows security zone will be enforced only while vessels are transiting the area and are designed to provide a safe operating distance while minimizing threats to tanker operations.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, l979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited size of the zones and the limited duration of the Tank Vessel moving security zone and the Valdez Narrows security zone. Additionally, vessels will not be precluded from transiting and operating in these areas as The Captain of The Port will consider requests for entry on a case-by-case basis and requests for entry will be approved as appropriate. Those desiring to transit the area of the security or safety zones must contact the Captain of the Port under the provisions of proposed 33 CFR 165.1701(d).

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would affect the following entities, some of which might be small entities: The owners and operators of commercial fishing vessels and native subsistence fishermen. Some of the areas that these entities might desire to use for fishing may fall within the security or safety zones. However, The Captain of The Port will consider requests for entry into the security or safety zones on a case-by-case basis and requests for entry will be approved as appropriate; therefore, it is likely that very few, if any, small entities will be impacted by this rule.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lt. Chris Beadle, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7222.

Collection of Information

This proposed rule contains information collection requirements that have not been approved by OMB. This proposed rule would modify an existing collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The Captain of the Port, Prince William Sound, Alaska requires information on vessel owners and operators, and their vessels, crews and passengers desiring entry into the proposed security and safety zones in Port Valdez and Valdez Narrows, Alaska. This information is required to ensure port and vessel safety and security, uninterrupted fishing industry openings, control vessel traffic, develop contingency plans and enforce applicable laws and regulations.

You are not required to respond to a collection of information unless it displays a currently valid control number from OMB.

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation since implementation of this action will not result in any inconsistencies with any Federal, State, or Local laws or administrative determinations relating to the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

For the reasons set forth in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.T17–013 [Removed]

2. Remove § 165.T17–013.

3. Revise § 165.1701 to read as follows:

§ 165.1701 Port Valdez and Valdez Narrows, Valdez, Alaska—security and safety zones.

(a) *Security zone locations.* The following areas are security zones:

(1) *Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels.* All waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°04′57″ N, 146°26′20″ W; thence northerly to 61°06′30″ N, 146°26′20″ W; thence east to 61°06′30″ N, 146°21′15″ W; thence south to 61°05′07″ N, 146°21′15″ W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point. This security zone encompasses all waters approximately 1 mile north, east and west of the TAPS Terminal between Allison Creek (61°05′07″ N, 146°21′15″ W) and Sawmill Spit (61°04′57″ N, 146°26′20″ W).

(2) *Tank Vessel Moving Security Zone.* All waters within 200 yards of any TAPS tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or transiting, maneuvering, laying to or anchored within the boundaries of the Captain of the Port, Prince William Sound Zone described in 33 CFR 3.85(b).

(3) *Valdez Narrows, Port Valdez, Valdez, Alaska.* All waters within 200 yards of the Valdez Narrows Tanker Optimum Track line bounded by a line beginning at 61°05′16.0″ N, 146°37′20.0″ W; thence south west to 61°04′00.0″ N, 146°39′52.0″ W; thence southerly to 61°02′33.5″ N, 146°41′28.0″ W; thence north west to 61°02′40.5″ N, 146°41′47.5″ W; thence north east to 61°04′06.0″ N, 146°40′14.5″ W; thence north east to 61°05′23.0″ N, 146°37′40.0″ W; thence south east back to the starting point at 61°05′16.0″ N, 146°37′20.0″ W.

(i) The Valdez Narrows Tanker Optimum Track line is a line commencing at 61°05′23.0″ N, 146°37′22.5″ W; thence south westerly to 61°04′03.2″ N, 146°40′03.2″ W; thence southerly to 61°03′00″ N, 146°41′12″ W.

(ii) This security zone encompasses all waters approximately 200 yards either side of the Valdez Narrows Optimum Track line.

(b) The following location is a safety zone: all waters within 200 yards of the shore and offshore facilities of the TAPS Terminal between Allison Creek (61°05′07″ N, 146°21′15″ W) and Sawmill Spit (61°04′57″ N, 146°26′20″ W).

(c) *Regulations.* (1) Entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Prince William Sound via the request process set out in paragraph (d) of this section.

(2) For the purposes of this section, paragraphs (a), (e), and (f) of § 165.33 do not apply to the following vessels or individuals legally on board those vessels:

(i) Public vessels of the United States; and

(ii) Vessels engaged in the movement of oil from the TAPS terminal or fuel to the TAPS terminal and that have reported their movements to the Vessel Traffic Service or vessels that are performing work at the TAPS Terminal including, but not limited to tugs, oil spill response vessels, boom boats, security and safety vessels.

(3) *Enforcement of Valdez Narrows security zone.* Section 165.33(a) will not be enforced in the Valdez Narrows security zone, described in paragraph (a)(3) of this section, except when a tank vessel greater than 20,000 DWT is in the Valdez Narrows security zone. Vessels must stay clear of the Valdez Narrows security zone when a transiting tank vessel approaches the Valdez Narrows VTS Special Area from the vicinity of Entrance Island to the north and Tongue Point to the south of Valdez Narrows. The Valdez Narrows VTS Special Area is depicted as the purple dashed lines on National Oceanic and Atmospheric Administration chart 16707 and is described in § 161.60(b) of this subchapter.

(4) Vessels other than those described in paragraph (c)(2) of this section desiring access to the security and safety zones set out in paragraphs (a) and (b) of this section shall secure permission from the Captain of the Port under the procedures listed in paragraph (d).

(d) *Permits.* (1) The Captain of the Port may allow access to the security and safety zones in order to encourage utilization of natural resources, promote tourism and provide for other reasonable use consistent with the needs of security and safety within Port Valdez and Prince William Sound. Vessels desiring access must obtain a permit from the Captain of the Port in the following manner:

(2) Applicants must submit an application via written request to the Captain of the Port at least 48 hours prior to the desired time of entry into a security or safety zone. Applications submitted less than 48 hours prior to the desired time of entry may be accepted by the Captain of the Port on a case by case basis. The written request must:

(i) Demonstrate good cause for entry into a security or safety zone.

(ii) Describe the vessel(s) entering (including name, visible identifying

numbers, markings, etc.) and time(s)/date(s) of entry.

(iii) Provide certification that all crew members and other persons on board are U.S. citizens or provide names and identifying information on all non-U.S. citizens (passport, etc.) and certification that all other crew and other persons on board are U.S. citizens.

(iv) Provide a name and contact information for the applicant or the applicant's designated point of contact.

(v) If the application is submitted less than 48 hours prior to the desired entry into a security or safety zone it must provide the reason the applicant was unable to meet the 48 hour deadline. The Captain of the Port may consider circumstances beyond the applicant's control as acceptable for relief from the 48 hour deadline. ''Beyond the applicant's control'' may include, but is not limited to, short notice fishing openers, gear retrieval for short notice fishing closures or other actions by state or federal wildlife or natural resources management agencies. If an application does not meet the 48 hour deadline and is not accepted, the Captain of the Port shall provide the reason(s) why the application is denied in a written response to the applicant.

(vi) Applications may be delivered in person or by mail to Captain of the Port, U.S. Coast Guard Marine Safety Office, PO Box 486, 105 Clifton Drive, Valdez, Alaska, 99686–0486.

(3) Upon approval the Captain of the Port shall issue a letter permitting access to a security or safety zone specifying time(s)/date(s) of entry, check-in, check-out and emergency vacate procedures. This letter shall be carried aboard the vessel and presented upon request to any on-scene patrol personnel of the Coast Guard.

(4) The Captain of the Port may require a permittee to monitor certain radio frequencies, display special visual signals such as flags or markers, enter and depart at specific locations and undergo a vessel examination prior to entry into any security or safety zone.

(5) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign, by siren, radio, flashing light, or other means, or by on-scene Coast Guard patrol personnel, the operator of the vessel shall proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws. Coast Guard Auxiliary and local or state agencies and may have on board their vessels Coast Guard patrol personnel.

(e) *Authority.* In addition to 33 U.S.C. 1231 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

Dated: September 25, 2002.

M.A. Swanson,

Commander, U.S. Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc. 02–26974 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket # WA–70–7148; FRL –7397–8]

Approval and Promulgation of Air Quality Implementation Plan; Washington

AGENCY: Environmental Protection Agency (EPA or ''we'').

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve most, but not all of the State Implementation Plan (SIP) revisions for visibility submitted by the State of Washington on November 5, 1999. Significant provisions of this SIP revision that we propose to approve include an improved smoke management plan and the Southwest Air Pollution Control Agency (SWAPCA) emission limitations on the Centralia Power Plant located in central western Washington.

DATES: Comments must be received on or before November 22, 2002.

ADDRESSES: Written comments should be addressed to Steven K. Body, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. You may see copies of the relevant documents used in this proposed action during normal business hours at the following location: EPA Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA Region 10, Office of Air Quality, at (206) 553–0782.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

Background

I. Background on Visibility

A. What Is Visibility Protection and Why Do We Have It?

Section 169A of the federal Clean Air Act (CAA or Act) requires states to protect visibility in mandatory Class I federal areas. Mandatory Class I federal areas are specified large National Parks or Wilderness Areas. In Washington, there are 8 mandatory Class I federal areas; the Mount Rainier National Park, North Cascades National Park, Olympic National Park, Alpine Lake Wilderness Area, Glacier Peak Wilderness Area, Goat Rocks Wilderness Area, Mount Adams Wilderness Area, and Pasayten Wilderness Area. 40 CFR 81.434 The federal rules regulating visibility protection are set out in 40 CFR part 51, subpart P.

B. What Are the Main Visibility Protections Provided by the Federal Rules?

The Clean Air Act sets out a goal of preventing any future and remedying any existing impairment of visibility in mandatory Class I federal areas. 42 U.S.C. 7491. Employing a close coordination process among the state and the federal land managers (FLM), the federal rules require monitoring of visibility in mandatory Class I federal areas, as well as the development of a long-term strategy for making reasonable progress towards the national visibility goal. The visibility protection rules also provide for an assessment of visibility impacts from any new or major modification to a major stationary

source that may affect mandatory Class I federal areas. Additionally, in the event that a federal land manager certifies impairment of visibility in a mandatory Class I federal area that could be caused, or contributed to, by an existing stationary facility, emission limitations representing Best Available Retrofit Technology (BART) may be imposed on the facility.

The federal visibility rules were modified in 1999 to include provisions for addressing regional haze. See 64 FR 35714, July 1, 1999. Regional haze is visibility impairment which results from the cumulative impact of emissions from many point and non-point sources. All states are currently in the process of developing revisions to their SIPs to address the regional haze provisions. Therefore, the SIP submission under discussion in this action is not required to comply with the regional haze provisions of 40 CFR part 51, subpart P.

C. How Has Visibility Been Protected in Washington?

The initial proposed Visibility SIP for Washington was submitted by the State and approved in part by EPA on May 4, 1987, (52 FR 16243). EPA approved the Washington State Visibility Protection Program (with exceptions described below), certain provisions of 173–403 Washington Administrative Code (WAC) Implementation of Regulations for Air Contaminant Sources, and the 1983 Smoke Management Program. EPA disapproved Section V.B., the new source review program, Appendix A, the Proposed Best Available Retrofit Technology (BART) rule, and the Proposed New Source Review Regulations.

II. What are the Required Provisions of a Visibility SIP?

40 CFR 51.302 provides the requirements for Visibility SIPs. These requirements and how the Washington Visibility SIP meets these requirements are summarized below.

A. Long-Term Strategy

The SIP needs to include a long-term (10–15 year) strategy that includes emission limitations, schedules of compliance, and other measures as deemed necessary to make reasonable progress toward the national goal. See 40 CFR 51.302(c)(2)(i). In general, Section VI of the proposed 1999 SIP revision provides a discussion of the long-term strategy, including measures for stationary sources, mobile sources, area sources, and interstate coordination. The long-term strategy must include:

- A strategy for evaluating visibility in mandatory Class I federal areas by visual observation or other appropriate monitoring techniques. See 40 CFR 51.305(a). Section V of the proposed 1999 SIP revision provides for monitoring through the IMPROVE monitoring network and an assessment strategy.
- A provision for the available visibility data and provide a mechanism for its use in decisions required by the regulations. See 40 CFR 51.305(b). Section IX of the proposed 1999 SIP revision provides for the development and use of available data for SIP review and development.
- A strategy covering any existing impairment the Federal Land Manager certifies to the State and integral vista of which the Federal Land Manager notifies the State at least 6 months prior to plan submission. See 40 CFR 51.306(a)(1). Section I of the proposed 1999 SIP revision discusses certification of impairment in federal mandatory Class I areas. Section III of the proposed 1999 SIP revision discusses integral vistas.
- A discussion, with reasonable specificity, why the long-term strategy is adequate for making reasonable progress. See 40 CFR 51.306(a)(3). Section VI of the proposed 1999 SIP revision discusses all source categories, the control measures that apply to them, and a qualitative assessment of how these are adequate for making reasonable progress. Section IX of the proposed 1999 SIP revision discusses the evaluation of progress toward achieving the national visibility goal.
- Coordination of the long-term strategy with other existing plans and goals, including those provided by affected Federal Land Managers. See 40 CFR 51.306(a)(3). Section IV of the proposed 1999 SIP revision provides for the consultation with Federal Land Managers for the review and revision of the visibility SIP and New Source Review rules.
- Provisions for periodic review and revision as appropriate of not less than every three years. See 40 CFR 51.306(c). This review must include:

(1) Progress achieved in remedying existing impairment;

(2) The ability of the long-term strategy to prevent future impairment;

(3) Any change in visibility since the last report;

(4) Additional measures, including the need for SIP revisions that may be needed to assure reasonable progress;

(5) The progress achieved in implementing BART and meeting other schedules set forth in the long-term strategy; and

(6) The impact of any exemption granted under 40 CFR 51.303.

(7) The need for BART to remedy existing visibility impairment of any integral vista.

Section IV of the proposed 1997 SIP revision provides for the review of the visibility SIP.

- Provisions for review of the impacts of any new or modified major stationary source. See 40 CFR 51.306(d). The Washington Department of Ecology has a fully delegated Prevention of Significant Deterioration (PSD) program. The Department of Ecology was notified of this delegation by letter dated February 7, 2002.

B. Monitoring

The plan must contain an assessment of visibility impairment and a discussion of how each element of the plan relates to preventing future or remedying existing impairment. See 40 CFR 51.302(c)(2)(ii). Section V of the proposed 1999 SIP revision provides for visibility monitoring of the mandatory Class I federal areas. Section IV of the proposed 1999 SIP revision provides a general discussion of the effect of measures on preventing future and remedying existing impairment.

C. BART

The plan must contain emission limitations representing BART for any existing facility that meets the requirements of 40 CFR 51.301(e), and for which impairment has been certified by the Federal Land managers and for which the State has determined such impairment is reasonably attributed to that source. (40 CFR 51.302(c)(2)(iii).

The State has not determined that existing impairment in any mandatory Class I federal area for which impairment has been certified can be reasonably attributed to a specific major stationary source.

III. What Does This Proposed Visibility SIP Revision Change and How Do These Changes Compare to the Federal Requirements?

A. Provisions To Revise the Protection of Integral Vistas

The 1987 SIP included a list of ''Preliminary Integral Vistas'' that were proposed by the National Park Service (NPS). The 1987 SIP provides that until the NPS finalizes the list of vistas, the panoramas listed in the January 15, 1981 **Federal Register** (Table III–2) will be protected under the visibility SIP. These integral vistas were never finalized by the NPS in accord with 40 CFR 51.304. Thus, there are no federally recognized Integral Vistas to be

protected. In the interim, no emission limitation was established for a source that specifically protected an integral vista, nor is the State proposing to revise and relax an emission limitation established for integral vista protection. The 1999 proposed SIP revision removes the provisions that would have continued these protections. The federal visibility regulations (40 CFR 51.304(d)) indicate that a state need not in its implementation plan list any integral vista the identification of which was not made in accordance with the criteria in 40 CFR 51.304(a). Since no integral vistas have been identified by the FLM, there is no relaxation of SIP emission requirements and since the 1999 proposed SIP revision meets the applicable requirements for visibility protection in mandatory Class I federal areas, EPA proposes approval of this revision.

B. Provisions To Revise the Smoke Management Plan

i. What Is Washington's Smoke Management Plan?

Washington's Smoke Management Plan (SMP) is a program designed to manage smoke impacts from the burning of silviculture and agriculture wastes. The SMP balances forest and agricultural land burning with preventing smoke from being carried to, or accumulating in, designated areas and other areas sensitive to smoke.

ii. How Does Washington's 1999 Proposed SIP Revision Change the Plan?

The Smoke Management Plan (SMP) of 1998 submitted in the proposed 1999 Visibility SIP revision is a significant improvement over the 1983 SMP included in the 1987 SIP. The 1983 SMP provides for reduced emissions through optimization of fuel conditions (*i.e.* dry fuel), improves ventilation and dispersion through meteorology, and minimizes impact by controlling smoke drift into populated areas. There is no consideration for protection of visibility in mandatory Class I federal areas.

The 1998 SMP requires approval from the Resource Protection Division Manager, Department of Natural Resources for all burns. Approval requirements differ depending whether the fire is a ''large fire'' involving over 100 tons of fuel or small fire. Large fire burn approval considers a number of factors including likelihood of intrusion into populated areas and Class I areas, air quality regulations, violation of emission reductions targets, violations of another state's air quality standards, and whether smoke will disperse within given timeframes. Operators of small fires (less than 100 ton of fuel) must call a toll free phone number and follow the instructions that apply for that day and location of the proposed burn.

The SMP further requires emissions from burning be reduced by 20% from baseline levels (defined in the SMP) by December 1994 and until December 2000. Emissions from burning must be permanently reduced by 50% from baseline levels by December 2000.

iii. How Does the Smoke Management Plan Compare to Federal Requirements?

The visibility protection provisions at 40 CFR part 51, subpart P suggest that states consider Smoke Management Plans in developing long-term strategies for visibility protection. However, there are no specific federal requirements for states to develop and adopt Smoke Management Plans. In September 1992, the Environmental Protection Agency published *The Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures* to assist states in the development of Smoke Management Plans (EPA–450/2–92–003). These are a few examples of how the federal government acknowledges the benefits of smoke management plans.

C. Provisions To Include the SWAPCA RACT Emission Limits for Centralia Power Plant

Centralia Power Plant (CPP) is a coal fired electrical generating station that has a potential to emit (PTE) 90,000 t/yr SO2. It is a BART eligible source as defined by 40 CFR 51.301. It is located near the mandatory Class I federal area, Mt. Rainier National Park in Washington state. The National Park Service has certified visibility impairment at Mt. Rainier National Park. The State of Washington has NOT determined that this visibility impairment is reasonably attributable to the CPP.

The SIP must contain emission limitations representing BART and schedules for compliance with BART for each existing stationary facility identified according to 40 CFR 51.302 (c)(4). The state needs to identify each existing facility which may reasonably be anticipated to cause or contribute to impairment of visibility in any Class I federal areas where the impairment in the mandatory Class I area is reasonably attributable to that existing stationary facility. The State has not identified any source or group of small sources, including the Centralia Power Plant (CPP), as existing facilities that may reasonably be expected to contribute to visibility impairment to Class I areas. Therefore, under 40 CFR 51.302(c)(4), a BART analysis is not required for CPP. In the future regional haze SIP, a BART analysis may be required for the CPP under 40 CFR 51.308(e).

In a separate activity the State, Southwest Air Pollution Control Authority (SWAPCA), the National Park Service and Forest Service, owners of the CPP, and EPA entered into a negotiated agreement to establish emission limits for SO2, NO_X, and PM–10 for the CPP. The SWAPCA, who has regulatory authority over the CPP, issued the CPP a Reasonably Available Control Technology (RACT) order under state law that contain emission limitations. This RACT Order is included in the proposed 1999 Visibility SIP revision.

Both SWAPCA in their Technical Support Document for the RACT Order and EPA Region 10 have independently conducted an analysis of the emission limits in the RACT Order comparing them against what would have been required using the Clean Air Act definition of BART and EPA BART guidelines. Additional details on this analyses can be found in the Technical Support Document accompanying this proposed action and docket of this proposed action. The conclusion of both analysis is that the RACT Order emission limits for SO2 and PM–10 represent BART. EPA proposes to approve these emissions limitations as meeting the BART requirements of 40 CFR 51.308(c)(4). Additionally, while the NO_X emission limitation may have represented BART when the emission limits in the RACT Order were negotiated, recent technology advancements have been made. EPA cannot say that the emission limitations in the SWAPCA RACT Order for NO_X represent BART. However EPA proposes to approve the emission limits for NO_X as a strengthening of the SIP for visibility purposes.

D. Provisions To Revise the State's Best Available Retrofit Technology and New Source Review Rules

The proposed 1999 SIP revision also included revised rules for Best Available Retrofit Technology (BART) (WAC 173–400–151 and New Source Review (NSR) (WAC 173–400–110, 112, 113, & 141). Subsequent to the submittal in 1999, the State has verbally indicated that new rules are being developed and the rules in this submittal will soon be obsolete. EPA proposes to take no action on these rules.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed

action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 proposes to approve 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 proposed 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

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

Dated: October 10, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, EPA, Region 10.

[FR Doc. 02–26992 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP No. CO–001–0068; FRL–7397–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Governor of Colorado on November 5, 1999. The November 5, 1999 submittal exempts military training exercises at the United States Army Installation Fort Carson and United States Army Pinon Canon Maneuver Site (PCMS) from opacity limits. The intended effect of this action is to allow the use of smoke and obscurants for military training exercises when operated under applicable requirements. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 22, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 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 Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA, Region 8, (303) 312–6144.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'' or ''our'' is used means EPA.

I. Analysis of the State Submittal

A. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan admitted by a State must be adopted after reasonable notice and public hearing. Section 110(1) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA must also determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of submission. This submittal became complete by operation of law on May 5, 2000, in accordance with section 110(k)(1)(B) of the Act.

To entertain public comment, the State of Colorado, after providing adequate public notice, held a public hearing on July 17, 1998, to address the revision to the SIP. Following the public hearing and public comment period, the Colorado Air Quality Control Commission adopted the revision. The revision to Regulation No. 1 was adopted on July 17, 1998, and the Governor of Colorado submitted the revisions to the SIP with a letter dated November 5, 1999.

B. Summary of SIP Revision

Regulation No. 1 Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Dioxide

Colorado has added a new subsection D to Regulation No. 1, section II, which provides an exemption for U.S. military training exercises at the United States Army Installation Fort Carson and the United States Army Pinon Canon Maneuver Site (PCMS) from opacity limits. The emissions of fog oil and other short duration military smokes, of twelve minutes or less, will be exempted from the opacity limits specified in Regulation No. 1, section II. Regulation No. 1, section II.A currently mandates ''. . . no owner or operator of a source shall allow or cause the emission into the atmosphere of any air pollutant which is in excess of 20% opacity.'' The military engages in training which creates emissions in excess of the 20% opacity standard, thus this exemption is necessary for the military to carry out realistic obscurant training.

The exemption is only granted if other restrictions are met, including the following: A three kilometer buffer zone for the entire perimeter of Fort Carson and PCMS is required, and no smoke generation will occur within this buffer zone; smoke generation will cease if smoke crosses or is in danger of crossing the boundary of Fort Carson or PCMS; and an observer will be posted to determine if training should be halted if there is potential for the smoke to drift across the boundary of Fort Carson and PCMS.

A modeling analysis of the smoke training exercises was conducted in an effort to determine the ambient air impacts at locations outside the Ft. Carson boundary. However, the modeling study did not address a potential maximum emissions scenario where a larger quantity of emissions could be emitted at locations closer to the property boundary. The report also did not address the possibility that certain smoke generation activities may release smaller particles which would stay airborne longer and be more likely to impact off-site receptors. In addition, the period of meteorological data that was used in the modeling study was insufficient to characterize the most adverse meteorological conditions that can occur in the Ft. Carson area. Therefore, EPA believes the modeling results are inconclusive, and our proposed approval of the opacity exemption is not based on these results. Several monitoring studies were also conducted over a period of years and the results of these studies were included with this SIP revision. However, it is not clear whether the monitoring data was collected during the Army's smoke training exercises, thus these data were also not used as a basis for the proposed approval of Colorado's SIP revision.

As stated above, the military engages by design in training that creates emissions in excess of the 20% opacity standard. Based on this fact and the restrictions that are imposed on the military's use of smokes by the proposed rule, the EPA is proposing to approve this SIP revision.

II. Proposed Action

EPA is proposing to approve revisions Colorado's Regulation No. 1, submitted on November 5, 1999. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the *Addresses* section of this document.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. The Colorado SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act because the State of Colorado is requiring that an observer be placed to visibly determine whether the smoke is in danger of crossing the perimeter and will cease smoke generation if this occurs. This is protective of the NAAQS because PM10 concentrations are clearly visible to the human eye at levels much lower than the 24 hour PM10 NAAQS. Therefore, section 110(l) requirements are satisfied.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 proposes to approve 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 proposed 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: October 10, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

[FR Doc. 02–26990 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7399–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List; extension of the public comment period.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announced its intent to delete the western tier parcel of the Rocky Mountain Arsenal National Priorities List Site (RMA/NPL Site) On-Post Operable Unit (OU) from the National Priorities List (NPL) on September 23, 2002 (67 FR 59487). The 30-day public comment period is scheduled to end on October 23, 2002. During the public meeting held on October 10, 2002, a formal request was made to extend the public comment period. In response, EPA is extending the public comment period for an additional 30 days concluding on November 22, 2002.

The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete the western tier of the RMA/NPL Site on the determination by EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), that all appropriate actions under CERCLA have been implemented to protect human health, welfare, and the environment and that no further response action by responsible parties is appropriate.

This partial deletion pertains only to the western tier of the On-Post OU of the RMA/NPL Site and does not include the rest of the On-Post OU or the Off-Post OU. The rest of the On-Post OU and the Off-Post OU will remain on the NPL and response activities will continue at those OUs.

DATES: Comments concerning this proposed partial deletion may be submitted to EPA on or before November 22, 2002.

ADDRESSES: Comments may be mailed to: Catherine Roberts, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202-2466, 1–800–227–8917 or (303) 312–6025.

Comprehensive information on the RMA/NPL Site, as well as information specific to this proposed partial deletion, is available through EPA's Region 8 Superfund Records Center in Denver, Colorado. Documents are available for viewing by appointment from 8:00 a.m. to 4:00 p.m., Monday through Friday excluding holidays by calling (303) 312–6473. The Administrative Record for the RMA/NPL Site and the Deletion Docket for this partial deletion are maintained at the Joint Administrative Records Document Facility, Building 129, Room 2024, Commerce City, Colorado 80022–1748, (303) 289–0362. Documents are available for viewing from 12:00 p.m. to 4:00 p.m., Monday through Friday or by appointment.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Williams, Remedial Project Manager (8EPR–F), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver Colorado, 80202–2466, (303) 312–6660.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Environmental Protection Agency (EPA) Region 8 announces a thirty (30) day extension of the public comment period for the intent to delete the western tier parcel of the Rocky Mountain Arsenal National Priorities List (RMA/NPL) Site, Commerce City, Colorado, from the National Priorities List (NPL) and requests comment on this proposed action. The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9605. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (60 FR 55466 (Nov. 1, 1995)). As described in 40 CFR 300.425(e)(3), portions of a site deleted from the NPL remain eligible for further remedial actions if warranted by future conditions.

EPA will accept comments concerning its intent for partial deletion of the RMA/NPL Site until November 22, 2002.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this proposed partial deletion. Section IV discusses the western tier of the RMA/NPL Site and explains how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to section 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities for portions not deleted from the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts. The U.S. Army and Shell Oil Company will be responsible for all future remedial actions required at the area deleted if

future site conditions warrant such actions.

III. Deletion Procedures

Upon determination that at least one of the criteria described in Section 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures were used for this proposed deletion of the western tier of the RMA/NPL Site:

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The State of Colorado, through the CDPHE, concurred with publication of the notice of intent for partial deletion.

(3) Concurrent with the national Notice of Intent for Partial Deletion, a local notice was published in a newspaper of record and distributed to appropriate federal, State, and local officials, and other interested parties. These notices announced a thirty (30) day public comment period on the deletion package, ending October 23, 2002, based upon publication of the notice in the **Federal Register** and a local newspaper of record.

(4) Concurrent with this national Notice of the Public Comment Extension, a local notice has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day extension of the public comment period, which ends on November 22, 2002.

(5) EPA has made all relevant documents available at the information repositories listed previously for public inspection and copying.

Upon completion of the thirty (30) calendar day extension of the public comment period, EPA Region 8 will evaluate each significant comment and any significant new data received before issuing a final decision concerning the proposed partial deletion. EPA will prepare a responsiveness summary for each significant comment and any significant new data received during the public comment period and will address concerns presented in such comments and data. The responsiveness summary will be made available to the public at the EPA Region 8 office and the information repository listed above and will be included in the final deletion package. Members of the public are encouraged to contact EPA Region 8 to obtain a copy of the responsiveness summary. If, after review of all such comments and data, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the western tier of the RMA/NPL Site does not actually occur until a final notice of partial deletion is published in the **Federal Register**. A copy of the final partial deletion package will be placed at the EPA Region 8 office and the information repository listed above after a final document has been published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

This notice announces a thirty (30) day extension of the public comment period for the proposed partial deletion of the RMA/NPL Site. EPA Region 8 announced its intent to delete the western tier parcel of the RMA/NPL Site from the NPL on September 23, 2002. The original basis for deleting the western tier parcel from the RMA/NPL Site has not changed. The **Federal Register** notice (67 FR 59487) provides a thorough discussion of the basis for the intended western tier parcel deletion.

Dated: October 16, 2002.

Robert E. Roberts,

Regional Administrator, U.S. Environmental Protection Agency, Region 8.

[FR Doc. 02–27130 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Cerulean Warbler as Threatened With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the cerulean warbler (*Dendroica cerulea*) as threatened, under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). We find that the petition presented substantial information indicating that listing this species may be warranted. We are initiating a status review to determine if listing the cerulean warbler is warranted.

DATES: The finding announced in this document was made on September 24, 2002. To be considered in the 12-month finding for this petition, comments and information should be submitted to the Service by January 21, 2003.

ADDRESSES: Data, information, comments, or questions should be submitted to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 608 East Cherry Street, Room 200, Columbia, MO 65201, or by facsimile to (573) 876–1914. The complete petition finding, supporting literature, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Amy Salveter at the Columbia, Missouri, Field Office see **ADDRESSES**), or at (573) 876–1911, extension 113.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is based on information contained in the petition, supporting information submitted with the petition, and information otherwise available to us at the time we make the finding. To the maximum extent practicable, we make this finding within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find that substantial information was presented, we commence a review of the status of the species. After considering the comments and information submitted to us during the status review comment period following this 90-day finding, we will issue an additional finding (*i.e.*, the 12-month finding) determining whether listing is in fact warranted.

On October 31, 2000, we received a petition to list the cerulean warbler as a threatened species and to designate critical habitat for the species pursuant to the Act. The petition was submitted by the Southern Environmental Law Center, which acted on its own behalf, and for 27 other organizations, and 7 scientists.

The letter clearly identified itself as a petition, and included the name, signature, and address of the representative of the parties submitting the petition. The petition referenced supporting information on the species' description, natural history, habitat, and population status. It also presented information on threats to the cerulean warbler including present or threatened destruction, modification, or

curtailment of the species' habitat or range; predation; the inadequacy of existing regulatory mechanisms to protect the species; and other natural or manmade factors affecting the species' continued existence. This notice announces and summarizes our 90-day finding for the October 30, 2000, petition.

The cerulean warbler is a neotropical migratory bird that winters in montane forests of northern South America and breeds in deciduous forests of the eastern United States and southern Canada. The breeding range of cerulean warbler generally extends from the eastern Great Plains in eastern North and South Dakota, Nebraska, Kansas, and Oklahoma; south to Arkansas, Mississippi, Tennessee, northern Alabama and Georgia, and South Carolina; and north to Massachusetts, southern Quebec, southeastern Ontario, Michigan, Wisconsin, and central Minnesota (Hamel 2000a, Rosenberg *et al.* 2000). Breeding cerulean warblers are found in the Mississippi and Ohio River valleys, but appear to be concentrated in the upper Ohio valley in West Virginia and western Pennsylvania (Hamel 2000a, 2000b, Rosenberg *et al.* 2000). During migration, the birds pass through the southern United States, across the Gulf of Mexico to the highlands of Central America, and on to South America. Cerulean warblers winter in the middle and lower elevations of the subtropical zone of the eastern slope of the Andes and other mountains in northern South America (Hamel 2000a). Their winter range generally extends from Colombia and Venezuela south, mostly along the eastern slope of the Andes, to southern Peru and perhaps northern Bolivia (AOU 1998).

The petitioners assert that the cerulean warbler is threatened by destruction, modification, or curtailment of habitat or range by logging on public and private lands, construction of water projects *e.g.*, reservoirs, sewer lines and stream channelization), agricultural practices and urbanization through: (1) Loss and fragmentation of breeding habitat in the United States *e.g.*, loss of tall, mature deciduous forest, especially extensive bottomland hardwood forest throughout the floodplain of the Lower Mississippi River Alluvial Valley), (2) loss of winter habitat (within a relatively narrow elevation zone of the Andes in South America), and (3) loss of migratory habitat *e.g.*, development of property along the beaches of Texas, Louisiana, and the Florida panhandle). According to the petitioners, logging creates smaller and more fragmented forest tracts, resulting in higher rates of cerulean warbler nest predation by jays, crows, raccoons, opossums, and snakes. They also cite existing regulations and guidelines as inadequate mechanisms for protecting cerulean warbler breeding and wintering habitats on public and private lands. Finally, the petitioners assert that other natural or human-caused factors affecting the cerulean warbler's continued existence are the likely increase in nest parasitism by cowbirds resulting from the destruction and fragmentation of forests as well as direct mortality resulting from collisions with communication towers.

Historical data on the distribution and abundance of cerulean warblers are scant. However, it is clear from the nineteenth century accounts of several prominent naturalists that the cerulean warbler was a conspicuous and abundant species throughout the Ohio and Mississippi River valleys (Hamel 2000a). Presently, cerulean warblers are much less numerous, and they are absent from some areas where they were abundant (Hamel 2000a, Smith *et al.* 1996). However, the species has increased in numbers or expanded its range in the northeastern United States (Hamel 1992; R. Mulvihill, *in litt.* 3 April 2001), Quebec (Ouellet 1967), and Ontario (Eagles 1987, Oliarnyk and Robertson 1996), perhaps in response to the maturation of previously harvested forests. McCracken (1993) reports that cerulean warbler populations remain fairly stable overall in Canada. Current population trends and estimates are derived from several sources, such as the Breeding Bird Survey, Breeding Bird Census, Breeding Bird Atlas projects, research and monitoring.

Much of the support provided by the petitioners for the listing of cerulean warbler under the Endangered Species Act is based on Breeding Bird Survey (BBS) data they cite as an indication of a declining trend for this species. While it is clear that the cerulean warbler's range has contracted and the overall population has declined, the species exists at high densities at various locations in the core of its range, populations are increasing in several areas, and new populations have been identified. Using a standardized method for extrapolating bird populations from BBS data, the total population of cerulean warblers is estimated at 214,000 pairs (K. Rosenberg, *in litt.* 13 June 2002). Roughly 70% of this population is concentrated in the North Cumberland Plateau and Ohio Hills physiographic areas.

The adequacy of the BBS as a method to monitor forest birds, such as cerulean warblers, has been questioned (Peterjohn *et al.* 1995, James *et al.* 1996). These concerns focus on changes in habitat along roadside routes, which would reduce the detectability of the birds potentially more than their numbers. This is because habitat loss due to development tends to be focused along roadsides, thus areas with habitat lost to development likely will be over-sampled by BBS surveys, with the resulting data possibly overstating the actual decline of the cerulean warbler throughout its range. Furthermore, because BBS routes are always located along roadsides, BBS coverage may not adequately sample those forested habitats that frequently are more distant from roads, such as the bottomlands and ridgetops that are preferred by cerulean warblers (Hamel 2000a, 2000b). This criticism of BBS suggests that other census techniques might be developed that could be more effective for detecting cerulean warblers. For example, recent surveys conducted by canoe on rivers in Missouri have revealed several previously unknown cerulean warbler populations (Robbins 2001); however this method would be difficult to implement on a larger scale. In addition, there are several logistical concerns about the BBS, which arise from the nature of BBS as a volunteer program. Some biologists believe that another problem with BBS data for cerulean warblers is the potential for unfamiliarity with the song of this species among BBS observers (Hamel 2000a).

We and our colleagues who oversee and analyze BBS data believe that BBS data are of questionable value for reliably determining trends for making listing determinations even for declining mature forest associated species, like the cerulean warbler. For example, BBS routes in eastern Kentucky and West Virginia, particularly in the more remote parts of those States where cerulean warblers are numerous *e.g.*, in West Virginia, cerulean warblers were reported from 74 percent of the sites surveyed during the Cerulean Warbler Atlas Project, Rosenberg *et al.* 2000), were not uniformly covered throughout the period of the BBS; therefore, trend calculations cannot effectively utilize the data from some of these routes (Hamel 2000a). The net effect of these differences in coverage is to introduce an unknown amount of uncertainty into the BBS trend estimates, particularly in some of the areas central to the cerulean warbler's breeding range (Hamel 2000a). Moreover, Sauer (1993) indicated that, while sufficient sampling intensity in the BBS existed to detect a 50 percent

decline in population of the species over a 25-year period with a probability of 0.9, low relative abundance of this species mandated caution when interpreting trend results.

The BBS estimate of the cerulean warbler's average annual population trend (for the period 1966 to 1996) of −3.7 percent per year (95 percent confidence interval −2.5 to −5.0) is based on 236 survey routes. The average annual trend for the survey period 1966 to 1979 (−5.5 percent per year, $n = 113$) indicates a significant decline in the cerulean warbler population over the first half of the survey period. However, the trend estimate for the remainder of the survey period, 1980 to 1996 (−0.4 percent per year, $n = 183$), is not significantly different from a stable population. These trend estimates suggest that the population declined most dramatically prior to 1980, and may not have declined since then. Whether this represents the primary or sole period of decline or perhaps indicates that, by 1980, populations were reduced to the point that the BBS became a less useful monitoring tool rangewide, is not clear (Hamel 2000b).

Hamel (2000a) stated that land use changes brought about by increasing human populations in the breeding, migratory, and winter range of cerulean warbler are the underlying causes of the population decline of the bird in this century. According to Hamel (2000a), Robbins *et al.* (1992a) compiled the most extensive listing of potential threats facing cerulean warblers. This list included six items which they categorized as constraints on the breeding grounds as well as non-breeding season constraints: (1) Loss of mature deciduous forest, especially along stream valleys; (2) fragmentation and increasing isolation of remaining mature deciduous forest; (3) change to shorter (timber harvest) rotation periods and even-aged management, so that less deciduous forest habitat reaches maturity; (4) loss of key tree species, especially oaks from oak wilt and gypsy moths, sycamores from a fungus, elms from Dutch elm disease, and American chestnuts from chestnut blight; (5) nest parasitism by the brown-headed cowbird; and (6) environmental degradation from acid rain and stream pollution. However, research is needed to determine whether these potential threats affect cerulean warbler populations, and if so, whether the effects of these potential threats vary across the species' breeding and winter range.

We agree with the petitioner's contention that there appear to be several potential threats to cerulean warbler migratory, breeding, and wintering habitats. Demographic data, and especially recruitment data, are currently lacking across the cerulean warbler's range, making it impossible to determine the important features of habitat that provide for successful reproduction, thus complicating the evaluation of potential threats to that habitat. We believe there are significant gaps in the threats data currently available to us, including: the degree to which timber management and harvest on privately owned forest habitat constitute a benefit or threat to the species; loss of habitat due to development has not been quantified or analyzed across the species' range; mountaintop mining impacts assessments and modeling effects on individual species, including the cerulean warbler, are currently unavailable; the magnitude of wintering habitat loss and its role in the species' decline; and mortality factors during migration.

We have reviewed the petition, supporting documentation, and other information available in our files. On the basis of the best scientific and commercial information, we find that substantial information exists indicating that listing the cerulean warbler as threatened may be warranted. When we make a 90-day finding that listing may be warranted, we are required to initiate a review of the status of the species. Following the status review we will issue a 12-month petition finding as required by section 4(b)(3)(B) of the Act. The 12-month finding considers all additional data received during the status review and determines whether listing is warranted. If the 12-month finding is ''warranted,'' we elevate the species to candidate status and assign it a listing priority number. We will then commence work on a proposal to list the species in the order dictated by its listing priority number and the listing priority numbers of other candidate species.

The petitioners also requested that critical habitat be designated for the cerulean warbler. We always consider the need for critical habitat designation when listing species. If the 12-month finding determines that listing the cerulean warbler is warranted, then the designation of critical habitat will be addressed in the subsequent proposed rule.

Public Information Solicited

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species involved, including providing an opportunity for data and other information to be provided by the public for our consideration. A rangewide status assessment of cerulean warbler was completed in April 2000, and this status assessment is available on the Service's Web site at *http://midwest.fws.gov/endangered/lists/concern.html#Birds.* This status assessment reviewed most of the information available at that time, so we are primarily interested in receiving data on the species that have become available since April 2000. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the cerulean warbler. Of particular interest is information pertaining to the factors the Service uses to determine if a species is threatened or endangered: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence.

If you wish to comment or provide data for our consideration, you may submit your comments and materials to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 608 East Cherry Street, Room 200, Columbia, Missouri 65201. Our practice is to make comments, including names and home addresses of respondents, available for public review. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment and explain the reason for your request. However, we will not consider anonymous comments. To the extent consistent with applicable law, 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.

References Cited

You may request a list of all references cited in this document, as

well as others, from the Columbia, Missouri Field Office (see **ADDRESSES**).

Author

The primary author of this document is Amy Salveter, Columbia, Missouri Field Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: September 24, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–27004 Filed 10–22–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 205
Wednesday, October 23, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–078–2]

Monsanto Co.; Availability of Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the Monsanto Company corn designated as Event MON 863, which has been genetically engineered for insect resistance, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms and products. Our determination is based on our evaluation of data submitted by Monsanto Company in its petition for a determination of nonregulated status, our analysis of other scientific data, and comments received from the public in response to a previous notice. This notice also announces the availability of our written determination document and our finding of no significant impact.

EFFECTIVE DATE: October 8, 2002.

ADDRESSES: You may read a copy of the determination, an environmental assessment and finding of no significant impact, the petition for a determination of nonregulated status submitted by Monsanto Company, and all comments received on the petition and the environmental assessment in our reading room. The reading room is located in room 1141, USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure that someone is available to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Biotechnology Regulatory Services, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–8365. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2001, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 01–137–01p) from Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for corn (*Zea mays* L.) designated as Corn Rootworm Protected Corn Event MON 863 (MON 863), which has been genetically engineered for resistance to the larvae of certain corn rootworm (CRW) species. The Monsanto petition stated that the subject corn should not be regulated by APHIS because it does not present a plant pest risk.

On March 14, 2002, APHIS published a notice in the **Federal Register** (67 FR 11458–11459, Docket No. 00–078–1) announcing that the Monsanto petition and an environmental assessment (EA) were available for public review. This notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject corn and food products derived from it. APHIS received 1,383 comments on the petition and the EA during the 60-day comment period, which ended May 13, 2002. The comments were received from private individuals, farmers (including corn growers and organic farmers), universities, seed companies, State governors, State department of agriculture directors, State corn growers' associations, State and regional agricultural business and trade associations, a national corn growers' association, an organic trade association, a State seed association, a consumer group, an environmental organization, a university cooperative extension specialist, an agronomic consultant, and a corn product manager. There were 542 comments in support of the subject petition, and 841 were opposed. The comment letters in support of deregulation for MON 863 stressed the environmental benefits of using MON 863 to control CRW, including the reductions in pesticide use and user exposure to toxic chemicals, reductions in farm labor time and costs, the effectiveness and consistency of MON 863 in controlling CRW, and the advantages to growers in increased yields and crop quality. Other comments in favor of deregulation for the subject corn concerned the absence of evidence of plant pest and environmental risk presented by MON 863.

The comments in opposition to deregulation for MON 863 corn included allegations concerning the potential for polluting the purity of organically grown corn, the inevitability of the development of insect resistance to *Bacillus thuringiensis* (Bt) and the consequent loss to organic farmers of the spray form of Bt, the toxic effects of Bt-containing pollen on nontargets, the potential for upsetting the microbial balances in the soil, the possible development of human allergic reactions to Bt corn, and the need for a moratorium on genetically engineered crops due to the alleged inadequacy of U.S. regulation of genetically engineered crops. One commenter contended that a full environmental impact assessment was required prior to commercial growing of MON 863 corn because allowing large-scale commercialization of this corn constituted a major Federal action significantly affecting the environment. The commenter further found the EA inadequate in its treatment of the potential for the development of insect resistance to the Cry 3Bb1 protein, the unavailability to the public of certain information on nontarget effects, the failure to address the cumulative issue of gene stacking through cross-pollination, the failure to address the susceptibility of MON 863 to corn stunt disease, the failure to adequately address the impacts on organic farmers of contamination by transgenic varieties, the failure to

address the economic impacts on U.S. corn farmers of the loss of European markets, and the failure to address the environmental impacts of the illegal grant of certain genetic resources from the public trust into the possession of commercial entities. One additional comment concerned the need for study of the impacts of Bt corn in the ruminant and human diets and the potential for lateral gene flow in the enteric milieu. We have provided responses to these comments as an attachment to our finding of no significant impact, which is available from the person listed under **FOR FURTHER INFORMATION CONTACT.**

MON 863 corn has been genetically engineered to express a Cry3Bb1 insecticidal protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *kumamotoensis* (*Bt kumamotoensis*). The petitioner stated that the Cry3Bb1 protein is effective in controlling the larvae of CRW pests (Coleoptera, *Diabrotica* spp.). The subject corn also contains the *nptII* marker gene derived from the bacterium *Escherichia coli.* The *nptII* gene encodes neomycin phosphotransferase type II and is used as a selectable marker in the initial laboratory stages of plant cell selection. Expression of the added genes is controlled in part by gene sequences from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens.* Particle gun acceleration technology was used to transfer the added genes into the recipient inbred yellow dent corn line A634.

The subject corn has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. This corn has been field tested since 1998 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

Determination

Based on its analysis of the data submitted by Monsanto, a review of other scientific data, field tests of the subject corn, and comments submitted by the public, APHIS has determined that MON 863 corn: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than corn developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not harm threatened or endangered species or organisms, such as bees, that are beneficial to agriculture; and (5) will not cause damage to raw or processed agricultural commodities. Therefore, APHIS has concluded that the subject corn and any progeny derived from hybrid crosses with other nontransformed corn varieties will be as safe to grow as corn in traditional breeding programs that is not subject to regulation under 7 CFR part 340.

The effect of this determination is that Monsanto's MON 863 corn is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject corn or its progeny. However, importation of MON 863 corn or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An EA was prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that MON 863 corn and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and FONSI are available upon request from the individual listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Done in Washington, DC, this 17th day of October 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–26923 Filed 10–22–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: Antidumping and Countervailing Duties, Procedures for Initiation of Downstream Product Monitoring.

Agency Form Number: ITA–4119P.

OMB Number: 0625–0200.

Type of Request: Regular Submission.

Burden: 15 hours.

Number of Respondents: 1.

Avg. Hours Per Response: 15 hours.

Needs and Uses: The International Trade Administration's (ITA), Import Administration, AD/CVD Enforcement, implements the U.S. antidumping and countervailing duty law. Under section 1320 of the Omnibus Trade and Competitiveness Act of 1988, a domestic producer of an article that is like a component part of a downstream product may petition the Department of Commerce to designate the downstream product for monitoring. Section 1320, and the Department's rule 19 CFR 351.223, requires that the petition identify the downstream product to be monitored, the relevant component part, and the likely diversion of foreign exports of the component part into increased exports of the downstream product to the United States. ITA will evaluate the petition and will issue either an affirmative or negative ''monitoring'' determination.

Affected Public: Businesses or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230 or via internet at *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: October 17, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26889 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; 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: Bureau of Industry and Security (BIS).

Title: Offsets in Military Reports.

Agency Form Number: n/a.

OMB Approval Number: 0694–0084.

Type of Request: Renewal of an existing collection of information.

Burden: 1,000 hours.

Average Time Per Response: 10 hours per response.

Number of Respondents: 100 respondents.

Needs and Uses: The Defense Production Act Amendments of 1992, section 123 (P.L. 102558), which amended section 309 or the Defense Production Act of 1950, requires United States firms to furnish information regarding offset agreements exceeding $5,000,000 in value associated with sales of weapon systems or defense-related items to foreign countries. The information collected on offset transactions will be used to assess the cumulative effect of offset compensation practices on U.S. trade and competitiveness, as required by statute.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Paperwork Clearance Officer, (202) 482–0266, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

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 20230.

Dated: October 17, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26890 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: Export Assistance Center Internet Website Form.

Agency Form Number: N/A.

OMB Number: 0625–0237.

Type of Request: Regular submission.

Burden: 667 hours.

Number of Respondents: 5,750.

Avg. Hours Per Response: 5–20 minutes.

Needs and Uses: The Newport Beach U.S. Export Assistant Center, which is a combined effort of the U.S. Department of Commerce, Export-Import Bank, and Small Business Administration provides a comprehensive array of export counseling and trade finance services to small and medium-sized U.S. exporting firms. It proposes the extension of the Office of Management and Budget's authorization for this information collection form to continue the usefulness of its interactive website. In addition, this generic form will be used in its entirety or with minor modifications by all U.S. Export Assistance Centers and the Office of Domestic Operations. The form will ask U.S. exporting firm respondents to provide general background information and identify which service(s) they are interested in.

Affected Public: Businesses or other for-profits.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230 or via internet at *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: October 17, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26891 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–588–804, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Japan, and the United Kingdom: Partial and Full Rescissions of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial and Full Rescissions of Antidumping Duty Administrative Reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce published a notice of initiation of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Japan, and the United Kingdom on June 25, 2002. The merchandise covered by these orders are ball bearings and parts thereof from France, Germany, Japan, and the United Kingdom and spherical plain bearings and parts thereof from France. The period of review is May 1, 2001, through April 30, 2002. The Department of Commerce is rescinding these administrative reviews in part or full.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Richard Rimlinger at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–1757 or (202) 482–4477, 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 of Commerce's (the Department) regulations are to 19 CFR Part 351 (2001).

Background

On May 15, 1989, the Department published in the **Federal Register** (54 FR 20909) the antidumping duty orders on ball bearings and parts thereof from France, Germany, Japan, and the United Kingdom and on spherical plain bearings and parts thereof from France. On June 25, 2002, pursuant to 19 CFR 351.213(b), we published a notice of initiation of administrative reviews of these orders (67 FR 42753).

Subsequent to the initiation of these reviews, we received timely withdrawals of the requests we had received for the following reviews: INA-Schaeffler KG (INA) and Sachs Handel GmbH and ZF Sachs (collectively Sachs) with respect to ball bearings from Germany; SKF France S.A. (SKF France) with respect to spherical plain bearings from France; Barden Corporation (U.K.) Ltd. (Barden) with respect to ball bearings from the United Kingdom; Asahi Seiko Co., Ltd. (Asahi), and Nachi-Fujikoshi Corporation (Nachi) with respect to ball bearings from Japan. Because there were no other requests for review of the above-named firms, we are rescinding the reviews with respect to these companies in accordance with 19 CFR 351.213(d). Because there are no other requests for reviews of the orders on ball bearings from the United Kingdom and on spherical plain bearings from France, we are rescinding the reviews of these orders in full.

Rescission of Reviews

In accordance with 19 CFR 351.213(d), the Department will rescind an administrative review ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' The Department is also authorized to extend this deadline if it decides that it is reasonable to do so. INA, Sachs, SKF France, Barden, and Asahi withdrew their requests for their respective reviews within the 90–day time limit. The Torrington Company (Torrington) withdrew its request for the review of Nachi after the 90–day period had expired. Because there were no other requests to review Nachi and no other interested party objected, the Department has decided to accept Torrington's withdrawal request.

Because the Department received no other requests for the reviews of INA, Sachs, Asahi, and Nachi, it is rescinding the reviews in part with respect to shipments of ball bearings from Germany and Japan by these firms. Also, because the Department received no other requests to review spherical plain bearings from France other than those sold by SKF and no other requests to review ball bearings from the United Kingdom other than those sold by Barden, the Department is rescinding the reviews of these orders completely. The above partial and complete rescissions are pursuant to 19 CFR 351.213(d)(1). The Department will issue appropriate assessment instructions to the U.S. Customs Service within 15 days of publication of this notice.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these rescissions in accordance with 19 CFR 351.213(d)(4).

Dated: October 16, 2002.

Louis Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–27010 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–501; C–507–601]

Certain In-Shell Pistachios (C–507–501) and Certain Roasted In-Shell Pistachios (C–507–601) From the Islamic Republic of Iran: Extension of Time Limit for Final Results of Countervailing Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for final results of countervailing duty new shipper reviews.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds or Darla Brown, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2786.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to issue preliminary results within 180 days after the date on which the review was initiated and final results within 90 days after the date on which the preliminary results are issued. However, if the Secretary determines the case is extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend the time limit for the preliminary results of new shipper reviews to a maximum of 300 days and for the final results to 150 days from the date of issuance of the preliminary results.

Background

On November 7, 2001, we published in the **Federal Register** the initiation of a new shipper review of the countervailing duty order on in-shell pistachios from the Islamic Republic of Iran (Iran), covering the period October 1, 2000, through September 30, 2001. *See* 66 FR 56277. On November 27, 2001, we published in the **Federal Register** the initiation of a new shipper on roasted in-shell pistachios from Iran covering the same period. *See* 66 FR 59235. On September 4, 2002, (67 FR 56534), we published the preliminary results for the in-shell and roasted in-shell new shipper reviews.

Extension of Final Results of Review

Upon further review of the information submitted on the record of these new shipper reviews, we have concluded that it is necessary to conduct a verification of the questionnaire responses. Given our decision to conduct verification, we have determined these cases are extraordinarily complicated. Therefore, the Department is extending the time limits for completion of the final results until no later than January 24, 2002. *See* the Decision Memorandum from Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, to Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, dated concurrent with this notice, which is on file in the Central Records Unit.

This extension is in accordance with section 751(a)(2)(B)(iv) of the Act.

Dated: October 16, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–27011 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–501]

Certain In-Shell Pistachios From the Islamic Republic of Iran: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit or preliminary results of countervailing duty administrative review.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds or Darla Brown, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (''the Department'') to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested. However, if it is not practicable to complete the preliminary results of review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days.

Background

On April 17, 2002 the Department initiated an administrative review of the countervailing duty order on certain in-shell pistachios from the Islamic Republic of Iran (Iran). *See* 67 FR 20089. The preliminary results are currently due no later than December 2, 2002.

Extension of Time Limit for Preliminary Results of Review

Upon further examination of the information submitted on the record of the administrative review, we have concluded that it is necessary to conduct a verification of the questionnaire responses. Because it is the Department's practice to verify administrative reviews prior to the issuance of preliminary results, we do not believe it is practicable to complete the preliminary results of the administrative review within the 245-day statutory time frame. Therefore, the Department is extending the time limits for completion of the preliminary results until April 1, 2003. *See* the Decision Memorandum from Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, to Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, dated concurrent with this notice, which is on file in the Central Records Unit.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 17, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–27012 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Barnes Nursery, Inc. From an Objection by the Ohio Department of Natural Resources

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of appeal and request for comments.

SUMMARY: Barnes Nursery, Inc. has filed a notice of appeal with the Department of Commerce asking that the Secretary of Commerce override the Ohio Department of Natural Resources' objection to the Barnes Nursery, Inc. after-the-fact permit to maintain an excavated channel and berm system intended to store water for agricultural purposes. This project is located in Erie County, Ohio adjacent to east Sandusky Bay.

DATES: Public comments on the appeal are due within 60 days of the publication of this notice.

ADDRESSES: Comments should be sent to Molly Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Public filings made by the parties to the appeal may be available at the NOAA Office of the Assistant General Counsel for Ocean Services and the offices of the Ohio Department of Natural Resources, 1952 Belcher Drive—Bldg. C–4, Columbus, OH 43215.

FOR ADDITIONAL INFORMATION CONTACT: Molly Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 or at 301–713–2967, extension 215.

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

On July 10, 20001, Barnes Nursery, Inc. (Appellant) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.,* and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H (revised, effective January 8, 2001). The appeal is taken from an objection by the Ohio Department of Natural Resources (state) to the Appellant's consistency certification for a U.S. Army Corps of Engineers' after-the-fact permit to maintain an excavated channel and berm system intended to store water for agricultural purposes. This project is located in Erie County, Ohio adjacent to East Sandusky Bay.

The CZMA provides that a timely objection by a state precludes any federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either ''consistent with the objectives'' of the CZMA (Ground I) or ''necessary in the interest of national security'' (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is ''consistent with the objectives'' of the CZMA, the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively, and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of the Ohio Department of Natural Resources' management program. 15 CFR 930.121.

II. Public Comments

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR

930.121. Comments are due within 60 days of the publication of this notice and should be sent to Molly Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Copies of comments will also be forwarded to the Appellant and the State.

III. Appeal Documents

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the NOAA Office of the Assistant General Counsel for Ocean Services and the Ohio Department of Natural Resources.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: October 1, 2002.

James R. Walpole,

General Counsel.

[FR Doc. 02–26903 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101102H]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries in the Gulf of Alaska

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

ACTION: Notice of public scoping meeting for a supplemental environmental impact statement (SEIS).

SUMMARY: NMFS announces a public scoping meeting to determine issues for an SEIS for the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) in accordance with the National Environmental Policy Act of 1969 (NEPA). The North Pacific Fishery Management Council (Council) is proposing management measures to improve the economic efficiency of the Gulf of Alaska (GOA) groundfish fisheries which also may address conservation, safety, and social concerns. The Council is considering one or more methods of allocating fishing privileges such as: individual fishing quotas (IFQs); individual processing quotas (IPQs); allocations to communities; fishing cooperatives program; or other measures.

DATES: The public scoping meeting will be held on Friday, October 25, 2002, from 1 to 4 p.m. Written comments will be accepted through November 15, 2002 (see **ADDRESSES**).

ADDRESSES: The meeting will be held at the Hilton Anchorage Hotel, Spruce Room, 500 West Third Avenue, Anchorage, AK.

Written comments on issues and alternatives for the SEIS should be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel-Durall, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Comments may be sent via facsimile (fax) to 907–586–7557. NMFS will not accept comments by e-mail or internet.

An analysis of the issues and alternatives will be available through the North Pacific Fishery Management Council, 605 West 4th, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, (907) 586–7228 or email: glenn.merrill@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS published a notice of intent to prepare an SEIS on May 29, 2002 (67 FR 37393). The notice of intent provides additional information on the SEIS public scoping process and may be obtained through NMFS (See **ADDRESSES**).

NMFS is holding public scoping meetings and accepting written comments to determine the issues of concern and the appropriate range of management alternatives to be addressed in the SEIS. NMFS has held seven public scoping hearings in Alaska at Sand Point, King Cove, Kodiak, Cordova, Homer, and Petersburg, and also in Seattle, WA. The meeting announced in this document is intended to provide an additional opportunity for public comment during the scoping period. This meeting is being held in Anchorage to help facilitate participation by Native Alaskan tribal governments attending the 2002 Conference of the Alaska Federation of Natives. NMFS will notify Native Alaskan tribal governments prior to this meeting.

Additional information on the public scoping process may be obtained through NMFS (see **ADDRESSES**), or via the NMFS website at http://www.fakr.noaa.gov/. The specific options for rationalization may be obtained through the Council (see **ADDRESSES**), or via the Council website at http://www.fakr.noaa.gov/npfmc/.

Public Involvement

NMFS is seeking written public comments on the scope of issues that should be addressed in the SEIS and alternatives and options that should be considered for management of the GOA groundfish fisheries.Public comments on specific aspects of the rationalization programs should be submitted to NMFS (see **ADDRESSES**). The public also will be able to provide oral and written comments at the meeting. The Council will make a draft analysis of these alternative programs available for public review and comment. Copies of the analysis can be requested from the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Glenn Merrill, NMFS, (see **ADDRESSES**), (907) 586–7228, at least 5 days prior to the meeting date.

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

Dated: October 18, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–26978 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2002–C–001]

Patent and Trademark Office Acquisition Guidelines (PTAG)

AGENCY: U.S. Patent and Trademark Office, Commerce.

ACTION: Notice of proposed guidelines and request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is publishing a notice of the proposed guidelines which it will apply to its acquisitions.

DATES: Written comments should be submitted on or before November 22, 2002.

ADDRESSES: Submit written comments to: USPTO, Office of Procurement, Washington, DC 20231. Electronic comments may be submitted to: *Mike.Anastasio@uspto.gov.* Copies of all comments will be available for public inspection at *http://www.uspto.gov/web/offices/ac/comp/proc/* or in Suite 810, Crystal Park One, 2011 Crystal Drive, Arlington, Virginia 22202, from 8:30 a.m. until 5 p.m., Monday through

Friday. Please submit comments only and cite PTAG in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Messina, Procurement Analyst, USPTO, Office of Procurement, at (703) 305–8014.

SUPPLEMENTARY INFORMATION:

Background

a. On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (''USPTO Efficiency Act''), Pub. L. 106–113—Appendix I, Title IV, Subtitle G, 113 Stat. 1501A–572, which took effect March 29, 2000. *See* 35 U.S.C. 1. The USPTO Efficiency Act expressly provides that the USPTO ''shall retain responsibility for decisions regarding the management and administration of its operations and shall exercise independent control of its * * * procurements * * *.'' To this end, the USPTO Efficiency Act expressly granted the USPTO the authority to make purchases and to enter into contracts for supplies or services without regard to the provisions of the Federal Property and Administrative Services Act of 1949 (FPAS) (40 U.S.C. 471 *et seq.*). 35 U.S.C. 2(b)(4)(A). FPAS is also codified at 41 U.S.C. 251 *et seq.* The pertinent portions of FPAS from which USPTO is exempt are found at 41 U.S.C. 251 *et seq.*

b. As relevant to the USPTO, the Federal Acquisition Regulation (FAR) is issued by the Administrator of the General Services Administration under the authority of FPAS. Because the USPTO is not subject to FPAS, it is not required to follow the FAR.

c. On April 5, 2000, the USPTO published a **Federal Register** notice stating that until otherwise indicated, USPTO will continue to follow the FAR and Department of Commerce regulations applicable to the United States Patent and Trademark Office. 65 Fed. Reg. 17,858–01 (2000).

d. Continuing to follow the FAR indefinitely will not permit the USPTO to utilize the procurement flexibilities provided by the USPTO Efficiency Act. On the other hand, the FAR contains procedures for compliance with a large number of procurement-related statutes, Executive Orders, and regulations to which the USPTO is still subject and with which it must continue to comply. The FAR also ensures that decisions are made fairly and in the best interests of the Government.

e. Accordingly, the USPTO will continue to use the FAR as guidance in its acquisitions. This notice sets forth additional proposed guidance concerning alternate procurement procedures that may be used by the USPTO.

Nature of Proposed Guidelines

Neither the FAR nor the procedures set forth in this notice will be binding on USPTO contracting officers or other USPTO employees involved in the procurement process. However, USPTO employees may assume that following either the FAR procedures or, to the extent applicable, the alternate procedures set forth in this notice will ensure compliance with applicable legal requirements and result in fair and appropriate decisions. USPTO employees may use procedures other than those set forth in the FAR and this notice so long as these procedures comply with all applicable statutes, Executive Orders and regulations, will further the legitimate interests of the USPTO and are calculated to result in fair decisions.

Neither the FAR nor the alternate guidance provided in this notice is binding on USPTO vendors or any other member of the public, except to the extent provisions therefrom are incorporated in legally enforceable contracts. Instructions set forth in solicitations or other procurement documents are also binding in that they may establish conditions on an offeror's continued participation in the procurement process.

The alternate procedures set forth in this notice are intended to incorporate brevity of content, streamlined procedures, innovation in process, flexibility, and discretion to the acquisition process while ensuring objectivity and maximum reasonable competition.

The following are highlights of the benefits the USPTO hopes to achieve through this alternate guidance:

- Increase the competitive threshold from $2500 to $5000 to decrease processing time and costs.
- Use ''maximum reasonable competition'' instead of ''full and open competition'' for a more efficient procurement process.
- Reflect the USPTO's increased flexibility in procuring printing services.
- Increase the threshold for the use of simplified acquisition procedures for commercial items from $5 million to $10 million to reduce the lead time for processing requirements and decrease acquisition costs.
- Provide guidance on the use of an Alternative Streamlined Contracting Approach. This process involves the early identification of highly qualified vendors, which will reduce the investment of vendor time and resources, provide greater flexibility, and establish better partnerships with the vendor community. The use of a pre-set number of firms for the competitive range also reduces unreasonable contractor expectations.
- Permit limited discussions after the establishment of the competitive range in lieu of making an award without discussions. USPTO hopes to reduce processing time and administrative burdens associated with proposal revisions.
- Permit use of contract types not included in the FAR (*i.e.*, contract types that combine elements of the various contract types listed in the FAR (Labor Hour Award Fee, for one example). This provides greater flexibility to improve mission accomplishment and improved partnering relationships with vendors.

Proposed Guidelines

Expanded Use of Electronic Commerce

Recognizing that the Internet provides a valuable means of disseminating information, USPTO intends to continue and expand its use of electronic commerce to facilitate streamlining of the acquisition process. While the USPTO will continue to synopsize proposed actions and contract awards, the objective is to use the USPTO Office of Procurement web site as the foremost method of publicizing requirements, business opportunities, and providing procurement information to the business community.

Competition

The USPTO will endeavor to acquire products and services to the maximum extent possible in all acquisitions on a competitive basis; however, it is exempt from the requirement to meet the test of ''full and open competition'' as defined in FAR Part 6.

The USPTO will use competition as a principal tool in achieving results and intends to adopt means of affording competition that it determines will effectually serve the performance goals established for particular acquisitions.

It is the policy of the USPTO to promote competition to the maximum extent possible. Competition reduces the risk of having to rely on only one source for critical goods or services and reduces costs. USPTO intends to balance these considerations with the program benefits that can be gained from developing a reduced supplier base and building strategic alliances with its suppliers. The degree of competition sought will be influenced by knowledge of the marketplace and successful past performance records, with competition in most cases limited

to a reasonable number of capable sources.

Under the USPTO process, all firms will be apprised of opportunities, but only those judged to be the most viable will commit the resources to fully participate. USPTO intends to have an open interchange with industry about USPTO potential requirements and contractor capabilities long before any formal solicitation is issued. It is the policy of the USPTO to inform all firms of opportunities and seek to ensure only the most viable will need to commit resources to fully participate.

Where justifications for limiting competition are prepared, they will be approved at the following levels:

a. Justifications of procurements $1,000,000 or less will be approved by the Contracting Officer.

b. Justifications over $1,000,000 and less than $10,000,000 will be approved by the Director, Office of Procurement.

c. Justifications greater than $10,000,000 will be approved by the Agency Competition Advocate.

Simplified Acquisition Procedures

Competitive quotations need not be sought for purchases under $5,000 provided that the Contracting Officer can readily determine the price to be fair and reasonable. Written solicitations should only be utilized when appropriate given the complexity of the requirement.

The USPTO contracting officer may use procedures similar to those set forth at subpart 13.5 of the FAR for acquisitions of commercial items not in excess of $10 million.

Alternative Streamlined Contracting Approach

The Contracting Officer may utilize the streamlined process described below to solicit offers. The characteristics of this process include:

a. Early identification of the most highly qualified contractors;

b. Establishing a pre-set number of firms for the competitive range to limit the investment of contractor time and resources and to reduce the administrative burden of the procurement process; and

c. Conducting negotiations only where it is practical and efficient to do so and without the requirement for a common cut-off date for concluding negotiations.

The USPTO intends to use a project team to conduct acquisitions under the alternative streamlined contracting approach. The project team will be a multi-disciplinary team that consists of a warranted contracting officer, representatives from the program office whose requirement is the subject of the procurement, the Office of Corporate Planning, and the Office of the General Counsel. The project team will possess the necessary authority needed to conduct all aspects of the acquisition. No further approvals will be required to conduct the acquisition.

The Alternative Streamlined Contracting Process is conducted as follows:

a. A project team conducts all aspects of the acquisition.

b. The team employs strategies and methods that best fulfill the needs of the acquisition.

c. When using the streamlined Alternative Streamlined Contracting Approach, USPTO may employ announcements of opportunities rather than announcement of individual actions over $25,000.

d. Initially, a high-level solicitation document is used. It should solicit basic and essential information such as offeror qualifications, broad-based product data, proposed technical concept, past performance, and pricing. The solicitation document will typically consist of:

1. information on goals and objectives of the requirement,

2. specific procedures related to conducting the acquisition,

3. instructions to offerors on preparing a response,

4. information on how responses will be evaluated,

5. budget information on the value of the acquisition, where appropriate, and

6. project and acquisition timeframes and schedules.

e. A competitive range will be established after initial evaluation of responses. Respondents judged as not being among the most highly rated will be eliminated from further consideration.

f. After establishment of the competitive range, a detailed Statement of Need is issued to solicit additional information and obtain a more complete offer from all firms. The Statement of Need will incorporate the principles of performance-based contracting to permit offerors the opportunity to propose the best solution to meet the USPTO's needs.

g. Oral presentations may be used. The Contracting Officer should maintain an adequate record of oral presentations.

Based on responses to the Statement of Need, the Contracting Officer may negotiate or conduct discussions only with the highest ranked offeror based on the evaluation factors set forth in the solicitation. If the USPTO Contracting Officer is unable to reach agreement with this offeror, negotiations will be initiated with the next highest-ranked firm. This process will continue until those firms remaining in the competitive range have been considered. If agreement cannot be reached, negotiations may be reopened with all firms in the competitive range or the solicitation may be canceled.

Selecting Contract Types

Where appropriate, the USPTO may use any contract type (*e.g.*, fixed price or labor hour) provided for in the FAR without regard to any limitations specified therein, and in addition may use hybrid or other contract types not provided for in the FAR.

Indefinite-Delivery Contracts

Because it is exempt from the FPAS, the USPTO is not required to make multiple awards for indefinite-quantity contracts under any circumstances, or, where multiple awards are made, to use any specific procedures for placing task or delivery orders. Contracting Officers are encouraged, however, to consider the use of multiple awards where doing so would result in benefits to the USPTO. A solicitation contemplating multiple awards should address the procedures the USPTO will use for selecting between contractors when awarding task or delivery orders. Where a specific procurement includes procedures for seeking task or delivery order proposals from multiple contractors, applying these procedures to individual requirements below $5,000 normally will not be in the best interest of the USPTO.

Options

Because of the USPTO's exemption from FPAS, it may make award on the basis of unpriced options contained in an existing contract without seeking further competition. The USPTO intends to consider the use of this technique in connection with performance based contracting under the following circumstances:

a. the award of additional option periods to the incumbent contractor without competition is used as an incentive and reward for good contract performance;

b. the solicitation notifies offerors that unpriced options will be used as a performance incentive; and

c. the contract includes provisions for measuring contract performance and the pricing, negotiation, and exercise of additional option periods.

Acquisition Plans

Acquisition planning serves two important purposes: it establishes how an agency will meet programmatic

requirements within the agency's budgetary goals and it serves as a guideline for the acquisition.

Annual Acquisition Plans—As a means of funds control, prioritization, and workload scheduling, USPTO intends to continue to utilize yearly acquisition plans that are tied to the budget process. The plans should be updated as priorities and funding changes occur to ensure accuracy and currency. Plans will be concise. All planned acquisitions for a given fiscal year should be included on the yearly acquisition plan.

Separate Project Agreements—The USPTO may use a separate project agreement for individual or multiple actions that utilize the Alternative Streamlined Contracting Approach. Project Agreement documents tailored to the size and complexity of the various acquisitions will be developed.

Individual Acquisition Plans—The content of the individual acquisition plan shall be left to the discretion of the Contracting Officer. At a minimum, acquisitions plans should contain the following:

a. Statement of need.
b. Applicable conditions.
c. Cost.
d. Risks.
e. Plan of action.
f. Milestones.

Printing Requirements

The Patent and Trademark Efficiency Act, 35 U.S.C. 2(b)(4)(B), exempts the USPTO from requirements for printing by the Government Printing Office. Accordingly the USPTO intends to acquire printing by the most economic and efficient means available, which may in particular acquisitions include the Government Printing Office.

Market Research

The purpose of USPTO's approach to market research is to identify and determine the availability of products or services that will satisfy its requirements. The USPTO will use such research, as appropriate, to help it ascertain the most efficient acquisition strategy—with consideration of the range of potential sources, availability of commercial items, and identification of standard commercial practices. Accordingly, the USPTO intends to conduct market research that, to the extent possible, is based upon clear statements of an acquisition's intended outcome and does not foreclose, before research is conducted, the consideration of any reasonable solution or technology for accomplishing its goal. The best result of market research will be achieved when there is a clear statement of the acquisition's intended outcome.

Market research is the responsibility of the entire acquisition team. USPTO Contracting Officers should work closely with technical/program staff to ensure that appropriate market research is conducted. The extent and results of market research efforts should be documented in acquisition planning documents and/or project agreements when the Alternative Streamlined Contracting Approach is utilized.

Bid Protests

The USPTO continues to be subject to the bid protest jurisdiction of the General Accounting Office and of the Court of Federal Claims. The USPTO is also subject to 6 Executive Order 12979 concerning protests to the agency. Its procedures for considering such protests are available at: *http://www.uspto.gov/web/offices/ac/comp/proc/protest.htm.*

Dated: October 17, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 02–26968 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

October 17, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63033, published on December 4, 2001.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 17, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on October 23, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
435	18,749 dozen.
443	31,068 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Philip J. Martello,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–26913 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 19(a)(2) of the Federal Advisory Committee Act

(P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 28–31 October 2002.

Time(s) of Meeting: 0900–1700, 28 October 2002, 0900–1200, 31 October 2002.

Place: Carlisle Barracks, Pennsylvania.

1. The Army Science Board is holding a General Membership Meeting on 28–31 October 2002. The meeting will be held at the U.S. Army War College, Carlisle Barracks, Pennsylvania. The meeting will begin at 0900hrs on the 28th and will end at approximately 1200hrs on the 31st, For further information, please contact Major Robert Grier—703–604–7478 or email: *robert.grier@saalt.army.mil.*

Wayne Joyner,

Executive Assistant, Army Science Board.

[FR Doc. 02–26911 Filed 10–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Meeting on the Draft Environmental Impact Statement for Basing the Advanced Amphibious Assault Vehicle at Marine Corps Base Camp Pendleton, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the National Environmental Policy Act as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy has prepared a Draft Environmental Impact Statement (DEIS) for basing the advanced amphibious assault vehicle at Marine Corps Base (MCB) Camp Pendleton, CA. Two public meetings will be held in order to collect public comments. These meetings are for interested persons to ask questions and provide comments on the DEIS. Each meeting will be conducted in an open house format and participants may attend some or all of the meeting(s).

DATES AND ADDRESSES: The first public meeting will be held on Monday, November 18, 2002, from 6 p.m. to 9 p.m. in the City of San Clemente Auditorium, 100 N. Calle Seville, San Clemente, CA. The second public meeting will be held on Wednesday, November 20, 2002, from 6 p.m. to 9 p.m. in the City of Oceanside Community Room, 330 North Coast Highway, Oceanside, CA. All written comments regarding the DEIS should be received by December 3, 2002, and directed to Commander, Southwest Division, Naval Facilities Engineering Command, Code 5CPR.15 (Attn: Ms. Lisa Seneca), 937 North Harbor Drive, San Diego, CA 92132.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Seneca, telephone (619) 532–4744, fax (619) 532–4160.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps is developing the advanced amphibious assault vehicle (AAAV) to replace the amphibious assault vehicle (AAV) as its primary combat vehicle for transporting troops on land, at sea, and from ship to shore. The AAAV is designed to satisfy many operational requirements to provide increased capabilities compared to the AAV and seamlessly link maneuver on ships and maneuver ashore.

The DEIS analyzes the potential environmental impacts associated with the proposed action, which involves the replacement of the AAV with the AAAV at MCB Camp Pendleton, the demolition, construction and modification of facilities at MCB Camp Pendleton to support the AAAV, and conducting AAAV training exercises at San Clemente Island.

The DEIS has been distributed to various Federal, state and local agencies, elected officials, special interest groups and individuals. The DEIS is available for public review at the following libraries:

- Carlsbad City Library, 1250 Carlsbad Village Dr, Carlsbad, CA.
- La Costa Branch Library, 6949 El Camino Real, Suite 200, Carlsbad, CA.
- Del Mar Branch Library, 1309 Camino Del Mar, Del Mar, CA.
- Imperial Beach Branch Library, 819 Imperial Beach Blvd, Imperial Beach, CA.
- Oceanside Public Library, 330 North Coast Highway, Oceanside, CA.
- Ocean Beach Branch Library, 4801 Santa Monica Ave, San Diego, CA.
- East San Diego Branch Library, 4089 Fairmount Ave, San Diego, CA.
- San Diego Central Library, 820 East St, San Diego, CA.

Dated: October 17, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–26908 Filed 10–22–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

The following patents are available for licensing:

U.S. Patent Number 6,338,456: LANDING IMPACT ABSORBING DEPLOYMENT SYSTEM FOR AIRCRAFT WITH DAMAGED LANDING GEAR. ABSTRACT: Inflation of impact absorbing bags is effected in time delayed relation to selective jettisoning of damaged landing gear on a helicopter prior to landing for replacement of the landing gear by the bags, without puncture thereof by the landing gear being jettisoned. U.S. Patent Number 6,371,410: EMERGENCY LANDING IMPACT ABSORBING SYSTEM FOR AIRCRAFT. ABSTRACT: Inflation of impact absorbing bags is effected on a portable platform positioned on an emergency landing zone after jettisoning of damaged landing gear from a helicopter fuselage. The impact absorbing bags when inflated form a cradle shape conforming to the bottom of the helicopter fuselage. U.S. Patent Number 6,386,830: QUIET AND EFFICIENT HIGH-PRESSURE FAN ASSEMBLY. ABSTRACT: A high-pressure vane-axial fan assembly is provided. A rotor assembly has a plurality of rotor blades disposed circumferentially around and extending radially outward from a hub. Each rotor blade has an airfoil cross-section and is constructed to define a straight-ruled leading edge that extends outward from the hub. The rotor blade is rotated along its span relative to the straight-ruled leading edge. The plurality of rotor blades defines a solidity of greater than 1. A stator assembly has a plurality of stator vanes disposed circumferentially around and extending radially from the frame. There are a lesser number of stator vanes than rotor blades. The stator assembly is positioned adjacent the rotor assembly such that an axial gap is defined between the trailing edge of the stator vanes. The axial gap increases with radial distance from the hub as defined by the shape of the trailing edge of the rotor blades and the shape of the leading edge of the stator vanes. The axial gap is a minimum of the rotor blade's axial chord length along a central portion thereof. U.S. Patent Number 6,382,912: CENTRIFUGAL COMPRESSOR WITH VANELESS DIFFUSER. ABSTRACT: A centrifugal compressor or pump has a vaneless diffuser within which a radially extending passage is formed between a fixed plate surface and a profile

contoured shroud surface establishing a pinch point location of minimum passage area intermediate inlet and outlet ends of the diffuser passage. Convergent and divergent flow portions of the diffuser passage respectively extend to and from the pinch point to establish convergent flow from the inlet end and divergent flow toward the outlet end for exit outflow at a flow angle less than that of a convergent inflow angle from the inlet end imposed along an initial profile segment. U.S. Patent Number 6,294,849: MAGNETOSTRICTIVE ACTUATOR WITH LOAD COMPENSATING OPERATIONAL MODIFICATION. ABSTRACT: A magnetostrictive actuator has an active rod deformed under exposure to magnetic bias of a magnetic field that is modified in accordance with variable external input loading transferred through gearing to rotationally displace a segmented magnetic shell relative to a fixed segmented magnetic shell within which the magnetic field is established. U.S. Patent Number 6,235,541: PATTERNING ANTIBODIES ON A SURFACE. ABSTRACT: Substrates are patterned with antibodies attached thereto at discrete locations from which absorption resistant coating is removed by selectively controlled mechanical scribing contact to avoid chemical removal so as to decrease fabrication costs and increase fabrication speed. U.S. Patent Number 6,170,422: ATTACHMENT OF EQUIPMENT TO COMPOSITE SANDWICH CORE STRUCTURES. ABSTRACT: Equipment is removably connected by a load transfer element and a removable fastener bolt to a core sandwich type of bulkhead through a plug-in insert, adhesively bonded to the bulkhead at interface surfaces within a pocket formed in the bulkhead for reception of such insert. U.S. Patent Number 6,138,724: SHIPBOARD PAINT DISPENSING SYSTEM. ABSTRACT: A storage chamber within a paint dispensing reservoir tank is maintained filled with paint from a refill paint source during recirculation of such paint through a paint cleansing filter within the chamber for supply of filter cleansed paint to a paint dispensing outlet under control of a metering system involving use of a valve controlled air-powered pump and flow metering regulating cylinders. U.S. Patent Number 6,038,995: COMBINED WEDGE-FLAP FOR IMPROVED SHIP POWERING. ABSTRACT: The inventive combination of a stern wedge and a stern flap demonstrates hydrodynamic properties which, for purposes of enhancing the powering performance of a ship, are superior to those of either a solitary stern wedge or a solitary stern flap. For many inventive embodiments the stern wedge portion's lower surface and the stern flap portion's lower surface are slanted at approximately equal angles with respect to the buttock centerline, thereby optimally consolidating the stern portion's lower surface and the flap portion's lower surface so as to effectively create an overall hydrodynamic lower surface which is slanted approximately at one and the same angle. U.S. Patent Number 6,208,268: VEHICLE PRESENCE, SPEED AND LENGTH DETECTING SYSTEM AND ROADWAY INSTALLED DETECTOR THEREFOR. ABSTRACT: An improved detector is provided for installation in a roadway surface. The detector finds utility in a highway vehicle detection system for determining vehicle presence, vehicle speed and vehicle length. First and second matched induction coil magnetic sensors are maintained at or near the roadway surface. Each of the sensors has a longitudinal axis aligned normal to the roadway surface. The first and second sensors are separated from one another by a known distance in a direction substantially aligned with a direction of traffic flow. Each of the sensors generate a differential magnetic field signature with respect to time to indicate a passing vehicle's leading and trailing edge magnetic signatures. Vehicle speed is determined by a time-distance relationship using the leading and trailing edge magnetic signatures and the known distance. Vehicle length is determined by a time-speed relationship using the leading and trailing edge magnetic signatures and the determined vehicle speed. A triaxial magnetometer maintained at a location in close proximity to the first and second sensors measures a DC magnetic field. The DC magnetic field has vertical and horizontal magnetic field components with the horizontal components including a component substantially aligned with the direction of traffic flow and a component substantially perpendicular to the direction of traffic flow. The vertical and horizontal components caused by the passing vehicle are used to determine vehicle presence. An ELF communications system may be incorporated with the detector to link roadside and vehicle transmitted received information.

ADDRESSES: Requests for copies of the patents cited should be directed to: Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Boulevard, West Bethesda, MD 20817–5700, and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Bloomquist, Director, Technology Transfer Office, Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Boulevard, West Bethesda, MD 20817–5700, telephone (301) 227–4299.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: October 17, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–26907 Filed 10–22–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of proposed information collection requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by October 30, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before December 23, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Lauren Wittenberg, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.* .

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the

requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: October 17, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New Collection.

Title: Teacher Cancellation Low Income Directory.

Abstract: There are 57 State Agencies that contribute to the development of a directory of elementary and secondary schools which qualify for the teacher cancellation benefit. The directory allows post-secondary institutions to determine whether or not a teacher who received a Federal Perkins Loan, Direct loan, or Federal Family Education Loan at their school is eligible to receive a loan cancellation as provided under Title I of the Elementary and Secondary Education Act of 1965.

Additional Information: Emergency clearance of this collection is necessary because if the collection were not approved for use by November 1, public harm to students applying for eligibility would occur.

Frequency: Annually.

Affected Public: Individuals or household, State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 6983.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2174. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–26894 Filed 10–22–02; 8:45 am]

BILLING CODE 4000–1–P

DEPARTMENT OF ENERGY

Office of Science; Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). 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: Tuesday, November 5, 2002, 8 a.m. to 5 p.m., and Wednesday, November 6, 2002, 8 a.m. to 12 p.m.

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Sharon Long; Office of Basic Energy Sciences; U. S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–5565.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

Tuesday, November 5, 2002.

- Welcome and Introduction.
- Office of Science Highlights.
- Basic Energy Sciences Highlights.
- Overview of the Division of Chemical Sciences, Geosciences, and Biosciences.
- Preliminary Summary of the Workshop on Basic Research Needs to Assure a Secure Energy Future.
- Update on Nanoscale Science Research Centers.
- Update on Linac Coherent Light Source.

Wednesday, November 6, 2002.

- Overview of Upcoming BESAC Activities.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301–903–6594 (fax) or *sharon.long@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule. This notice is being published less than 15 days before the date the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC 20585; between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on October 17, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–26961 Filed 10–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

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), Northern New Mexico. The Federal Advisory

Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 20, 2002, 1 p.m.–8:30 p.m.

ADDRESSES: Holiday Inn, Santa Fe, 4048 Cerrillos Road, Santa Fe, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1:00 p.m.—Call to Order by Ted Taylor, DDFO; Establishment of a Quorum; Welcome and Introductions by Jim Brannon, Board Chair; Approval of Agenda; Approval of Sept. 25, 2002 Meeting Minutes.
1:15 p.m—Public Comment.
1:30 p.m—Board Business.
A. Recruitment/Membership Update.
B. Report from Chairman Brannon.
C. Report from DOE, Ted Taylor, DDFO.
D. Report from Executive Director, Menice S. Manzanares.
E. New Business.
2:30 p.m.—Break.
2:45 p.m.—Reports for Committees.
A. Community Outreach Committee, Debra Walsh.
B. Monitoring and Surveillance Committee, Jim Brannon.
C. Environmental Restoration Committee, Dr. Fran Berting.
D. Waste Management Committee, Richard Gale.
E. Ad Hoc Committee on CAB Self Evaluation, Don Jordan.
3:30 p.m.—Resolutions.
4:00 p.m.—Discussion of Board Processes.
5:00 p.m.—Dinner Break.
6:00 p.m.—Continue Discussion of Board Process.
7:30 p.m.—Break.
7:45 p.m.—Public Comment.
8:15 p.m.—Recap of Meeting.
8:30 p.m.—Adjourn.

This agenda is subject to change at least one day in advance of the meeting. A final agenda will available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer 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 at the beginning of the meeting.

Minutes: 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 IndependenceAvenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9:00 a.m.-4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: http:www.nnmcab.org.

Issued in Washington, DC on October 17, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–26962 Filed 10–22–02; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

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), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 7, 2002, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Update on Rocky Flats site closure progress.
2. Discuss end-state strategy for surface water.
3. Review draft recommendation language on surface soil, subsurface soil, and long-term stewardship.
4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer 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.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb French at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued in Washington, DC, on October 17, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–26963 Filed 10–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–6–000]

CenterPoint Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

October 16, 2002.

Take notice that on October 9, 2002, Centerpoint Energy Gas Transmission Company (CEGT), formerly Reliant Energy Gas Transmission Company, whose main office is located at 1111 Louisiana Street, Houston, Texas 77210, filed in Docket No. CP03–6–000, a request pursuant to 157.205 and 157.208 (18 CFR sections 157.205 and 157.208) of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to acquire, own, and operate certain pipeline facilities and to construct facilities, all as more fully set forth in the Application, which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659

Specifically, CEGT proposes to acquire approximately 28.97 miles of interstate pipeline facilities owned by Ozark Gas Transmission, L.L.C. (Ozark) located in Pittsburg and Latimer Counties, Oklahoma, including 28.32 miles of 20-inch diameter pipeline, approximately 0.65 miles of smaller diameter pipelines, and other appurtenant facilities. Additionally, CEGT proposes to construct approximately 2,600 feet of 20-inch diameter pipe and related pigging and measurement facilities, to connect the Ozark facilities to CEGT's system. The estimated cost of this project is $12,508,612. CEGT's filing is related to Ozark's abandonment application filed on August 23, 2002 in Docket No. CP02–428–000.

Any questions concerning this request may be directed to Lawrence O. Thomas, Director, Rate and Regulatory, CenterPoint Energy Gas Transmission Company, 525 Milam Street, Shreveport, Louisiana 71111 at (318) 429–2804.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26939 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–439–002]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

October 16, 2002.

Take notice that on October 10, 2002, CenterPoint Energy Gas Transmission Corporation (CEGT), formerly known as Reliant Energy Gas Transmission Company, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective on October 1, 2002:

First Revised Sheet No. 279
First Revised Sheet No. 280
First Revised Sheet No. 281
Substitute Original Sheet No. 293A
First Revised Sheet No. 300
First Revised Sheet No. 301
Substitute Third Revised Sheet No. 399
First Revised Sheet No. 400A
Second Substitute Fourth Revised Sheet No. 435

CEFT states that the purpose of this filing is to comply with the Commission's Letter Order regarding CEGT's filing to comply with Order No. 587–O.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at http://www.ferc.gov using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26950 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–426–001]

Dominion Transmission Inc.; Notice of Compliance Filing

October 16, 2002.

Take notice that on October 10, 2002, Dominion Transmission Inc. (DTI) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of October 1, 2002:

Second Revised Sheet No. 1052
Second Revised Sheet No. 1053
First Revised Sheet No. 1056
Fourth Revised Sheet No. 1057
Fourth Revised Sheet No. 1173

DTI states that the revised sheets are submitted to comply with the Commission's Order No. 587–O and the Commission's September 25, 2002 order in Docket No. RP02–426–000 (September 25 Order). DTI's compliance filing incorporates the changes required by the September 25 Order.

DTI's states that a copy of the filing has been served upon all of DTI's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section

385.211 of the Commission's rules and regulations.

All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26948 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–485–002]

Enbridge Pipelines (KPC); Notice of Compliance Filing

October 16, 2002.

Take notice that on October 10, 2002, Enbridge Pipelines (KPC) (Enbridge KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of November 10, 2002:

Second Revised Sheet No. 15
First Revised Sheet No. 16A
First Revised Sheet No. 17
Second Revised Sheet No. 21
First Revised Sheet No. 23
Second Revised Sheet No. 26
Second Revised Sheet No. 28
Second Revised Sheet No. 30

Enbridge KPC states that the filing is being made to comply with the Commission's September 10, 2002 ''Order on Initial Decision'' in Docket No. RP99–485–000. Enbridge KPC states that its compliance filing is consistent with the Commission's September 10, 2002 order.

Enbridge KPC states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding, as well as all customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26960 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket Nos. CP03–2–000, et. al.]

Federal Energy Regulatory Commission

October 16, 2002.

Energy West Development, Inc.; Notice of Application

On October 3, 2002, Energy West Development, Inc. (Energy West), PO Box 2229, Great Falls, Montana, 59403, filed an application pursuant to section 7 of the Natural Gas Act (NGA), as amended, and sections 157 Subparts A and F and 284 Subpart G of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations thereunder. Energy West requests authorization: to convert about 34 miles of oil pipeline to natural gas pipeline operation; for a Subpart F construction, operation and abandonment blanket certificate (CP03–3–000); and, for a Subpart G transportation blanket certificate (CP03–4–000). The facilities are necessary to provide additional incremental firm and interruptible transportation service of 13,500 Decatherms per Day(Dth/d) for market area load, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659.

The requested certificate would authorize Energy West to convert to natural gas operation an existing pipeline running from Cody, Wyoming to Warren, Montana that originally was constructed and used for the transportation of non-jurisdictional liquids, but that in recent years has laid dormant. Energy West also seeks acceptance of an initial tariff and initial rates, and requests that the Commission accept for filing a negotiated rate transaction with Prairielands Energy Marketing, Inc. that does not conform to the proposed initial rates. Energy West submitted precedent agreements with Prairielands Energy Marketing, Inc.(10,000 Dth/d) and Howell Petroleum Corp.(5,000 Dth/d) for interruptible transportation service; and, with Energy West Resources, Inc. for 10,000 Dth/d of firm transportation service. Energy West also requests expedited consideration of its application and certain waivers of the Commission's regulations.

Questions regarding the application may be directed to: John C. Allen, President and General Counsel, Energy West Development, Inc., PO Box 2229, Great Falls, Montana, 59403, or call (406) 791–7500; or, Patrick J. Joyce, Blackwell Sanders Peper Martin LLP, 13710 FNB Parkway, Suite 200, PO Box 542090, Omaha, Nebraska, 68154 or call (402) 964–5012.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 5, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the nonparty commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26937 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–462–001 and -002 and RP01–37–003 and -004]

Equitrans, L.P.; Errata Notice

October 16, 2002.

In the Commission's Order on Rehearing and Compliance with Order Nos. 637, 587–G and 587–L issued October 10, 2002, in the above-proceeding, on page 5, paragraph 14, of the order, change ''October 1, 2002'' to ''November 1, 2002''. The sentence should read as follows:

''With the exception of the items discussed below, the Commission accepts Equitrans's proposed compliance tariff sheets, effective November 1, 2002''.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26946 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–19–000]

Florida Gas Transmission Company; Notice of Tariff Filing

October 16, 2002.

Take notice that on October 11, 2002, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to become effective November 11, 2002:

[Fifth Revised Sheet No. 174]

FGT states that in the instant filing, it is proposing tariff revisions setting forth the criteria that would permit FGT to terminate a temporary capacity relinquishment. Specifically, in a new Section 18 L of FGT's General Terms and Conditions, Transporter's Right to Terminate a Temporary Capacity Relinquishment, FGT is proposing that FGT may elect to terminate a temporary capacity relinquishment upon 30-days' written notice if the relinquishing shipper has failed to maintain creditworthiness and the rate paid by the acquiring shipper is less than the relinquishing shipper's contract rate. Additionally, FGT is proposing that the acquiring shipper may avoid termination of the temporary capacity relinquishment by agreeing to pay for the remainder of the relinquishment the lower of the relinquishing shipper's contract rate or the maximum tariff rate under the applicable rate schedule. FGT believes the tariff revisions being proposed are similar to those recently approved by the Federal Energy Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26957 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CPO2–49–001]

Great Lakes Gas Transmission Limited Partnership; Notice of Application

October 16, 2002.

Take notice that on September 30, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes), 5250 Corporate Drive, Troy, Michigan 48098, filed in Docket No. CP02–49–001 Fifth Revised Sheet No. 16 to its FERC Gas Tariff, Second Revised Volume No. 1, in compliance with the Commission's Order issued February 7, 2002 in Docket No. CP02–49–000 which authorized the abandonment of the Summerfield Meter Station located in Clare County,

Michigan. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659.

Great Lakes states that by its filing of the proposed tariff sheet, which removes the Summerfield Meter Station from its tariff list of Physical Receipt Points, Great Lakes gives notice of the abandonment of its Summerfield Meter Station facilities, as required by the February 7, 2002 Commission Order.

Any person desiring to intervene or to protest this filing should file on or before November 6, 2002, 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) and the regulations under the Natural Gas Act (18 CFR 157.10). 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, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26936 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–504–001]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

October 16, 2002.

Take notice that on October 7, 2002, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets in compliance with the Commission's September 20, 2002 letter order:

Substitute Original Sheet No. 10B
Original Sheet No. 10B.01
Substitute Second Revised Sheet No. 66A
Substitute Fourth Revised Sheet No. 67

Iroquois states that these tariff sheets are being filed to replace sheets accepted to become effective on September 20, 2002, therefore the proposed tariff sheets also reflect an effective date of September 20, 2002.

In its initial August 20, 2002 filing in Docket No. RP02–504, Iroquois proposed modifications to its tariff to permit it to reserve existing firm transportation capacity for future projects and to clarify and modify the provisions of its tariff concerning its customers' ability to make changes to their receipt and delivery points. The Commission's Order accepted Iroquois' tariff sheets, but required Iroquois to modify certain aspects of its proposal to conform to recent Commission policy regarding capacity reservation and delivery point changes. The substitute tariff sheets submitted with Iroquois' filing make those required changes.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26953 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–17–000]

Missouri Interstate Gas, LLC; Notice of Tariff Filing

October 16, 2002.

Take notice that on October 8, 2002, Missouri Interstate Gas, LLC (Missouri) tendered for filing revise Pro Forma tariff sheets replacing the pro forma tariff filed by Missouri on July 3, 2002.

Missouri states that the filing is being made in accordance with the Commission's September 24, 2002 order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26955 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–448–002]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

October 16, 2002.

Take notice that on October 10, 2002 National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed on Appendix A to its filing.

National Fuel states that this filing is being made in compliance with the Commission's Letter Order issued on September 25, 2002, in the above-referenced docket. The September 25 Order directed National Fuel to file revised tariff sheets to rectify certain matters with respect to National Fuel's August 1, 2002 filing made to comply with the Commission's Order No. 587-O.

National Fuel states that copies of this filing were served upon its customers, interested state commissions and the parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26951 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–338–001]

Natural Gas Pipeline Company of America; Notice of Motion to Make Effective Proposed Changes in FERC Gas Tariff

October 16, 2002.

Take notice that on October 10, 2002, Natural Gas Pipeline Company of America (Natural) filed a motion to make certain tariff sheets effective on November 10, 2002.

Natural states that the purpose of this filing is to move into effect certain tariff sheets which, in the Commission's Order Accepting Tariff Sheet and Conditionally Accepting and Suspending Other Tariff Sheets Subject to Refund and Establishing a Technical Conference dated June 7, 2002 were conditionally accepted and suspended, subject to refund. Natural has also proposed some additional revisions in certain of these tariff sheets to address issues raised in protests.

Natural requests waivers of the Commission's Regulations to the extent necessary to permit these tariff sheets to become effective November 10, 2002.

Natural states that copies of the filing are being mailed to all parties on the official service list in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before October 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26947 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–573–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 16, 2002.

Take notice that on September 30, 2002, Northern Natural Gas Company (Northern) tendered for filing has part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Second Revised Sheet No. 253, Original Sheet No. 253A, and Third Revised Sheet No. 297, with an effective date of October 31, 2002.

Pursuant to the Commission order issued September 24, 2002 in Docket No. CP02–139–000, Northern is proposing changes to Section 26 (Request for Throughput Service) and Section 52 (Right of First Refusal) of the General Terms and Conditions of its tariff to set forth its proposal regarding the reservation of capacity for future expansion projects and extension rights for interim shippers.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before October 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments,

protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26954 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–18–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 16, 2002.

Take notice that on October 10, 2002, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of October 1, 2002:

First Revised Sheet No. 5–C
Twelfth Revised Sheet No. 7
Twelfth Revised Sheet No. 8.1
Fifth Revised Sheet No. 266
Fifth Revised Sheet No. 267

Northwest states that the purpose of this filing is to restore required language to Northwest's tariff now that the Commission's experimental waiver of the rate ceiling on short-term capacity release transactions has expired.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26956 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–1–000]

ONEOK Field Services Company; Notice of Petition for Rate Approval

October 16, 2002.

Take notice that on October 1, 2002, ONEOK Field Services Company (ONEOK) filed a petition for approval of $0.026 per Dth as its rate for interruptible Section 311 transportation service on ONEOK's Transmission System.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed with the Secretary of the Commission on or before October 31, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits I the docket number field to access the document. For Assistant, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26945 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–463–001]

Portland Natural Gas Transmission System; Notice of Compliance Filing

October 16, 2002.

Take notice that on October 10, 2002, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 324 and Sub. Third Revised Sheet No. 380. The proposed effective date of these revised tariff sheets is October 1, 2002.

PNGTS states that, pursuant to section 154.402 of the Commission's regulations, it is filing the referenced tariff sheet to comply with a letter order issued in the captioned docket by the FERC on September 30, 2002.

PNGTS states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS''

link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26952 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–436–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

October 16, 2002.

Take notice that on October 10, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing with an effective date of October 1, 2002.

Tennessee states that these tariff sheets are being filed in compliance with the Commission's Order dated September 25, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26949 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–197–046 and RP97–71–038]

Federal Energy Regulatory Commission; Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

October 16, 2002.

Take notice that on October 10, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 certain revised tariff sheets listed on Appendix C attached to the filing, to be effective October 1, 2002.

Transco states that the purpose of the filing is to comply with the Commission's Order issued September 30, 2002, which directed Transco to (i) refile certain tariff sheets to remove the effects of the proposed section 5 tariff changes relating to the unbundling of the costs associated with its Emergency Eminence Storage Withdrawal Service and (ii) file a response to protest a by The KeySpan Delivery Companies.

Transco states that copies of the filing are being mailed to all parties in Docket Nos. RP95–197 and RP97–71 and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26959 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–20–000]

Transwestern Pipeline Company; Notice of Tariff Filing

October 16, 2002.

Take notice that on October 11, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to become effective November 11, 2002:

Fourth Revised Sheet No. 95J
Sixth Revised Sheet No. 95K
Seventh Revised Sheet No. 95L

Transwestern states it is proposing tariff revisions setting forth the criteria that would permit Transwestern to terminate a temporary capacity release. Specifically, in a new section 30.4 (g) of Transwestern's General Terms and Conditions, Transporter's Right to Terminate a Temporary Capacity Release, Transwestern is proposing that Transwestern may elect to terminate a temporary capacity release upon 30-day written notice if the Releasing Shipper has failed to maintain creditworthiness and the rate paid by the Replacement Shipper is less than the Releasing Shipper's contract rate. Additionally, Transwestern is proposing that the Replacement Shipper may avoid termination of the temporary capacity release by agreeing to pay, for the remainder of the capacity release, the lower of the Releasing Shipper's contract rate or the maximum tariff rate under the applicable rate schedule. Transwestern believes the tariff revisions being proposed are similar to those recently approved by the Federal Energy Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26958 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–420–000]

Red Lake Gas Storage, L.P.; Notice of Public Comment Meeting and Site Visit for the Proposed Red Lake Gas Storage Project and Request for Comments on Environmental Issues

October 16, 2002.

The staff of the Federal Energy Regulatory Commission (Commission) is issuing this notice to announce the date and location of a public scoping meeting on the proposed Red Lake Gas Storage Project. The Commission staff will be preparing an environmental assessment (EA) for Red Lake Gas Storage, L.P.''s project in Mohave County, Arizona. The planned facilities would consist of two solution-mined underground salt caverns, about 52 miles of various diameter pipeline, a 25,000-horsepower (hp) compressor station, a 9,000-hp compressor station, four water withdrawal wells, four brine disposal wells, and appurtenant facilities. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. You are invited to attend the public meeting to enter into the Commission's record any comments you might have. Comments received at the scoping meeting will help us to determine the issues to be evaluated in the EA. The date, time, and location are shown below:

Date and Time: November 14, 2002, 7 to 10 pm.

Location Phone: Mohave Community College, Kingman Campus, Room Number 111, 1971 Jagerson Avenue, Kingman, AZ 86401.

Phone: (928) 757–4331.

For additional information, please contact Mr. Thomas Russo of the Commission's Office of External Affairs at (202) 502–8004.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26935 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–1–000]

El Paso Natural Gas Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed Power-Up Project and Request for Comments on Environmental Issues

October 16, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Power-up Project involving construction and operation of facilities by El Paso Natural Gas Company (El Paso) in Pinal and Cochise Counties, Arizona, Hidalgo and Luna Counties, New Mexico, and El Paso, Winkler, and Culbertson Counties, Texas.[1] These facilities would consist of about 151,600 horsepower (hp) of compression at nine existing or new compressor stations. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice El Paso provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

El Paso wants to expand the capacity of its facilities in Arizona, New Mexico, and Texas to transport an additional 320,000 thousand cubic feet (mcf) per day of natural gas on its Line 2000. El Paso seeks authority to construct and operate:

Phase I Facilities (February 2004)

1. Wink Compressor Station—Install three Taurus 60s turbine compressor units, with appurtenances, rated at approximately 23,100 hp at a new site in Section 32, P.S.L. Block 5, Winkler County, Texas.

2. El Paso Compressor Station—Install one Mars 100 turbine compressor unit, with appurtenances, rated at 15,000 hp at the existing El Paso Compressor Station located in Section 18, Block 80, El Paso County, Texas.

3. Lordsburg Compressor Station—Install one Mars 100 turbine compressor unit, with appurtenances, rated at 15,000 hp at the existing Lordsburg Compressor Station located in Section 8, Township 23 South, Range 17 West, Hidalgo County, New Mexico.

4. Tom Mix Compressor Station—Install two Taurus 70 turbine compressor units, with appurtenances, rated at 20,620 hp at a former oil pumping station located in Section 21, Township 8 South, Range 13 East, Pinal County, Arizona.

Phase 2 Facilities (April 2004)

5. Black River Compressor Station—Install one Mars 100 turbine compressor unit, with appurtenances, rated at 15,000 hp at a former oil pumping station located in Section 17, T&P Township 2, Block 60, Culberson County, Texas.

6. Florida Compressor Station—Install one Mars 100 turbine compressor unit, with appurtenances, rated at 15,000 hp at the existing Florida Compressor Station located in Section 14, Township

[1] El Paso's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

24 South, Range 6 West, Luna County, New Mexico.

7. Cimarron Compressor Station—Install one Mars 100 turbine compressor unit, with appurtenances, rated at 15,000 hp at a new site located in Section 10, Township 13 South, Range 25 East, Cochise County, Arizona. Phase 3 Facilities (April 2005)

8. Cornudas Compressor Station—Install two Taurus 70 turbine compressor units, with appurtenances, rated at 20,620 hp at the existing Cornudas Compressor Station located in Section 17, University Land, Block J, Hudspeth County, Texas.

9. Casa Grande Compressor Station—Install two Centaur 50 turbine compressor units, with appurtenances, rated at 12,260 hp at the existing Casa Grande Compressor Station located in Section 17, Township 6 South, Range 3 East, Pinal County, Arizona.

El Paso would also install certain appurtenant facilities within the compressor stations, pursuant to Section 2.55(a) of the Commission's Statements of General Policy and Interpretations Under the Natural Gas Act. These facilities would include station piping, valves and fittings, gas cooling equipment, compressor station yard facilities (yard lighting, gravel or other ground covering), gas scrubbers, auxiliary buildings, cathodic protection systems, and an evaporative pond.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 81.5 acres of land. Following construction, about 35.4 acres would be maintained as new aboveground facility sites. The remaining 46.1 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

1. Geology and soils.
2. Land use.
3. Water resources.
4. Cultural resources.
5. Vegetation and wildlife.
6. Air quality and noise.
7. Endangered and threatened species.
8. Hazardous waste.
9. Public safety.

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed facilities:

1. Federal-, state-, or local- designated natural, recreational, scenic, or special use areas.
2. Wetlands.
3. Fisheries.
4. Perennial waterbodies.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by El Paso. This preliminary list of issues may be changed based on your comments and our analysis.

1. The operation of the compressor units at the nine existing and new compressor stations would affect air quality and increase noise levels near the station.

2. About 23 acres of desert scrub vegetation would be affected by construction of which about 4 acres would be permanently affected by operation of the project.

3. Twenty federally listed endangered or threatened species may occur in the proposed project area.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

1. Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426.

2. Label one copy of the comments for the attention of Gas Branch 2.

3. Reference Docket No. CP03–1–000.

4. Mail your comments so that they will be received in Washington, DC on or before November 12, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''FERRIS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call 1–202–502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

created by clicking on ''Login to File'' and then ''New User Account.''

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2). [4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY 1–202–502–8659, or at *FERCONLINESUPPORT@FERC.GOV*. The FERRIS link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26938 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 16, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12182–000.

c. *Date filed*: June 4, 2002.

d. *Applicant*: Bridgeport Hydro, LLC.

e. *Name and Location of Project*: The Bridgeport Dam Project would be located on the East Walker River in Mono County, California. The project would be located on an existing dam owned by Walker River Irrigation District. The project would be partially located on lands administered by Walker River Irrigation District and may affect lands of the Toiyabe National Forest.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact*: Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12182–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project would consist of: (1) an existing 900-foot-long, 63-foot-high earthfill dam, (2) an existing impoundment, Bridgeport Reservoir, with a surface area of 3,125 acres and a storage capacity of 44,100 acre-feet at normal maximum water surface elevation 6,450 feet msl, (3) a proposed powerhouse with a total installed capacity of 1 megawatt, (4) a proposed 150-foot-long, 5.5-foot-diameter steel penstock, (5) a proposed 1-mile-long, 15 kv transmission line, and (6) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 3.4 GWh.

k. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Bridgeport Hydro, LLC., 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified

development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26940 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 16, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12218–000.

c. *Date filed*: June 17, 2002.

d. *Applicant*: Brantley Hydro, LLC.

e. *Name and Location of Project*: The Brantley Dam Project would be located on the Pecos River in Eddy County, New Mexico. The project would be located on an existing dam administered by the U.S. Bureau of Reclamation (BOR) and would be partially located on lands administered by the BOR.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact*: Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12218–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project, using the Bureau of Reclamation's existing Brantley Dam and Reservoir, would consist of: (1) A proposed 100-foot-long, 5.5-foot-diameter steel penstock, (2) a proposed powerhouse with an installed capacity of 1.4 megawatts, (3) a proposed 3-mile-long, 25-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 4.4 GWh.

k. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Brantley Hydro, LLC., 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26941 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 16, 2002.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications*: Preliminary Permit (Competing).

b. *Project Nos.*: 12297–000 and 12312–000.

c. *Dates filed*: July 5, 2002, and July 23, 2002.

d. *Applicants*: Heflin Hydro, LLC and Universal Electric Power Corporation.

e. *Name and Location of Project*: The Heflin Lock and Dam Project is proposed to be located on the Tombigbee River in Greene County, Alabama, and to utilize the U.S. Army Corps of Engineers' (Corps) existing Gainesville Lock and Dam.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts*: For Heflin Hydro, LLC: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

For Universal: Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact*: Tom Papsidero, (202) 502–6002.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the noted project numbers on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project: Each applicant proposes to use the existing Gainesville Lock and Dam. Heflin's project would consist of: (1) Two 14-foot-diameter, 50-foot-long concrete penstocks, (2) a powerhouse containing two generating units with a total installed capacity of 24 megawatts, (3) a 1-mile-long, 50-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 82 gigawatthours.

Universal's project would consist of: (1) Seven 8-foot-diameter, 50-foot-long steel penstocks, (2) a powerhouse containing seven generating units with a total installed capacity of 23.2 megawatts, (3) a 600-foot-long, 14.7-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 102 gigawatthours.

k. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy of Universal's application is also available for inspection and reproduction at the address in item g. above. A copy of Heflin's application is available for inspection and reproduction at Heflin Hydro, LLC., 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26942 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 16, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12363–000.

c. *Date filed*: September 12, 2002.

d. *Applicant*: City of Anoka, Minnesota.

e. *Name and Location of Project*: The Rum River Dam Hydroelectric Project would be located at an existing dam owned by the Applicant on the Rum River in Anoka County, Minnesota.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact*: Mr. Daniel J. Voss, Director, Anoka Municipal Utility, 2015 First Avenue North, Anoka, MN 55303, (763) 576–2904.

h. *FERC Contact*: James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12363–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities

of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project would consist of: (1) The existing 236-foot-long, 14.3-foot-high (with timber flashboards) concrete overflow dam, with a 20-foot-wide Tainter gate-controlled spillway, creating a 210-acre impoundment at normal water surface elevation 845 feet, (2) a powerhouse, proposed to be built at the site of the former powerhouse at the left abutment, containing one or two generating units with a total installed capacity of 560 kilowatts, (4) a 100-foot-long, 7.2-kilovolt overhead transmission line connecting to the City's existing distribution system, and (5) appurtenant facilities. The project would have an average annual generation of 2.3 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application— Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26943 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 16, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: New Major License.

b. *Project No.*: P–5334–019.

c. *Date filed*: October 2, 2001.

d. *Applicant*: Charter Township of Ypsilanti.

e. *Name of Project*: Ford Lake Hydroelectric Station.

f. *Location*: On the Huron River, Washtenaw County, within the township of Ypsilanti, MI. The project does not affect Federal lands.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. §§ 791 (a)—825(r).

h. *Applicant Contact*: Ms. Joann Brinker, Administrative Services/Human Resources Director, Charter Township of Ypsilanti, 7200 South Huron River Driver, Ypsilanti, Mi 48197, (734) 484–0065.

i. *FERC Contact*: Monte TerHaar, (202) 502–6035 or *monte.terhaar@ferc.gov*.

j. *Cooperating Agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing documents described in item k below.

k. *Deadline for filing motions to intervene and protests and requests for*

cooperating agency status: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

l. This application has been accepted, but is not ready for environmental analysis at this time.

m. The existing Ford Lake Hydroelectric Project consists of: (1) A 1,050 acre reservoir; (2) a 110-foot-long earth embankment dam; (3) a 46.5-foot-long powerhouse with 2 hydroelectric turbines; (4) a 172-foot-long spillway with six bays, each with a 6-foot by 8-foot sluice gate; (5) a 380-foot-long earth embankment; (6) a 175-foot-long emergency spillway; (7) two vertical shaft turbine/generator units with an installed capacity of 1,920 kilowatts at normal pool elevation; and (8) appurtenant facilities. The project operates run-of-river with a normal reservoir elevation maintained between 684.4 and 684.9 feet MSL. Average annual generation between 1995 and 2000 has been 8,664 megawatthours. Generated power is sold to Detroit Power. No new facilities are proposed.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26944 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7397–7]

Gulf of Mexico Program Policy Review Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's Gulf of Mexico Program Policy Review Board (GMPPRB) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2 section 9(c). The purpose of GMPPRB is to provide advice and recommendations to the Administrator of EPA on issues associated with plans to improve and protect the water quality and living resources of the Gulf of Mexico.

It is determined that GMPPRB is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Gloria Car, Designated Federal Officer, U.S. EPA, Gulf of Mexico Program Office (*Mail Code*: EPA/GMPO), Stennis Space Center, MS, 39529, Telephone (228) 688–2421, or *car.gloria@epa.gov.*

Dated: October 15, 2002.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. 02–26988 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7398–2]

Meetings of the Small Systems Affordability Working Group of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meetings.

SUMMARY: Under section 10(a)(2) of Pub. L. 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given of the forthcoming meetings of the Small Systems Affordability Work Group, of the National Drinking Water Advisory Council, established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*).

DATES: The affordability work group will meet on November 7–8, 2002 (9 a.m.–5:30 p.m. on November 7 and 8:30 a.m.–3:30 p.m. on November 8), then on December 18–19, 2002 (9 a.m.–5:30 p.m. on December 18 and 8:30 a.m.–3:30 p.m. on December 19), and again on January 13–14, 2003 (9 a.m.–5:30 p.m. on January 13 and 8:30 a.m.–3:30 p.m. on January 14).

ADDRESSES: The meetings will be held at RESOLVE Inc., 1255 23rd Street, NW., Suite 275, Washington, DC and are open to the public, but from past experience, seating will likely be limited.

FOR FURTHER INFORMATION CONTACT: For more information on the location and times of these meetings, or general background information please contact the Safe Drinking Water Hotline (phone: 800–426–4791 or (703) 285–1093; e-mail: *hotline-sdwa@epa.gov*). Members of the public are requested to contact RESOLVE if they plan on attending at (202) 944–2300. Any person needing special accommodations at either of these meetings, including wheelchair access, should contact RESOLVE (contact information previously noted), at least five business days before the meeting so that appropriate arrangements can be made. For technical information contact Mr. Amit Kapadia, Designated Federal Officer, Small Systems Affordability Work Group, U.S. Environmental Protection Agency, Office of Ground Water and

Drinking Water (4607M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (e-mail: *kapadia.amit@epa.gov*; Tel: 202–564–4879).

SUPPLEMENTARY INFORMATION: As part of the 2002 appropriations process, Congress directed EPA to ''begin immediately to review the Agency's affordability criteria and how small system variance and exemption programs should be implemented for arsenic'' (Conference Report 107–272, page 175). Congress further directed the Agency to prepare a report, which EPA submitted (Report to Congress: Small System Arsenic Implementation Issues: EPA 815–R–02–003), ''on its review of the affordability criteria and the administrative actions undertaken or planned to be undertaken by the Agency, as well as potential funding mechanisms for small community compliance and other legislative actions, which, if taken by the Congress, would best achieve appropriate extensions of time for small communities while also guaranteeing maximum compliance.'' (Conference Report 107–272, page 175).

In evaluating treatment technologies for small systems, EPA currently uses an affordability threshold of 2.5% of median household income. EPA's national-level affordability criteria consist of two major components: an expenditure baseline and an affordability threshold. The expenditure baseline (derived from annual median household water bills) is subtracted from the affordability threshold (a share of median household income that EPA believes to be a reasonable upper limit for these water bills) to determine the expenditure margin (the maximum increase in household water bills that can be imposed by treatment and still be considered affordable). EPA compares the cost of treatment technologies against the available expenditure margin to determine if an affordable compliance technology can be identified. If EPA cannot identify an affordable compliance technology, then it attempts to identify a variance technology. Findings must be made at both the Federal and State level that compliance technologies are not affordable for small systems before a variance can be granted.

EPA is asking the NDWAC for advice on its national-level affordability criteria and the methodology used to establish these criteria. Taking into consideration the structure of the Safe Drinking Water Act and the limitations of readily available data and information sources, EPA is seeking the Council's opinion of the national level affordability criteria, methodology for deriving the criteria, and approach to applying those criteria to NPDWRs.

As part of the Council's review of EPA's national-level affordability criteria, the Agency is seeking input on (1) the Agency's overall approach, (2) alternatives, if any, to the use of median household income as a metric, (3) alternatives, if any, to 2.5% as a metric, (4) alternatives, if any, to calculating the expenditure baseline, (5) the usefulness of a separate criteria for ground and surface water systems, (6) including an evaluation of the potential availability of financial assistance, and (7) the need for making affordability determinations on a regional basis. Other issue areas may also be discussed. The meeting is open to the public; statements from the public will be taken at the close of the meeting. EPA is not soliciting written comments and is not planning to formally respond to comments.

This will be the third, fourth, and fifth work group meetings on this topic. At the first meeting held on September 11–12 , the work group was briefed by EPA on the approach to affordability taken by the Agency. At the first meeting, the work group also devised an approach to answer the Agency's charge questions. For the second work group meeting (to be held on October 21–22), other technical experts on financial assistance have been invited to speak. The purpose of these last three meetings is to continue the workgroup deliberations and to draft a report for the full National Drinking Water Advisory Council.

Dated: October 17, 2002.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–26994 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0275; FRL–7276–8]

Hydrogenated Starch Hydrolysate; Notice of Filing a Pesticide Petition to Establish an Exemption From the Requirement of 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–2002–0275 must be received on or before November 22, 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: Treva Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; e-mail address: alston.treva@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 an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0275. 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. 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. 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. 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–2002–0275. 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–2002–0275. 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–2002–0275.

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–2002–0275. 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. Make sure to submit your comments by the deadline in this notice.

7. 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 FFDCA 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: October 9, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner, and represents the view of the petitioner. 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.

Hydrogenated Starch Hydrolysate

PP 2E6503

EPA has received a pesticide petition (2E6503) from Grain Processing Corporation, 1600 Oregon Street, Muscatine, Iowa 52761 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 tolerance for hydrogenated starch hydrolysate (HSH) in or on growing crops or when applied to the raw agricultural commodity after harvest. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; 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.

A. Residue Chemistry

1. *Plant metabolism.* Like any other carbohydrate, HSH degrades readily in the soil and other substrates into carbon dioxide and water. HSH (CAS number 68425–17–2) is a carbohydrate polymer with a theoretical molecular weight (in amu) of 1,000–3,600. It can be supplied as a liquid syrup or white powder. The empirical formula of the components of HSH are:

Components	Formula
Sorbitol	$C_6H_{14}O_6$
Maltitol	$C_{12}H_{24}O_{11}$
Hydrogenated polysaccharides	$C_{12}H_{24}O_{11}$ plus $C_6H_{10}O_5$ for each additional glucose moiety in the chain

HSH is highly soluble in water. The aqueous solution has a pH range of 4.0–6.0. It hydrolyzes slowly to glucose and sorbitol. It combusts at 300 ^{0}C to carbon dioxide and water.

2. *Analytical method.* The qualitative analysis of HSH in the products to which it has been added may be accomplished by extraction of the sorbitol and maltitol moieties with appropriate solvents, followed by gas chromatography of the extracts. Similarly, the quantity of HSH occurring in food may be estimated by determining the amount of maltitol recovered and applying an appropriate factor. Information on the sensitivity and reproducibility of the method has also been developed.

3. *Magnitude of residues.* HSH is readily degraded by microorganisms on leaf surfaces and in the soil. Due to the solubility of this carbohydrate, rain, or other water sources wash the carbohydrate into the soil where it is degraded by microorganisms into carbon dioxide and water. No harmful residues are produced.

B. Toxicological Profile

HSH has been widely used in foods since the early 1980s. It has been marketed extensively by Roquette, Lonza and SPI Polyols for years. Grain Processing Corporation produces HSH using a process that is equivalent to the process petitioned to the Food and Drug Administration by Lonza and Roquette Freres for GRAS (generally recognized as safe) affirmation. In support of the safety of our HSH, Grain Processing Corporation and SPI Polyols cites data

submitted by Roquette in its Lycasin® 80/55 petition regarding numerous studies relating to the safety of the ingredient, including reports on: Digestion, absorption, distribution and excretion; acute oral toxicity, subchronic toxicity, genotoxicity, reproduction, biological tolerance, human exposure, and laxation effects.

1. *Acute toxicity.* The acute oral toxicity of HSH has been evaluated. The acute oral lethal dose (LD_{50}) of HSH is greater than 10 grams/kilogram (g/kg).

2. *Genotoxicty.* As stated in Roquette's GRAS submission of Lycasin® 80/55, HSH is nonmutagenic and nonclastogenic in short-term *in vivo*, and *in vitro* studies.

3. *Reproductive and developmental toxicity.* Again as noted in Roquette's GRAS submission of Lycasin® 80/55 HSH products, when administered to rats over 3-generations, produce no significant effects on reproduction.

4. *Subchronic toxicity.* In Roquette's GRAS submission for Lycasin® 80/55, it is noted that when administered orally to rats and dogs in amounts of 5 g/kg to 15 g/kg of body weight per day for 90 days, HSH produced no toxicologically meaningful effects which could not be accounted for by the presence of sorbitol. The possible treatment related effects are aggregates in the renal pelvis of some rats, diarrhea in most dogs, and minimal ectasia in the renule tubules of some dogs.

5. *Chronic toxicity.* HSH is used extensively in foods. Grain Processing Corporation is not aware of any chronic toxic effects associated with this product.

6. *Animal metabolism.* The GRAS submission for Lycasin® 80/55 developed by Roquette Freres states that over 96% of HSH (Lycasin® 80/55) is broken down by the mammalian digestive system into the GRAS substances, glucose and sorbitol, the remaining 4% is in the form of maltitol. One half of the maltitol is excreted in the feces and the majority of the remainder is excreted in the urine.

Within the first 2 hours after oral administration of HSH (Lycasin® 80/55), virtually all of the glucose to glucose bonds are broken down in the digestive system, producing a resulting mixture of glucose, sorbitol, and maltitol. Within 7 hours, 95% of the total maltitol, is broken down into glucose and sorbitol. Of the remaining 5% of maltitol, 2% is found in the digestive tube and fecal contents, less than 1% is found in the plasma, and approximately 1% is excreted in the urine.

There is no accumulation of maltitol in the plasma, liver, kidneys, or spleen of rats fed 13.5 g/kg/day of Lycasin® 80/55 for 10 days irrespective of whether measurements are made 12 hours or 10 days after cessation of dosing.

Lycasin® 80/55 at the dose levels tested, 30 to 180 grams per day, produces no significant variations in the clinical chemical, hematological or urinary profile of humans with the exception of glucose and insulin peaks which are less than 50% of those produced by equivalent amounts of glucose, and 50 to 90% of those produced by sucrose. The only significant clinical effects are flatulence and diarrhea, which can be accounted for by the presence of free and bound sorbitol. The mean laxative threshold in adult males is approximately 180 grams per day, while in females the threshold is approximately 100 grams per day. In children, the threshold is approximately 60 grams per day, about half that of adults.

7. *Metabolite toxicology.* None of the metabolites of HSH are considered to be of toxicological significance for the use of this product as a pesticide inert ingredient.

8. *Endocrine disruption.* Grain Processing Corporation is not aware of any endocrine disruption with the use of this product.

C. Aggregate Exposure

1. *Dietary exposure.* This product is already used extensively in foods. Studies have shown that it is safe even when consumed at levels of up to 100 g/day.

i. *Food.* As a pesticide inert ingredient HSH will not result in any harmful exposure. The proposed use will not result in any dietary exposure beyond what is currently present in commonly consumed foods.

ii. *Drinking water.* There is no anticipated human exposure to HSH through drinking water. HSH is expected to be degraded by soil microorganisms to carbon dioxide and water before it reaches surface or ground water. Moreover, in water, HSH hydrolyses to glucose and sorbitol.

2. *Non-dietary exposure.* No significant non-dietary human exposure to HSH is anticipated.

D. Cumulative Effects

HSH is a widely used food ingredient, is readily digested by humans, and there are no cumulative effects. Except for possible occupational exposure of the pesticide mixer/loader/applicator, the proposed use of HSH will not result in the exposure of other persons.

E. Safety Determination

1. *U.S. population.* The proposed use of HSH does not pose a safety concern for the U.S. population due to the non-toxic nature of the compound and the absence of exposure.

2. Infants and children. Infants and children will not be exposed to HSH from its proposed use as a pesticide inert ingredient.

F. International Tolerances

Grain Processing Corporation is unaware of any international tolerances for this product. HSH was developed by a Swedish company in the 1960's and has been widely used by the food industry for many years, especially in confectionery products. Roquette's petition indicates that Roquette's Lycasin® products have been approved for use in food in Europe since 1963, as indicated below.

Country	Year of Approval
Sweden	1963 (reaffirmed in 1975)
Switzerland	1968
Norway	1975
Finland	1975 (reaffirmed in 1980)
Denmark	1976

[FR Doc. 02–26993 Filed 10–22–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0188; FRL–7199–7]

Availability of the Risk Assessments on FQPA Tolerance Reassessment Progress and Tolerance Reassessment Decision (TRED) for Hexazinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's tolerance reassessment decision and related documents for hexazinone including the *Hexazinone Overview, Hexazinone Summary, Hexazinone Decision Document (TRED),* and supporting risk assessment documents. EPA has reassessed the 25 tolerances, or legal limits, for residues of hexazinone in or on raw agricultural commodities. These tolerances are now considered safe under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by

the Food Quality Protection Act (FQPA) of 1996.

DATES: Comments on the tolerance reassessment decision for hexazinone, must be received by EPA on or before November 22, 2002. In the absence of substantive comments, the tolerance reassessment decision will be considered final. Comments on the human health and ecological effects risk assessments for hexazinone, must be received by EPA on or before November 22, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in the **SUPPLEMENTARY INFORMATION** section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0188 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Dirk V. Helder, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–4610; e-mail address: helder.dirk@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. The Agency has not attempted to describe all the persons or entities who may be interested in or affected by this action. If you have questions in this regard, consult the persons listed under **FOR FURTHER INFORMATION CONTACT.**

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

1.*Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You can obtain copies of the TRED and related documents discussed in this notice on EPA's website at http://www.epa.gov/pesticides/reregistration/status.htm. Information on pesticide reregistration and tolerance reassessment, including the purpose and status of Agency programs to complete Reregistration Eligibility Decisions (REDs), Interim REDs, and Tolerance Reassessment Decisions (TREDs), is available at http://www.epa.gov/pesticides/reregistration. General information is available on the Office of Pesticide Programs' home page, http://www.epa.gov/pesticides/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0188. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0188 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0188. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has reassessed the risks associated with current food uses of the pesticide hexazinone, reassessed 25 existing tolerances, and reached a tolerance reassessment and risk management decision. The Agency is issuing for comment the resulting report on FQPA tolerance reassessment progress, including the *Hexazinone Overview, Hexazinone Summary, Hexazinone Decision Document (TRED),* and supporting risk assessment documents.

EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the tolerances and exemptions included in this notice. EPA completed the hexazinone Reregistration Eligibility Decision (RED) prior to the 1996 enactment of the FQPA; therefore, while no reregistration decision is required at present, risks from non-occupational exposure to hexazinone through food, drinking water, and residential uses must be reassessed. There are no residential uses of hexazinone. The Agency has reassessed the 25 tolerances for hexazinone and determined that residues in food and drinking water are not expected to pose risk concerns. Because existing data were inadequate to calculate residue estimates for pasture and rangeland grass and grass hay, EPA constructed the maximum theoretical dietary burden (MTDB) of hexazinone to livestock using protective assumptions for the contributions of other hexazinone treated feed items. Thus, tolerances for meats and milk can be reassessed. Additional field trial data for grass forage and grass hay, as well as rotational crop studies for corn and wheat are required. Because of the relatively low volume of use on pasture and rangeland, data from these confirmatory studies are not expected to significantly change current dietary risk estimates. Some tolerances may be revised once additional data has been submitted to and reviewed by the Agency. The current tolerance expression for hexazinone in 40 CFR 180.396 is for ''combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1H,3H)-dione) and its metabolites, calculated as hexazinone.'' The tolerance expression should be modified to include specific metabolites A, B, C, D, and E, identified by the appropriate chemical name. Final tolerances are being proposed as part of this Tolerance Reassessment Decision (TRED). In addition, occupational and ecological risk management decisions were made as part of the 1994 hexazinone RED.

EPA works with affected parties to reach the tolerance reassessment decisions. The Agency therefore is issuing the hexazinone decision as a final decision with a public comment period. All comments received during the public comment period will be considered by the Agency. If any comment significantly affects the Agency's decision, EPA will publish an amendment to the decision in the **Federal Register.** In the absence of substantive comments, the tolerance reassessment decisions reflected here will be considered final.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: October 4, 2002.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–26577 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0223; FRL–7274–1]

Availability of the Report on FQPA Tolerance Reassessment Progress and Risk Management Decision (TRED) for Metolachlor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the report on the Food Quality Protection Act (FQPA) tolerance reassessment progress and Risk Management Decision (TRED) for metolachlor for public comment. EPA has reassessed the 81 tolerances, or legal limits, established for residues of metolachlor in/on raw agricultural commodities (RACs). These tolerances are now considered safe under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the FQPA of 1996.

DATES: Comments, identified by docket ID number OPP–2002–0223, must be received on or before November 22, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method 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–2002–0223 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Anne Overstreet, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8068; fax number: (703) 308–8005; e-mail address: overstreet.anne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. The Agency has not attempted to describe all the persons or entities who may be interested in or affected by this action. If you have questions in this regard, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**— Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You can obtain copies of the TRED and related documents discussed in this notice on EPA's website at http://www.epa.gov/pesticides/reregistration/status.htm.

Available documents include the TRED, supporting technical documents, and **Federal Register** notices. Information on pesticide reregistration and tolerance reassessment, including the purpose and status of Agency programs to complete Reregistration Eligibility Decisions (REDs), Interim REDs, and Tolerance Reassessment Decisions (TREDs), is available at http://www.epa.gov/pesticides/tolerance. General information is available on the Office of Pesticide Programs' Home Page, http://www.epa.gov/pesticides.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0223. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0223 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0223. Electronic comments may also be filed online at many Federal Depository Libraries.

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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 burdens 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 assessed the risks associated with current and proposed food uses of metolachlor, reassessed 81 existing tolerances, and reached a tolerance reassessment and risk management decision. The Agency is issuing the resulting report on FQPA Tolerance Reassessment Progress and Risk Management Decision for metolachlor, known as a TRED, as well as a summary, overview, and technical support documents.

EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. In total, 81 tolerances have been reassessed and are now considered safe under section 408(q) of FFDCA.

The Agency has determined that there are no dietary (food or drinking water) or aggregate risks of concern for metolachlor, so mitigation of these risks is not necessary. EPA is able to make the FQPA safety finding for all current and proposed uses of metolachlor.

EPA must consider the cumulative effects of pesticides that have common mechanisms of toxicity, and may issue final tolerance reassessment decisions for these pesticides only after their cumulative risks have been considered. The Agency has examined this common mechanism potential for metolachlor and has concluded that only some of the pesticides that comprise the class of chloroacetanilides should be designated as a ''Common Mechanism Group'' based on the development of nasal turbinate tumors. Because only acetochlor, alachlor, and butachlor should be grouped based on a common mechanism of toxicity for nasal turbinate tumors, a cumulative assessment is not necessary to determine whether tolerances established for residues of metolachlor in/on RACs are reassessed as safe.

EPA works extensively with affected parties to reach the tolerance reassessment decisions presented in TREDs. The Agency therefore is issuing the metolachlor TRED as a final decision. However, the docket remains open, and if the Agency receives any comments within the next 30 days which significantly affect the Agency's decision, EPA will publish an

amendment to the TRED in the **Federal Register**. In the absence of substantive comments, the tolerance reassessment decisions reflected in this TRED will be considered final.

List of Subjects

Environmental protection, Pesticides and pests, Metolachlor.

Dated: October 2, 2002.

Lois Ann Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–26578 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 11, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact A. Marie Moyd, Federal Communications Commission, (202) 418–2111.

Federal Communications Commission

OMB Control No.: 3060–0997.

Expiration Date: 05/31/2005.

Title: 47 CFR section 52.15(k), Numbering Utilization and Compliance Audit Program.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 25 respondents; 33 per response (avg.); 825 total annual burden hours (for all collections under this control number).

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Description

The state of the nation's numbering resources has a direct effect on the growth of competition in the telecommunications industry. The nation's numbering resources are depleting rapidly. Under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Congress granted the Federal Communications Commission (Commission) exclusive jurisdiction over the United States' portion of the North American Numbering Plan (NANP). *See* 47 U.S.C. 251(e). The purpose of the audits is to monitor telecommunications carriers' compliance with Commission's numbering rules and to verify the accuracy and validity of the numbering data submitted to the Commission. The audits will also allow the Commission to identify inefficiencies in the manner in which carriers use numbers, including excessive use of certain categories of numbers (*e.g.*, administrative, aging, or intermediate numbers). By ensuring compliance with Commission rules that promote efficient number usage, the numbering audits will help preserve the nation's numbering resources.

The Commission staff developed a standardized audit program for conducting random audits. This standard audit program consists of audit procedures, an internal controls questionnaire, and a corresponding data request. The independent auditor would conduct audits using these tools. The audit procedures generally require the audited carrier to respond to requests for information from the independent auditor. The internal controls questionnaire and the data request require audited carriers to respond to specific requests for information during the audit. The independent auditor will report its audit findings to the Commission. The Commission staff will review and modify the audit program on an on-going basis. The Commission will use the audit results to determine whether the audited carriers are complying with the Commission's rules, and whether the audited carriers' numbering data submitted to the Commission, *e.g.*, FCC Form 502, is accurate and valid. To the extent that the Commission finds evidence of potential violations, possible enforcement action may be taken. *See* Second Report and Order, 16 FCC Rcd at 349, para. 96; *see* also 47 CFR 52.15(k). Obligation to respond: Mandatory. Public reporting burden for the collections of information are as noted above. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 02–26926 Filed 10–22–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–102; DA 02–2560]

Small Business Size Standards

AGENCY: Federal Communications Commission.

ACTION: Notice; comments invited.

SUMMARY: The Commission seeks comment on a proposed special small business size standard for Tier III wireless carriers in the Enhanced 911 (E911) proceeding. This action is taken pursuant to a requirement in the Small Business Act.

DATES: Comments are due on or before November 6, 2002, and reply comments are due on or before November 21, 2002.

ADDRESSES: Parties who choose to file by paper must file an original and four copies of each filing. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. A copy should also be sent to Jennifer Tomchin, Room 3C–400, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer Tomchin, Attorney, 202–418–1310.

SUPPLEMENTARY INFORMATION:

1. On July 26, 2002, the Commission adopted an Order (E911 Small Carriers Order) staying certain wireless enhanced 911 (E911) Phase II deployment deadlines for Tier II and Tier III carriers, with conditions. (*See* Order to Stay in CC Docket No. 94–102, FCC 02–210, released July 26, 2002.) Pursuant to this Order, Tier II carriers were defined as non-nationwide carriers that had over 500,000 subscribers as of year-end 2001, and Tier III carriers were defined as all other non-nationwide carriers. In the E911 Small Carriers Order, the Commission noted that it would solicit public comment on the proposed size standard for Tier III carriers, in accordance with Section 121.902(b) of the SBA's small business size regulations. The Commission now seeks comment on this matter for purposes of obtaining SBA approval of the Tier III size standard. This action will not affect the deadlines or conditions set forth in the E911 Small Carriers Order, including applicable reporting requirements.

2. In the E911 Small Carriers Order, the Commission defined Tier II, or mid-size carriers, as those non-nationwide carriers with over 500,000 subscribers as of year-end 2001. The Commission

defined Tier III carriers as all other non-nationwide carriers. The Commission found this to be the appropriate level to distinguish between Tier II and Tier III carriers, noting that each of the Tier II carriers reported over $85 million in annual revenues for 2001, and thus should have sufficient resources to pursue an E911 Phase II solution more quickly than the smaller carriers. The Commission reasoned that relatively larger carriers should have a greater ability to obtain location technologies in a shorter period of time as compared with the smallest carriers. Additionally, a standard based on number of subscribers rather than the number of employees may more accurately reflect the size of the carrier's wireless network and as a result, the scope of work required to implement Phase II service.

3. Interested parties may file comments on or before November 6, 2002, and reply comments on or before November 21, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

4. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the filing to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic copy by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: ''get form <your email address>.'' A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html.*

5. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. A copy should also be sent to Jennifer Tomchin, 445 12th Street, SW., Room 3-C400, Washington, DC 20554.

6. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554 (telephone 202–863–2893; facsimile 202–863–2898) or via e-mail at *qualexint@aol.com.* In addition, one copy of each submission must be filed with the Chief, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street, SW., Washington, DC 20554, and will be placed on the Commission's Internet site.

Federal Communications Commission.

James D. Schlichting,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 02–27064 Filed 10–22–02; 8:45 am]

BILLING CODE 6712–01–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.: 011829.

Title: The Ro Ro Ancillary Agreement.

Parties: RoRo Korea Inc., Wallenius Wilhelmsen Lines AS, Walleniusrederierna AB, Wilh. Wilhelmsen ASA, Hyundai Merchant Marine Co., Ltd.

Synopsis: Under the proposed agreement, Hyundai Merchant Marine agrees not to compete in the roll-on roll-off or lift-on lift-off trade on a worldwide basis for three years. Hyundai also agrees not to reveal trade secrets to third parties for five years, use trade secrets to cause harm to the ro-ro industry for three years, or offer employment to employees in the ro-ro industry for one year. This agreement is an ancillary agreement to RoRo Korea's purchase of Hyundai Merchant Marine's ro-ro assets.

Agreement No.: 011830.

Title: Indamex/APL Agreement.

Parties: The Shipping Corporation of India Ltd., Contship Containerlines, a division of CP Ships (UK) Limited, CMA CGM S.A., APL Co. Pte. Ltd./American President Lines, Ltd.

Synopsis: The proposed agreement would authorize the parties to share vessel space between the U.S. East Coast and ports in India, Pakistan, Sri Lanka, Portugal, the United Arab Emirates, ports in the Bangladesh to Philippines range, ports bordering the Mediterranean Sea, and ports bordering the Red Sea. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: October 18, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–26980 Filed 10–22–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to

contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Cargo Transport, Inc. dba Blue Ocean Marine, 44190 Mercure Circle, Suite 195, Dulles, VA 20166, Officers: David Bernhardt, President (Qualifying Individual), Michael Moore, C.E.O.

Goodway Cargo International Freight Forwarders, Inc. dba Goodway Cargo Line, 2801 N.W. 74th Avenue, Suite 102, Miami, FL 33122, Officers: Jose Antonio Da Silva, President (Qualifying Individual), Marcos A. Dasilva, Treasury

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

Cargo Gate International, Inc., 20435 South Western Avenue, Torrance, CA 90501, Officer: Andrew Han Kang, President (Qualifying Individual)

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

JAG INT'L of So. Fla., Inc., 2700 W. Atlantic Blvd., Suite 200–19, Pomano Beach, FL 33069, Officer: Kimberly Boehm, President, Qualifying Individual

Dated: October 18, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–26979 Filed 10–22–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the ethodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before December 23, 2002.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e– mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report:

1. Report of Terms of Credit Card Plans

Agency form number: FR 2572

OMB control number: 7100–0239

Frequency: Semi–annual

Reporters: Financial institutions

Annual reporting hours: 75 hours

Estimated average hours per response: 0.25 hours

Number of respondents: 150

Small businesses are affected.

General description of report: This information collection is voluntary (15 U.S.C. §1646(b)) and is not given confidential treatment.

Abstract: This report collects data on credit card pricing and availability from a sample of at least 150 financial institutions that offer credit cards to the general public. The information is reported to the Congress and made available to the public in order to promote competition within the industry. The Board publishes the information in a brochure titled ''SHOP: The Card You Pick Can Save You Money'' (SHOP), available through Publication Services at the Board and on the Board's public web site, www.federalreserve.gov/pubs/shop.

Board of Governors of the Federal Reserve System, October 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26896 Filed 10–22–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503

Final Approval Under OMB Delegated Authority of the Extension For Three Years, Without Revision, of the Following Reports:

1. Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity)

Agency form number: unnum Reg B

OMB Control number: 7100–0201

Frequency: Event–generated

Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

Annual reporting hours: 169,603 hours

Estimated average hours per response: Notice of action, 2.50 minutes; credit history reporting, 2 minutes; monitoring data, 0.50 minutes; appraisal report upon request 5.00 minutes; notice of right to appraisal, 0.25 minutes; recordkeeping of self–test, 2 hours; and recordkeeping of corrective action for self–test, 8 hours

Number of respondents: 1,350

Small businesses are affected.

General description of report: This information collection is mandatory (15 U.S.C. 1691(a)(1)). The adverse action disclosure is confidential between the institution and the consumer involved. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)).

Abstract: The Equal Credit Opportunity Act and Regulation B prohibit discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, or other specified bases. To aid in implementation of this prohibition, the statute and regulation also subject creditors to various mandatory disclosure requirements, notification provisions, credit history reporting, monitoring rules, and recordkeeping requirements. These requirements are triggered by specific events and disclosures must be provided within the time periods established by the Act and regulation.

2. Report title: Recordkeeping and Disclosure Requirements in Connection With Regulation E (Electronic Funds Transfer)

Agency form number: unnum Reg E

OMB Control number: 7100–0200

Frequency: Event–generated

Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

Annual reporting hours: 48,868 hours

Estimated average hours per response: Initial terms disclosure, 1.5 minutes; change in terms disclosure, 1 minute; periodic disclosure, 7 hours; and error resolution rules, 30 minutes

Number of respondents: 1,289

Small businesses are affected.

General description of report: This information collection is mandatory (15 U.S.C. 1693 et seq.). Since the Federal Reserve does not collect any information, no issue of confidentiality arises. However, the information, if made available to the Federal Reserve, may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. § 552 (b)(4), (6), and (8)). The disclosures required by the rule and information about error allegations and their resolution are confidential between the institution and the consumer.

Abstract: The Electronic Funds Transfer Act and Regulation E are designed to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to consumers. Institutions offering EFT services must disclose to consumers certain information, including: initial and updated EFT terms, transaction information, periodic statements of activity, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures. EFT services include automated teller machines, telephone bill payment, point–of–sale transfers in retail stores, fund transfers initiated through the internet, and preauthorized transfers to or from a consumer's account.

Board of Governors of the Federal Reserve System, October 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26895 Filed 10–22–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the

Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 2002.

Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Commerce Bancorp, Inc., Duncan, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Commerce, Duncan, Oklahoma (in organization).

2. Community Bankshares, Inc., Greenwood Village, Colorado; to acquire 100 percent of the voting shares of Community Banks of Tracy, Tracy, California (formerly known as Tracy Federal Bank, FSB).

Board of Governors of the Federal Reserve System, October 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26897 Filed 10–22–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 6, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Midwest Banc Holdings, Inc., Melrose Park, Illinois; to acquire Big Foot Financial Corporation, Long Grove, Illinois, and thereby indirectly acquire Fairfield Savings Bank, F.S.B., Long Grove, Illinois, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments on this application must be received no later than November 15, 2002.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Signature Bancshares, Inc., Springfield, Missouri; to engage *de novo* through Signature Investment Services, LLC, Springfield, Missouri, in securities brokerage activities, pursuant to § 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, October 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26898 Filed 10–22–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Establishment of the Secretary's Advisory Committee on Genetics, Health, and Society

ACTION: Notice of establishment.

SUMMARY: The Secretary of the Department of Health and Human Services (HHS) has determined that the establishment of the Secretary's Advisory Committee on Genetics, Health, and Society is necessary and in the public interest in connection with the duties of the Secretary, HHS, and that such duties can best be performed through the advice and counsel of such a group.

The Secretary's Advisory Committee on Genetics, Health, and Society is established to: (1) Provide a forum for expert discussion and deliberation and the formulation of advice and recommendations on the range of complex and sensitive medical, ethical, legal and social issues raised by new technological developments in human genetics; (2) assist the Department of Health and Human Services and, at their request, other Federal agencies in exploring issues raised by the development and application of genetic technologies; and, (3) make recommendations to the Secretary of Health and Human Services concerning how such issues should be addressed.

The function of the committee is to explore, analyze, and deliberate on the broad range of human health and societal issues raised by the development and use, as well as potential misuse, of genetic technologies and make recommendations to the Secretary of Health and Human Services (Secretary), and other entities as appropriate. The scope of the Committee's charge includes assessing how genetic technologies are being integrated into health care and public health; studying the clinical, ethical, legal and societal implications of new medical applications, such as preimplantation genetic diagnosis, and emerging technological approaches to clinical testing, identifying opportunities and gaps in research and data collection efforts; exploring the use of genetics in bioterrorism; examining current patent policy and licensing practices for their impact on access to genetic technologies; analyzing uses of genetic information in education, employment, insurance, including health, disability, long-term care, and life, and law, including family, immigration, and forensics; and serving as a public forum for discussion of emerging scientific, ethical, legal and social issues raised by genetic technologies.

The Committee shall consist of a core of 13 members, including the Chair. Members and the Chair shall be selected by the Secretary, or designee, from authorities knowledgeable about molecular biology, human genetics, health care, public health, bioterrorism, ethics, forensics, law, psychology, social sciences, education, occupational

health, insurance, and other relevant fields. Of the appointed members, at least two members shall be specifically selected for their knowledge of consumer issues and concerns and the view and perspectives of the general public.

Unless renewed by appropriate action prior to its expiration, the Secretary's Advisory Committee on Genetics, Health, and Society charter will expire two years from the date of establishment.

Dated: October 17, 2002.

LaVerne Stringfield,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. 02–27030 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

Time and Date: October 22, 2002; 9 a.m.–5 p.m. October 23, 2002; 9 a.m.–1 p.m.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue SW., Washington, DC.

Status: Open.

Purpose: In the morning session on October 22, the Subcommittee on Standards and Security will review the current status of implementation of the Health Insurance Portability and Accountability Act (HIPAA) and will discuss best practices resulting from that implementation. In the afternoon the subcommittee will be briefed on drug terminologies from the Food and Drug Administration (FDA) and will discuss and prepare for the November full Committee meeting relating to the issues of ICD–10–CM and ICD–10–PCS. On October 23 the subcommittee will review a summary of the testimony from the expert panel in medical terminology heard at the August 28–29 subcommittee meeting. From the review and discussion the subcommittee intends to define the scope and the criteria for recommendations to the Department on the selection of Patient Record Medical Information (PMRI) terminologies under HIPAA.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Karen Trudel, Senior Technical Advisor, Security and Standards Group, Centers for Medicare and Medicaid Services, MD: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–9937; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: October 15, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–26882 Filed 10–22–02; 8:45 am]

BILLING CODE 4551–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors Meeting, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 9 a.m.—3 p.m., November 20, 2002.

Place: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington, DC 20001, telephone 202/628–2100, fax 202/879–7938.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation the Director, Centers for Disease Control and Prevention, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors shall provide guidance to the Director, National Institute for Occupational Safety and Health on research and preventions programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of the National Institute for Occupational Safety and Health: (1) conform to appropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

Matters to be Discussed: Agenda items include a report from the Director of NIOSH; Response to the BSC Report on NIOSH Beryllium Research; Discussion of Public Health Infrastructure for Occupational Safety and Health; Update on Musculoskeletal Research; Update on Approaches to Reducing Occupational Health Disparities; Closing Report.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Roger Rosa, Executive Secretary, BSC, NIOSH, CDC, 200 Independence Avenue, SW., Room 715H, Washington, DC 20201, telephone (202)205–7856, fax (202)260–4464.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 17, 2002.

John Burckhardt,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26910 Filed 10–22–02; 8:45 am]

BILLING CODE 4163–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Alaska State Plan Amendment 01–009

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 24, 2002, at 10 a.m., Seattle Regional Office; 2201 Sixth Avenue; Room 1206; Seattle, Washington 98121, to reconsider our decision to disapprove Alaska State Plan Amendment (SPA) 01–009.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, Centers for Medicare & Medicaid Services, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244–2670, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Alaska State Plan Amendment (SPA) 01–009. Alaska submitted SPA 01–009 on December 27, 2001.

The issue is whether the State's proposed rates are in compliance with the provisions of section 1902(a)(30)(A) of the Social Security Act (the Act),

which requires that payments under the plan be ''consistent with efficiency, economy and quality of care.''

The proposed SPA would increase the Medicaid payment rate for inpatient and outpatient services at facilities paid as Indian Health Service (IHS) facilities (including tribal facilities operated under contracts or compacts pursuant to Public Law 93–638). The IHS sets Medicaid billing rates for inpatient and outpatient services furnished by Alaska IHS facilities, which are announced in the **Federal Register**. Alaska's proposed rates would substantially exceed the IHS published rates, and Alaska provided no analysis of why it would be consistent with efficiency, economy, and quality of care to pay rates higher than the rate authorized by IHS. Absent any such analysis, the CMS found that the proposed rates were not consistent with efficiency, economy, and quality of care as required under section 1902(a)(30)(A) of the Act. Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Alaska SPA 01–009.

Section 1116 of the Act and 42 CFR, part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. The CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Alaska announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Robert Labbe,
Director, Division of Medical Assistance,
Department of Health and Social Services,
P.O. Box 110601, Juneau, AK 99811–0601.

Dear Mr. Labbe: I am responding to your request for reconsideration of the decision to disapprove Alaska State Plan Amendment (SPA) 01–009. Alaska submitted SPA 01–009 on December 27, 2001. This SPA would increase the Medicaid payment rate for inpatient and outpatient services at facilities paid as Indian Health Service (IHS) facilities (including tribal facilities operated under contracts or compacts pursuant to Public Law 93–638). The IHS sets Medicaid billing rates for inpatient and outpatient services furnished by Alaska IHS facilities, which are announced in the **Federal Register**. Alaska's proposed rates would substantially exceed the IHS published rates, and Alaska provided no analysis of why it would be consistent with efficiency, economy, and quality of care to pay rates higher than the rate authorized by IHS. Absent any such analysis, CMS found that the proposed rates were not consistent with efficiency, economy, and quality of care as required under section 1902(a)(30)(A) of the Act. Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Alaska SPA 01–009.

I am scheduling a hearing on your request for reconsideration to be held at 10:00 a.m., October 24, 2002, Seattle Regional Office; 2201 Sixth Avenue; Room 1206; Seattle, Washington 98121, to reconsider our decision to disapprove Alaska SPA 01–009.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Thomas A. Scully.

Authority: Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: October 11, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–26904 Filed 10–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Virginia State Plan Amendment 01–14

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on December 11, 2002, 10 a.m., Suite 216, The Public Ledger Building, 150 S. Independence Mall West; Philadelphia, Pennsylvania 19106, to reconsider our decision to disapprove Virginia State Plan Amendment 01–14.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244–2670, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Virginia State Plan Amendment (SPA) 01–14. Virginia submitted SPA 01–14 on December 14, 2001. The amendment would revise the State's payment methodology to provide for supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities.

The issue is whether this SPA sets out a definite payment methodology for supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities in compliance with the requirements of the Centers for Medicare & Medicaid Services' (CMS) regulations at 42 CFR 430.10 and 447.252(b). First, the methodology set out in the proposed plan amendment is contingent on unexplained factors including size criteria and Medicaid participation criteria that are not described, and the hospital's acceptance of an intergovernmental transfer agreement that is not described. As a result, the proposed State plan amendment does not ''comprehensively'' describe the State Medicaid program, and does not contain ''all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation'' consistent with

these regulatory requirements. Second, the State was on notice that CMS would review this proposed state plan amendment with heightened scrutiny because of CMS'' concern that the payment level was not consistent with efficiency, economy, and quality of care. During a portion of the period covered by this amendment, the methodology would result in total aggregate payments at the level of 150 percent of the amount that would be paid for the services under Medicare payment principles. In a State Medicaid Director's letter dated November 23, 2002, CMS informed states of the intention not to approve amendments submitted after the November 23, 2001, issuance of a notice of proposed rulemaking that would lower the permissible aggregate payment level from 150 percent to 100 percent of the amount that would be paid for the services under Medicare payment principles.

Section 1116 of the Social Security Act (the Act) and 42 CFR, part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. The CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants. Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Virginia SPA 01–14.

The notice to Virginia announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Patrick W. Finnerty,

Director, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23119.

Dear Mr. Finnerty: I am responding to your request for reconsideration of the decision to disapprove Virginia State Plan Amendment (SPA) 01–14. Virginia submitted SPA 01–14 on December 14, 2001. The amendment would revise the State's payment methodology to provide for supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities.

The issue is whether this SPA sets out a definite payment methodology for supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities in compliance with the requirements of the Centers for Medicare & Medicaid Services' (CMS) regulations at 42 CFR 430.10 and 447.252(b). First, the methodology set out in the proposed plan amendment is contingent on unexplained factors including size criteria and Medicaid participation criteria that are not described, and the hospital's acceptance of an intergovernmental transfer agreement that is not described. As a result, the proposed state plan amendment does not ''comprehensively'' describe the state Medicaid program, and does not contain ''all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation'' consistent with these regulatory requirements. Second, the State was on notice that CMS would review this proposed state plan amendment with heightened scrutiny because of CMS'' concern that the payment level was not consistent with efficiency, economy, and quality of care. During a portion of the period covered by this amendment, the methodology would result in total aggregate payments at the level of 150 percent of the amount that would be paid for the services under Medicare payment principles. In a State Medicaid Director's letter dated November 23, 2002, CMS informed states of the intention not to approve amendments submitted after the November 23, 2001, issuance of a notice of proposed rulemaking that would lower the permissible aggregate payment level from 150 percent to 100 percent of the amount that would be paid for the services under Medicare payment principles.

Based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Virginia SPA 01–14.

I am scheduling a hearing on your request for reconsideration to be held on December 11, 2002, at 10 a.m., Suite 216, The Public Ledger Building, 150 S. Independence Mall West; Philadelphia, Pennsylvania 19106 to reconsider our decision to disapprove Virginia SPA 01–14.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,
Thomas A. Scully.

Authority: Section 1116 of the Social Security Act (42 U.S.C. section 1316), (42 CFR Section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: October 11, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–26905 Filed 10–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of South Carolina State Plan Amendment 01–14(A)

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on December 2, 2002, at 10 a.m., Atlanta Federal Center, 61 Forsyth Street, SW., Suite 4T20, Executive Conference Room, Atlanta, Georgia 30303–8909, to reconsider our decision to disapprove South Carolina State Plan Amendment 01–14 (A).

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244–2670, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove South Carolina State Plan Amendment (SPA) 01–14(A). South Carolina submitted SPA 01–014(A) on December 21, 2001. In this amendment, South Carolina proposed to revise the methodology for calculating supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities.

The issue is whether the State's proposed revised methodology for calculating supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities was consistent with the requirements of

section 1902(a)(30)(A) of the Social Security Act (the Act), as implemented by the Centers for Medicare & Medicaid Services' (CMS) regulations at 42 CFR 447.272 and 447.321. The proposed methodology would increase supplemental payments to non-state government owned or operated facilities to result in aggregate payments based on 150 percent of the estimated amount that would be paid for the same services under Medicare payment principles. In accordance with the regulations at 42 CFR 447.272 and 447.321, as amended on January 18, 2002, effective May 14, 2002, aggregate payments to non-state government owned or operated hospitals may not exceed 100 percent of the reasonable estimate of the amount that would be paid for the same services under Medicare payment principles. Because the proposed payment methodology would provide for payments above the permissible level after that date, CMS concluded that the proposed methodologies are not in compliance with applicable regulations and the SPA could not be approved. Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved South Carolina SPA 01–14(A).

Section 1116 of the Act and 42 CFR, part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. The CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to South Carolina announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. William Prince, Medicaid Director, South Carolina Department of Health and Human Services, P.O. Box 8206, Columbia, SC 29202–8206.

Dear Mr. Prince: I am responding to your request for reconsideration of the decision to disapprove South Carolina State Plan Amendment (SPA) 01–14(A). South Carolina submitted SPA 01–14(A) on December 21, 2001. In this amendment, South Carolina proposed to revise the methodology for calculating supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities.

The issue is whether the State's proposed revised methodology for calculating supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities was consistent with the requirements of section 1902(a)(30)(A) of the Social Security Act (the Act), as implemented by the Centers for Medicare & Medicaid Services (CMS) regulations at 42 CFR 447.272 and 447.321. The proposed methodology would increase supplemental payments to non-state government owned or operated facilities to result in aggregate payments based on 150 percent of the estimated amount that would be paid for the same services under Medicare payment principles. In accordance with the regulations at 42 CFR 447.272 and 447.321, as amended on January 18, 2002, effective May 14, 2002, aggregate payments to non-state government owned or operated hospitals may not exceed 100 percent of the reasonable estimate of the amount that would be paid for the same services under Medicare payment principles. Because the proposed payment methodology would provide for payments above the permissible level after that date, CMS concluded that the proposed methodologies are not in compliance with applicable regulations and the SPA could not be approved. Based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved South Carolina SPA 01–14(A).

I am scheduling a hearing on your request for reconsideration to be held on December 2, 2002, at 10 a.m., Atlanta Federal Center, 61 Forsyth Street, SW., Suite 4T20, Executive Conference Room, Atlanta, Georgia 30303–8909, to reconsider our decision to disapprove South Carolina SPA 01–14(A).

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Thomas A. Scully.

Authority: Section 1116 of the Social Security Act (42 U.S.C. section 1316); (42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: October 11, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–26906 Filed 10–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0012]

Agency Information Collection Activities; Announcement of OMB Approval; Postmarketing Adverse Drug Experience Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Postmarketing Adverse Drug Experience Reporting'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 22, 2002 (67 FR 47821), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0230. The approval expires on September 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 16, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26875 Filed 10–22–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, U.S.C, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: Progress Reports for Continuation Training Grants (OMB No. 0915–0061)—Extension

The HRSA Progress Reports for Continuation Training Grants are used for the preparation and submission of continuation applications for titles VII and VIII health professions and nursing education and training programs. The Uniform Progress Report measures grantee success in meeting (1) the objectives of the grant project and (2) the cross-cutting outcomes developed for the Bureau's education and training programs. Part I of the progress report is designed to collect information to determine whether sufficient progress has been made on the approved project objectives, as grantees must demonstrate satisfactory progress to warrant continuation of funding. Part II collects information on activities specific to a given program and Part III, Comprehensive Performance Management System, collects data on overall project performance related to the Bureau of Health Profession's strategic goals, objectives, outcomes and indicators. Progress will be measured based on the objectives of the grant project and outcome measures and indicators developed by the Bureau to meet requirements of the Government Performance and Results Act (GPRA).

To respond to the requirements of GPRA, the Bureau developed goals, outcomes and indicators that provide a framework for collection of outcome data for its Title VII and VIII programs. An outcome based performance system is critical for measuring whether program support is meeting national health workforce objectives. At the core of the performance measurement system are found cross-cutting goals with respect to workforce quality, supply, diversity and distribution of the health professions workforce. A demonstration project to assess availability of the data needed to support the indicators was conducted, and data from this project are currently being analyzed.

The grantees were able to obtain, and submit progress reports electronically for fiscal year 2001.

Estimates of annualized reporting burden are as follows:

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Health Care Professionals	1,550	1	1,550	20	31,000

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 17, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–26914 Filed 10–22–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Infant Mortality; 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.

Name: Advisory Committee on Infant Mortality (ACIM).

Date and Time: November 20, 2002; 9 a.m.–5 p.m., November 21, 2002; 8:30 a.m.–3 p.m.

Place: The Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 418–1234.

Purpose: The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; factors determining the length of hospital stay following childbirth; strategies to coordinate the variety of Federal, State, and local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People 2010.*

Agenda: Topics that will be discussed include the following: Early Postpartum Discharge; Low-Birth Weight; Disparities in Infant Mortality; and the Healthy Start Program. Agenda items are subject to change as priorities are further determined.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Parklawn Building, Room 18–05, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–2170.

Individuals who are interested in attending any portion of the meeting or who have questions regarding the meeting should contact Ann M. Koontz, C.N.M., Dr. P.H., HRSA, Maternal and Child Health Bureau, Telephone (301) 443–6327.

Dated: October 17, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–26915 Filed 10–22–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; 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.

Name: National Advisory Council on Nurse Education and Practice.

Date and Time: November 7, 2002, 8:30 a..m.–5 p.m., November 8, 2002, 8:30 a.m.–3 p.m.

Place: The Hotel Washington, Pennsylvania Avenue, NW at 15th St., Washington, DC 20004.

Agenda: Agency, Bureau and Division administrative updates. Overview of the Nurse Reinvestment Act, Pub. L. 107–205; staff legislative workgroup reports; and Council workgroup sessions with discussion and recommendations for implementation of legislation. Presentations and discussion of bioterrorism workforce issues with focus on nursing. Reports of the Institute of Medicine Health Professions Summit meeting with discussion regarding future interdisciplinary activities and report of the Development of a Funding Methodology for the Allocation of Title VIII Funds: Phase II.

*For Further Information Contact:*Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1405.

Dated: October 17, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–26916 Filed 10–22–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health/National Institute of Environmental Health Sciences

Proposed Collection; Comment Request; Organochlorine Exposure in Relation to Timing of Natural Menopause

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Organochlorine Exposure in Relation to Timing of Natural Menopause. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* Smoking has been shown in many studies to be associated with a 1-2 year decrease in age at natural menopause. However, relatively little is known about the effect of other potential toxicants, including organochlorines such as polychlorinated biphenyls (PCBs) and 1,1 dichloro- 2,2-bis(p-chlorophenyl) ethylene (p,p'-DDE (DDE). We will assess timing of menopause among women who previously participated in the North Carolina Infant Feeding Study. PCB and DDE levels were analyzed in blood and breast milk samples around delivery and after pregnancy. The median age of the women as of March, 2002, is 50 years. Data will be collected in a telephone interview focusing on reproductive and menstrual history with additional information samples in order to classify menopausal status of women who had undergone hysterectomy with retention of at least one ovary, women who are currently using hormone replacement therapy whose use began while still having periods, and women who report very short, very long, or irregular menstrual cycle lengths during the past 12 months. PCB and DDE levels will also be determined in these samples, allowing us to assess the correlation between current and baseline (1978–1982) PCB and DDE measures. The purpose of this study is to assess the association between the baseline organochlorine measurements and timing of natural menopause. A secondary aim will be to conduct exploratory analyses of the association between specific factors (*e.g.,* pregnancy history, weight change) and rate of change in collected and demographic, social and behavioral factors that could affect timing of menopause. Approximately 50% of participants based on sampling strata that involve criteria relating to age and menopausal status will also have a blood sample collection. Follicle stimulating hormone and luteinizing hormone will be measured in these organochlorine levels. *Frequency of Response:* On occasion (one half-hour long telephone interview and ten minutes for biological specimens collection for half of the study population). *Affected Public:* Individuals. *Type of Respondents:* We will enroll women who participated in the North Carolina Infant Feeding Study. The annual reporting burden is as follows: *Estimated Number of Respondents:* 857. *Estimated Number of Responses per Respondent:* See table below. *Average Burden Hours Per Response:* 0.5 for the telephone interview and 0.334 for the blood collection; and *Estimated Total Burden Hours Requested:* 571.45. The average annual burden hours requested is 428.5 for the telephone interview and 142.95 for the blood collection. The annualized cost to respondents is estimated at $10 (assuming $20 hourly wage × 0.50 hours) for the interview and $6.658 (assuming a $20 hourly wage × 0.334 hours) for blood collection. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total burden hours requested
Telephone Interview (CATI)	857	1	.5	428.5
Biological Collections	*428	1	.334	142.95
Total	1,285			571.45

*Expect approximately 50% of the (n=857) participants to complete the blood draw.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of collection of information on whose who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Glinda Cooper, Epidemiology Branch, NIEHS, Building 101, AE–05, P.O. Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (929) 541–0799 or E-mail your request, including your address to: *cooper1@niehs.nih.gov.*

Comments Due Date: Comments regarding this information are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: October 12, 2002.

Francine Little,

NIEHS, Associate Director for Management.

[FR Doc. 02–27029 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request, National Kidney Disease Education Program Evaluation Survey

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register**. August 5, 2002 (67 FR 50678–50679), and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection:

Title: National Kidney Disease Education Program Evaluation Survey. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* NIDDK will conduct a survey to monitor and evaluate the effects of a pilot kidney disease education program. This will be accomplished through baseline and follow-up surveys of the primary target audience members, *i.e.,* African American adults and primary care providers, in four pilot site locations. The search is designed to assess the overall impact of the program, but also to provide information that will be useful in developing and refining this and future programs. *Frequency of Response:* A baseline and follow-up survey will each require a onetime response. *Affected Public:* Individuals or households, clinics or doctor's offices. *Type of Respondents:* African-American adults and primary care providers (*e.g.,* physicians, physician assistants, nurse practitioners, etc.). The annual reporting burden is as follows: *Estimated Number of Respondents:* 2,000; *Estimated Number of Responses per Respondent:* 1 (Respondents will answer a single survey: African American adults will complete a 20 minute computer assisted telephone interview (CATI); Primary care providers will complete a 10 minute faxed survey); *Average Burden Hours Per Response:* .298 and *Estimated Total Annual Burden Hours Requested:* 596. The annualized total cost to respondents is estimated at $10,684. All respondents will be contacted via telephone. To reduce respondent burden and overall costs of administering the study, it is expected that random digit dialing will be used to contact African American adults and telephone lists will be used to contact primary care providers. Because different program materials will be developed for each audience the questionnaires will be tailored such that respondents will be asked only target-audience pertinent questions. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
African Americans	1,600	1.0	.33	528
Primary Care Providers	400	1.0	.17	68
Total	2,000	.....	.....	596

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 102353, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Thomas Hostetter, Project Officer, Director, NIDDK National Kidney Disease Education Program, NIH, Building 31, 6707 Democracy Bldg, Room 625, Bethesda, MD 20892–2560,

or call non-toll free number 301–594–8864 or e-mail your request, including your address, to: *hostettert@extra.niddk,nih.gov.*

Comments Due Date: Comments regarding this information are best assured of having full effect if they are received within 30 days of the date of this publication.

Dated: October 17, 2002.

John C. Condray,

Acting Project Clearance Liaison, NIDDK, National Institutes of Health.

[FR Doc. 02–27028 Filed 10–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Exploratory/Developmental Grants: Overcoming barriers to early phase clinical trials.

Date: December 3, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lalita D Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405. (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.999, Cancer Control, National Institutes of Health, HHS)

Dated: October 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27013 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Toxicology.

Date: December 10–11, 2002.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Thomas M. Vollberg, Ph.D., Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 703/7142, Rockville, MD 20852. 301/594–9582. *vollbert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research, 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27014 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Molecular Targets for Nutrients in Prostate Cancer Prevention.

Date: November 19–20, 2002.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 703/7142, Rockville, MD 20852. 301/594–9582. *vollbert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27021 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol and Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: October 29, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contract Person: Karen P. Peterson, Phd, Scientific Review Administrator, Extramural Project Review Branch, National Institute of Alcohol Abuse, and Alcoholism, National Institutes of Health, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003. (301) 451–3883. *kp177z@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: November 7, 2002.

Time: 10 a.m. to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Karen P. Peterson, Phd, Scientific Review Administrator, Extramural Project Review Branch, National Institute of Alcohol Abuse, and Alcoholism, National Institutes of Health, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003. (301) 451–3883. *kp177z@nih.gov.*

Name of Committee: National Institute of Alcohol Abuse and Alcoholism Special Emphasis Panel. Review of research applications and KO5's.

Date: November 8, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute of Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 executive Boulevard, Bethesda, MD 20892-7003. 301–443–2861.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: October 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27015 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. ''Development and testing of a Modified Vaccinia Ankara (MVA) Vaccine''.

Date: November 12, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Georgetown, Fortune Room, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert C. Goldman, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 3124, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–496–8424, *rg159w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27016 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Autism Susceptibility Loci.

Date: November 19, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340. *haraj@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Mental Health Education Grants.

Date: November 25, 2002.

Time: 3 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608. 301–443–1340. *haraj@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Institutional Research Training Grants.

Date: November 26, 2002.
Time: 7:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608. 301–443–1340. *haraj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27017 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Cooperative Reproductive Science Research Centers at Minority Institutions.
Date: December 11, 2002.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892. (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27018 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Mechanisms of Skeletal Repair.
Date: December 10, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Tracy A. Shahan PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892. (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27019 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research for the Prevention and Control of Diabetes.
Date: November 19, 2002.
Time: 8:00 AM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.
Contact Person: Michele L. Barnard, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institute of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–8898.

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Diabetic Nephropathy.
Date: November 20, 2002,
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications,
Place: 6701 Democracy Blvd., Bethesda, MD 20814. (Telephone Conference Call).
Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institute of Health, Room 748, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

October 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27020 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 80 Phase II.

Date: November 19, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709. (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of R01 Applications.

Date: December 9, 2002.

Time: 9:30 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, South Campus, Building 101, Conference Room C, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. 919/541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: October 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27022 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Cellular Repair Studies: Auditory and Vestibular.

Date: November 26, 2002.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 400C, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180. 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27023 Filed 10–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Hearing and Balance Feasibility Grants.

Date: November 25, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Ali A. Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH, EPS–400C, 6120 Executive Blvd., MSC 7180, Bethesda, MD 20892–7180. (301) 496–8683. *azadegan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27024 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BM–1 (02): Bacteriology & Microbiology 1: Quorum.

Date: October 24–25, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892. (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biobehavioral Regulation and Ethology.

Date: October 25, 2002.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005–2750.

Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892. (301) 435–0692. roberlu@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Plant Expressions and Microfluidics.

Date: October 27, 2002.

Time: 6:30 p.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892. (301) 435–8367. atreyap@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neurosciences 6 01.

Date: October 29–30, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Jay Cinque, MSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CDF Instrument Development R01's.

Date: November 1, 2002.

Time: 8 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel & Suites, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CDF SBIR/STTR.

Date: November 1, 2002.

Time: 12:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel & Suites, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–B (01) M: Member Conflicts in Biophysics and Chemistry.

Date: November 4, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Donald Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Orthopedics and Musculoskeletal Study Section.

Date: November 4–5, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892. (301) 435–1215. *mcdonald@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 4.

Date: November 4–5, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892. (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, HIV/AIDS Intervention Research Regular Meeting.

Date: November 4–5, 2002.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892. (301) 435–1167. *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 REN 01.

Date: November 4, 2002.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892. (301) 435–1042. *shaikha@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SMB 03 Dermatology and Rheumatology.

Date: November 5, 2002.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. (301) 435–6809, *wagnerp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F10 20L: Fellowships: Pathophysiology and Cardiovascular Sciences.

Date: November 6–7, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892. (301) 435–0682. *perrinp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reparative Medicine, ZRG 1 SSS–M 01.

Date: November 6–7, 2002.

Time: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814. 301/435–1743. *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review SBIR & STTR applications on AIDS-Related Behavioral Science Studies.

Date: November 6, 2002.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892. (301) 435–1167. *srinivar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHB 01M: Member Conflict: Molecular Biology of Cancer.

Date: November 6, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Call).

Contact Person: Martin L. Podarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892. (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Breast Cancer.

Date: November 6, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692. 301–435–3504. *fungv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Multimedia Interventions for Childhood Obesity.

Date: November 6, 2002.

Time: 12 p.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7848, Bethesda, MD 20892. (301) 435–3554. *shirleym@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27026 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4768–C–03]

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants, Fiscal Year 2002; Notice of Technical Corrections

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants, Notice of Technical Corrections.

SUMMARY: This notice makes a number of technical corrections to HUD's Fiscal Year (FY) 2002 Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants.

DATES: *Application Due Date.* Revitalization grant applications are due to HUD Headquarters on or before 5:15 p.m., Eastern Time, on December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll free numbers). Persons with hearing-or speech-impairments may call via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On July 31, 2002 (67 FR 49766), HUD published its Fiscal Year (FY) 2002 Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants (HOPE VI NOFA), which announced the availability of approximately $492.5 million in FY 2002 funds for the HOPE VI Revitalization Program. The July 31, 2002 HOPE VI NOFA provided an application due date of November 29, 2002. Because November 29, 2002, falls on the Friday after Thanksgiving, HUD extended the application due date under the July 31, 2002 HOPE VI NOFA for one week to Friday, December 6, 2002, in a notice published on September 27, 2002 (67 FR 61150). This notice makes a number of technical corrections to the July 31, 2002 HOPE VI NOFA.

In Section VI(A)(1), the reference to ''Section IV(A)(2)'' is corrected to ''Section VI(A)(2)'' instead, changing the ''IV'' to ''VI.''

Section VIII (B)(4) is corrected to make explicit that the average market rental costs calculated from apartment listings is based upon the rent for 3-bedroom apartments.

In the last sentence of Section IX(D)(10), ''allocated'' is changed to ''reserved,'' and in the first sentence of Section IX(D)(10)(a), ''allocation'' is changed to ''reservation.'' Both changes are made to correctly express the tax credit procedure involved.

A sentence is added to Section IX(D)(10)(b)(ii) to provide that a letter from the investor may be used to document the dollar amount expected from the sale of equity.

In Section IX(G)(1)(c), the reference to ''1:20'' should be to ''1:2.0'' instead, adding a decimal point that had been omitted inadvertently from the ratio.

In Section IX(G)(3)(a), the ratio is corrected from ''1:1.0'' to ''.1:1.0'' adding a decimal point before the first

digit; in Section IX(G)(3)(b), the ratio is corrected from ''1:.1'' to ''.1:1.0'' reversing the order of the digits; and in Section IX(G)(4)(b), the ratio is corrected from ''1:.1'' to ''1:1.0'' removing the decimal point before the second digit.

In Section XII(E)(3), the reference to ''Section (1)'' is changed to ''Section (2).''

Accordingly, FR Doc. 02–19276, the Fiscal Year (FY) 2002 Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants, published in the **Federal Register** on July 31, 2002 (67 FR 49766) is corrected as follows:

1. *On page 49769, in column 3, revise Section VI(A)(1) to read as follows:*

(1) The total amount you may request in your Revitalization application is limited to $20 million or the sum of the amounts in Section VI(A)(2), whichever is lower.

2. *On page 49775, in column 2, revise Section VIII(B)(4) to read as follows:*

(4) Need for Affordable Housing in the Community—3 Points.

The applicant must demonstrate the need for affordable housing in the community. The need for affordable housing in the community is measured by a lack of supply of private market housing that can be rented at the Section 8 fair market rent (FMR), as adjusted by HUD, and in the community. To make this calculation, use the most recently published FMR, as adjusted, for a 3-bedroom apartment and apartment listings in a newspaper of general circulation that serves the majority of the community (the jurisdiction covered by the FMR). In the apartment listings, track and tabulate the rents for 3-bedroom apartments for a period of 30 consecutive days during the application preparation period, counting each 3-bedroom apartment once for the period of days it appears in the listings (*e.g.*, if the same apartment appears in the listings every day for a period of 7 days, you would count it one time). Calculate the average market rental costs, based on your tabulations, and compare them to the FMR, as adjusted, for a 3-bedroom apartment. In your application you will document information about your analysis. Points will be awarded in accordance with one of the following, based on your analysis:

(a) You will receive 3 Points if the average market rental costs are over 130 percent of FMR.

(b) You will receive 2 Points if the average market rental costs are over 120 percent of FMR.

(c) You will receive 1 Point if the average market rental costs are over 110 percent of FMR.

(d) You will receive 0 Points if the average market rental costs are 110 percent or less of FMR or if there is inadequate information to rate this factor.

3. *On page 49776, in column 2, revise the last sentence of Section IX(D)(10) to read as follows:*

(10) * * * Tax credits are generally reserved annually through State Housing Finance Agencies, a directory of which can be found at *http://www.ncsha.org/ncsha/public/statehfadirectory/index.htm*

4. *On page 49776, in column 3, revise the first sentence of Section IX(D)(10)(a) to read as follows:*

(a) If you propose to include LIHTC equity as a development resource for your first phase of development, your application must include a LIHTC reservation letter from your State or local Housing Finance Agency. * * *.

5. On *page 49776, in column 3, revise Section IX(D)(10)(b)(ii) to read as follows:*

(ii) The dollar amount expected from the sale of equity. If this information is not provided, HUD will count 80 percent of the total tax credit amount. The dollar amount expected from the sale of equity may be detailed in a letter from the investor, instead of in a letter from your State or local Housing Finance Agency. All other criteria in Section IX(D)(10)(b)(i)–(vii) must be included in a commitment letter from your State or local Housing Finance Agency.

6. *On page 49777, in column 2, revise Section IX(G)(1)(c) to read as follows:*

(c) You will receive 5 Points if the ratio is between 1:2.0 and 1:2.49.

7. *On page 49777, in column 3, revise Section IX(G)(3)(a) to read as follows:*

(a) You will receive 2 Points if the ratio of your documented anticipatory resources to the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) is .1:1.0 or higher.

8. *On page 49777, in column 3, revise Section IX(G)(3)(b) to read as follows:*

(b) You will receive 0 Points if the ratio of your documented anticipatory resources to the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) resources is less than .1:1.0.

9. *On page 49777, in column 3, revise Section IX(G)(4)(b) to read as follows:*

(b) You will receive 0 Points if the ratio of your documented collateral resources to the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) is less than 1:1.0.

10. *On page 49780, in column 3, revise Section XII(E)(3) to read as follows:*

(3) You will receive 2 points if you meet only one of the factors described in Section (2) above.

Dated: October 15, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–26892 Filed 10–22–02; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of availability of the Draft Lookout Mountain Forest and Rangeland Health Project Plan, Associated Amendments to the Baker Resource Management Plan and Draft Environmental Impact Statement

AGENCY: Baker Resource Area, Vale District, Bureau of Land Management.

ACTION: Notice of availability of the Draft Lookout Mountain Forest and Rangeland Health Project Plan, Associated Amendments to the Baker Resource Management Plan (RMP) and Draft Environmental Impact Statement (DEIS).

SUMMARY: The Baker Resource Area is providing the Lookout Mountain Forest and Rangeland Health Project DEIS for public review and comment. The planning area encompasses approximately 25,160 acres of public land managed by the Baker Resource Area, Vale District and located in Baker county in northeastern Oregon. Some of the alternatives include amendments to portions of the Baker RMP, which was originally approved in 1989. The Bureau of Land Management (BLM) has and will continue to work closely with all interested parties to identify the management decisions that are best suited to the needs of the public. For comments to be most helpful, they should relate to specific concerns or conflicts that are within the legal responsibilities of the BLM and they should be able to be resolved in this planning process. Specific comments are the most useful in helping us improve the analysis and in the development of the preferred alternative. In addition to public comments, the BLM is particularly interested in state, local and Tribal government comments regarding plan consistency. Documents referenced in this DEIS may be examined at the Baker Resource Area Office during normal working hours. The Baker RMP to

which the DEIS is tiered also is available for review at the Vale District and Oregon State Offices during normal working hours, and on the internet at *http://www.or.blm.gov/Vale/Planning-EnvirnAnalyses.htm.*

DATES: The comment period will end 90 days after the publication of the Environmental Protection Agency's Notice of Availability of the DEIS in the **Federal Register**. Supplemental notices indicating the precise dates of DEIS availability and the comment period will be printed in local newspapers and sent to mailing list addressees. Comments must be received on or before the end of the comment period at the address listed below. No public meetings, open houses, or field tours of the project area have been scheduled at this time. If there is sufficient public interest, public meetings will be arranged to discuss the management alternatives and answer questions. At least 15 days public notice will be given for activities where the public is invited to attend. All meetings will be published on the Vale District Web site *http://www.or.blm.gov/Vale/Planning-EnvirnAnalyses.htm* and in the Baker City Herald and Argus-Observer (Ontario) newspapers. Comments, including names and addresses of commentors, will be available for public review. Individual respondents may request confidentiality. If you wish to withhold your name and/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 organizations or businesses, will be made available for public inspection in their entirety.

ADDRESSES: The responsible field official is Penelope Dunn Woods, Baker Resource Area Manager. Written comments should be sent to Ted Davis, Supervisory Natural Resource Specialist, Baker Resource Area, Bureau of Land Management, 3165 10th St., Baker City, Oregon 97814. Planning records are available at this address for inspection during normal working hours. Requests for copies of the draft plan can also be made by telephone to Ted Davis at (541) 523–1431.

SUPPLEMENTARY INFORMATION: The DEIS contains descriptions and analyses of five action alternatives, and a no-action alternative, each developed with differing emphasis. The range of management direction includes commercial and precommercial timber harvest, riparian restoration activities, road relocation and decommissionings, fuel hazard reduction treatments including prescribed burning, and other land management direction. The portions of the Baker Resource Management Plan that would be most affected and amended by the action alternatives involve visual resource management and alternative road access. The action alternatives would support the National Fire Policy. There are no identified substantive adverse effects on energy resources or transmission. Public comments were considered in developing and analyzing issues and alternatives, along with input from local and Tribal governments, known interest groups, and data developed by BLM staff. The alternatives were designed to address, in different ways, the land and resource management issues identified in the early stages of the planning process. There were no requests for formal cooperator status by other federal, state, local or Tribal governments.

Authority: Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA).

Dated: May 29, 2002.

Penelope Dunn Woods,

Field Manager, Baker Resource Area.

[FR Doc. 02–26934 Filed 10–22–02; 8:45 am]

BILLING CODE 4310–AG–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (USITC or Commission) has submitted a proposed information collection package to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, (44 U.S.C. Chap. 35), requesting renewal of a currently approved collection: *USITC Reader Satisfaction Survey* (OMB No.: 3117–0188). On August 15, 2002, the USITC published in the **Federal Register** a notice of proposed information collection and request for comments on the *USITC Reader Satisfaction Survey.* No public comments to the August 15, 2002, **Federal Register** notice were received by the Commission. The USITC has also conducted a review of the proposed information collection as required by 5 CFR 1320.8.

EFFECTIVE DATE: October 16, 2002.

Purpose of Information Collection: The requested extension of a currently approved collection (one-page survey) is for use by the Commission, and complies with objectives set forth in the Government Performance and Results Act of 1993 (Pub. L. 103–62), to establish measures to improve information on program performance, and specifically, to focus on evaluating results, quality, and customer satisfaction. The one-page survey will be placed inside the cover of certain public reports issued annually or on occasion by the Commission pursuant to section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), and including public reports that meet agency requirements for the USITC Research Program.

Public Comments Regarding the Information Collection: OMB is required to make a decision concerning extension of this currently approved collection between 30 and 60 days after publication of this notice. To be assured of consideration, comments must be received at OMB by the Desk Officer/ USITC by November 22, 2002.

ADDRESSES: Comments should be addressed to: Desk Officer for U.S. International Trade Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (telephone No. 202–395–3897). Copies of any comments should also be provided to Robert Rogowsky, Director 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.

Summary of Proposal

(1) *Number of forms submitted:* One.

(2) *Title of form: USITC Reader Satisfaction Survey.*

(3) *Type of request:* Renewal of a currently approved collection.

(4) *Frequency of use:* Annual or on occasion information gathering.

(5) *Description of Respondents:* Interested parties receiving most public reports issued by the USITC, with the exception of Title VII reports.

(6) *Estimated number of respondents:* 600 annually.

(7) *Estimated total number of hours to complete the forms:* 100 hours annually.

(8) *Recordkeeping burden:* There is no retention period for recordkeeping required.

(9) *Response burden:* Less than 10 minutes for each individual respondent.

(10) *Summary of the collection of information:* Single-page survey requests readers' comments about value and quality of USITC reports.

(11) Information requested on a voluntary basis is not proprietary in nature, but rather for program evaluation purposes and is not intended to be published. Commission treatment of questionnaire responses will be followed; responses will be aggregated and will not be presented in a manner that will reveal the individual parties that supplied the information.

FOR FURTHER INFORMATION CONTACT: Karl Tsuji, Office of Industries, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436 (telephone No. 202–205–3434). Copies of the public notice (Agency Form Submitted for OMB Review) along with the survey and Supporting Statement to be submitted to OMB will be posted on the Commission's World Wide Web site at *http://www.usitc.gov/whatsnew.htm* or the agency submissions to OMB in connection with this request may be obtained from Karl Tsuji, at the above address or telephone number. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone No. 202–205–1810).

By order of the Commission.

Issued: October 17, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–26878 Filed 10–22–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–989 (Final)]

Ball Bearings From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–989 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of certain ball bearings and parts thereof, provided for in subheadings 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.50, 8431.20.00, 8431.39.00, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.25, 8482.99.35, 8482.99.65, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.60, 8708.93.30, 8708.93.60, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.40, 8708.99.49, 8708.99.58, 8708.99.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain ball bearings and parts thereof from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on February 13, 2002, by the American Bearing Manufacturers Association, Washington, DC.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on February 19, 2003, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on March 4, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 24, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''antifriction bearings, regardless of size, precision grade or use, that employ balls as the rolling element (whether ground or unground) and parts thereof (inner ring, outer ring, cage, balls, seals, shields, etc.) that are produced in China. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts and parts thereof, ball bearings (including thrust, angular contact, and radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. The scope includes ball bearing type pillow blocks and parts thereof; and wheel hub units incorporating balls as the rolling element. With regard to finished parts, all such parts are included in the scope of the petition. With regard to unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the petition are those that will be subject to heat treatment after importation.''

should attend a prehearing conference to be held at 9:30 a.m. on February 27, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is February 26, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 11, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 11, 2003. On March 26, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 28, 2003, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 17, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–26879 Filed 10–22–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1006, 1008, and 1009 (Final)]

Urea Ammonium Nitrate Solutions From Belarus, Russia, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–1006, 1008, and 1009 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Belarus, Russia, and Ukraine of urea ammonium nitrate solutions, provided for in subheading 3102.80.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of urea ammonium nitrate solutions from Belarus, Russia, and Ukraine are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). These investigations were requested in a petition filed on April 19, 2002, by the Nitrogen Solutions Fair Trade Committee, an ad hoc coalition of U.S. producers consisting of CF Industries, Inc., Long Grove, IL; Mississippi Chemical Corp., Yazoo City, MS; and Terra Industries, Inc., Sioux City, IA.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''all mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution, regardless of nitrogen content by weight, and regardless of the presence of additives, such as corrosion inhibitors.''

preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on December 5, 2002, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on December 18, 2002, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 11, 2002. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. If unable to allocate amongst themselves respective times of testimony within the maximum allowable, all parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference that is scheduled for this purpose at 9:30 a.m. on December 16, 2002, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is December 12, 2002. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 27, 2002; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 27, 2002. On January 13, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 15, 2003, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 17, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–26880 Filed 10–22–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

TIME AND DATE: October 29, 2002 at 10 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. TA–421–1 (Remedy) (Pedestal Actuators from China)—briefing and vote. (The Commission is currently scheduled to transmit its views and remedy proposals to the President and U.S. Trade Representative on November 7, 2002.)
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 18, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–27089 Filed 10–21–02; 11:03 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Steven Tyler Everett, M.D.; Revocation of Registration

On May 28, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Steven Tyler Everett, M.D. (Dr. Everett) of Port St. Lucie, Florida, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BE4443064 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Everett is not currently authorized to practice medicine or handle controlled substances in Florida, the State in which he practices. The order also notified Dr. Everett that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Everett at his registered location in Port St. Lucie, Florida. On June 17, 2002, DEA received an undated signed receipt indicating that the Order to Show Cause was received on his behalf. DEA has not received a request for hearing or any other reply from Dr. Everett or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Everett is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Everett currently possesses DEA Certificate of Registration BE4443064

and that registration remains valid until August 31, 2004. The Deputy Administrator further finds that on July 10, 2001, the State of Florida, Department of Health (Department of Health) filed a three-count Administrative Complaint against Dr. Everett seeking the revocation of his medical license. As a basis for revocation, the Department of Health alleged, *inter alia,* that Dr. Everett engaged in a sexual relationship with a patient and that he committed fraud in the practice of medicine by writing a prescription for injectable Demerol (a Schedule II controlled substance) in the name of one patient while knowing the drug was intended for and would be used by another.

On October 23, 2001, the Department of Health issued a Final Order, revoking Dr. Everett's license to practice medicine. The investigative file contains no evidence that the Final Order has been stayed or that Dr. Everett's medical license has been reinstated. Therefore, the Deputy Administrator finds that Dr. Everett is not currently authorized to practice medicine in the State of Florida. As a result, it is reasonable to infer that he is also without authorization to handle controlled substances in that State.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Muttaiya Darmarajeh, M.D.,* 66 FR 52936 (2001); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988).

Here, it is clear that Dr. Everett's medical license has been revoked and he is not licensed to handle controlled substances in the State of Florida, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that State.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 828 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BE4443064, issued to Steven Tyler Everett, MD., be, and it hereby is revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are denied. This order is effective November 22, 2002.

Dated: September 30, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–26966 Filed 10–22–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Samuel Silas Jackson, D.D.S.; Revocation of Registration

On March 5, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Samuel Silas Jackson, D.D.S. of Nashville, Tennessee, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BJ5820558 under 21 U.S.C. 824(a)(2), (a)(3), and (a)(4), and deny any pending applications for renewal or modification of that registration for reason that Dr. Jackson was convicted of a felony offense related to controlled substances, is not authorized to handle controlled substances in the State of Tennessee, and his continued registration would be inconsistent with the public interest. The order also notified Dr. Jackson that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Jackson at his registered location in Nashville, Tennessee, and DEA received a signed receipt indicating that it was received on March 11, 2002. A second copy of the Order to Show Cause was sent by certified mail to Dr. Jackson at a location in Forrest City, Arkansas. DEA again received a signed receipt indicating that the Order to Show Cause was received on behalf of Dr. Jackson. DEA has not received a request for hearing or any other reply from Dr. Jackson or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Jackson is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on January 24, 2002, Dr. Jackson entered into an Agreed Order of Revocation with the Tennessee Department of Health, Board of Dentistry (the Board). As the caption of the order suggests, Dr. Jackson agreed to the revocation of his state license to practice dentistry. The Board found, *inter alia*, that Dr. Jackson entered into a conspiracy with a known drug trafficker/federal fugitive and with a confidential informant with the Drug Enforcement Administration; and that Dr. Jackson conspired with others to perform dental work and arrange for plastic surgery in California for two fugitives. These actions by Dr. Jackson were carried out for the purpose of altering the fugitives' dental records and physical appearance, and to aid their avoiding identification and apprehension by law enforcement officers. The Board also found that on or about March 16, 2000, Dr. Jackson entered a guilty plea in the United States District Court for the Middle District of Tennessee to one felony count of conspiracy to be an accessory after the fact, in violation of 18 U.S.C. 371 and 373.

There is no evidence in the record that Dr. Jackson's license to medicine in the State of Tennessee has been reinstated. Therefore, the Deputy Administrator finds that since Dr. Jackson is not currently authorized to practice medicine in the State of Tennessee, it is reasonable to infer that he is not authorized to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Joseph Thomas Allevi, M.D.,* 67 FR 35581 (2002); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988).

Here, it is clear that Dr. Jackson is not licensed to handle controlled substances in Tennessee, where he is registered with DEA. Therefore, he is not entitled to maintain that registration. Because Dr. Jackson is not entitled to a DEA registration in Tennessee due to his lack of state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether Dr. Jackson's registration should be revoked based upon the other grounds asserted in the Order to Show Cause. *See Nathaniel-Aikens-Afful, M.D.,* 62 FR 16871 (1997).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823

and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BJ5820558, issued to Samuel Silas Jackson, D.D.S., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective November 22, 2002.

Dated: October 1, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–26967 Filed 10–22–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP)–1364]

Office of Juvenile Justice and Delinquency Prevention: Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is announcing the meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention. The purpose of this meeting is for the Council to discuss its goals and priorities for Fiscal Year 2003, review the Annual Report to Congress, and be briefed on the impact of marijuana on youth.

This meeting will be open to the public. Members of the public who wish to attend the meeting should notify the Juvenile Justice Resource Center, at 301–519–6473 (this is not a toll-free number) by 5 p.m., ET, on Friday, November 1, 2002. For security purposes, photo identification will be required.

DATES: Friday, November 8, 2002, 10 a.m. to 1 p.m. (ET).

ADDRESSES: The meeting will take place at the U.S. Department of Justice, Office of Justice Programs, Main Conference Room, 3rd Floor, 810 Seventh Street NW., Washington, DC 20531.

Oral and Written Comments

Anyone who wishes to submit oral or written comments should contact Bob Hubbard, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, OJJDP, 810 Seventh Street, NW., Washington DC 20531; Telephone: 202–616–3567 (This is not a toll-free number); Fax: 202–307–2093; E-mail: *hubbard@ojp.usdoj.gov.* Requests for the opportunity to present oral comments at the meeting must be made in writing to Bob Hubbard and be received no later than 12 noon, Eastern Time, on Friday, November 1, 2002.

Public statements presented at the meeting should not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total of 10 minutes.

Written comments (at least 20 copies) may be mailed to the Office of Juvenile Justice and Delinquency Prevention, 810 7th Street NW., Washington, DC 20531, by October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting should contact Daryel Dunston, Program Manager, Juvenile Justice Resource Center, at 301–519–6473. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. Sec. 5601 *et seq.*). Documents such as meeting announcements, agendas, minutes, and interim and final reports will be available on the Council's Web page at *ojjdp.ncjrs.org/council/index.html.*

Dated: October 16, 2002.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–26881 Filed 10–22–02; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The NSF management officials having responsibility for the Oversight Council for the International Arctic Research Center (#9535) have determined that renewing this group for another year is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation, by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Service Administration.

For more information contact Susanne Bolton at (703) 292–7488.

Dated: October 18, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–26981 Filed 10–22–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Dates: November 6–8, 2002.

Time:

10 a.m.–5:30 p.m. Wednesday, November 6, 2002.

8:30 a.m.–5:30 p.m. Thursday, November 7, 2002.

8:30 a.m.–3 p.m. Friday, November 8, 2002.

Place: National Science Foundation, Stafford II, 4121 Wilson Boulevard, Suite 555 Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Thomas Spence, Directorate for Geosciences, National Science Foundation, Suite 705, 4101 Wilson Boulevard, Arlington, Virginia 22230, Phone 703–292–8500.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda:

Day 1: Education and Diversity Subcommittee Meeting, Division Subcommittee Meetings.

Day 2: Directorate activities and plans, Cross-directorate programs.

Day 3: Communications and Information Exchange, Priority areas, GPRA.

Dated: October 15, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–26982 Filed 10–22–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27]

BWX Technologies, Inc.

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of receipt of request from BWX Technologies, Inc. (BWXT), to amend Special Nuclear Material License SNM–42 to approve Industrial Waste Landfill No. 1, Decommissioning Plan and Final Status Survey Plan. The NRC

is providing a notice of an opportunity for a hearing.

SUMMARY: Notice is hereby given that the NRC has received, by letter dated June 11, 2002, a request from BWXT to amend its NRC Special Nuclear Material License SNM–42, to approve BWXT's Industrial Waste Landfill No. 1, Decommissioning Plan and Final Status Survey Plan (ADAMS Accession Number ML021690397). The NRC is providing a notice of an opportunity for a hearing.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Olivier, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8A33, Washington, DC 20555. Telephone (301) 415–8098.

SUPPLEMENTARY INFORMATION: By its submittal dated June 11, 2002, BWXT requested that the NRC amend Special Nuclear Materials License SNM–42 to approve BWXT's Industrial Waste Landfill No. 1, Decommissioning Plan and Final Status Survey Plan.

From 1972 until 1990, BWXT operated two industrial waste landfills at its Nuclear Products Division site. The first landfill was used from 1972 until 1976. The second landfill was used in two sections. The first section operated from 1977 until 1988; the second section operated from 1989 until 1990. Use of the landfills was discontinued after June 1990, because the filter cake material was found to contain low levels of radioactive contamination.

Both landfills were operated in a relatively similar manner. Filter cake material was placed in a series of parallel trenches. Each trench was excavated; sludge material was transported to the trench at one end and dumped by roto-hopper in piles until this area within the trench was full. Successive piles of filter cake material placed in the trenches were mounded above ground level. The volume of the filter cake placed in the trenches was reduced by approximately 30% after allowing it to dry, resulting in the mound above ground settling below grade. Excavated material from the trench was used as a cover of top soil approximately two feet in depth. The surface was then allowed to vegetate naturally.

The Decommissioning Plan and Final Status Survey Plan for Industrial Waste Landfill No. 1 were developed in accordance with 10 CFR 70.38 ''Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas'' and in response to a NRC letter dated February 26, 2001. Regulatory Guide 3.65, ''Standard Format and Content of Decommissioning Plans for Licensees Under 10 CFR parts 30, 40, and 70'' (NRC 1989), and draft NUREG/CR5849, ''Manual for Conducting Radiological Surveys in Support of License Termination'' (NRC 1992) were used in the development of the Decommissioning Plan and Final Status Survey Plan for Industrial Waste Landfill No. 1. BWXT's objective is to:

1. Demonstrate through characterization of the landfill, or portions thereof, that the average contamination levels meet the criteria of Option 1 of NRC's 1981 Branch Technical Position. (See 46 FR 52061, October 23, 1981).

OR

2. Demonstrate through characterization of the landfill that the average contamination levels, the characteristics of the material buried, and the site characteristics, meet the criteria of Option 2 to NRC's 1981 Branch Technical position. For those areas decommissioned under Option 2, capping of the landfill will be necessary to assure the minimum burial depth.

BWXT's June 11, 2002, request will be reviewed by the NRC staff using NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility,'' and NUREG–1748, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs.''

The amendment application is available for public inspection and copying at the NRC Public Document Room, U.S. Nuclear Regulatory Commission Headquarters, Room 0–1F21, 11555 Rockville Pike, Rockville, MD 20852.

Notice of Opportunity for Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR part 2, subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov.*

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The licensee, BWX Technologies, Inc., Nuclear Products Division, PO Box 785, Lynchburg, VA 24505–0785, Attention Mr. Carl Yates, Licensing Officer, and

(2) The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov.*

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to Michael Lesar, Chief, Rules Review and Directives Branch, Division of Administration Services, Office of

Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated in Rockville, Maryland, this 17th day of October, 2002.

For the U.S. Nuclear Regulatory Commission.

Eric J. Leeds,

Deputy Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–26983 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on October 28, 2002. The meeting will take place at the address provided below. All sessions of the meeting will be open to the public with the exception of the first session, which will be closed for a security briefing and to conduct administrative business related to internal personnel rules and/or practices of ACMUI members. Topics of discussion in the public session will include: (1) Status of the implementation of the revised title 10, Code of Federal Regulations, part 35; (2) Status of NUREG 1556, Vol. 9 (Consolidated Guidance About Materials Licensees: Program-Specific Guidance About Licenses of Broad Scope); (3) Status: ACMUI Subcommittee's training and experience recommendations as they pertain to the revised title 10 Code of Federal Regulations, part 35; and, (4) Discussion of the National Materials Program report.

DATES: The public meeting will be held on Monday October 28, 2002, from 10 a.m. to 5 p.m. The closed session will be held from 8 a.m. to 9:45 a.m on October 28.

ADDRESSES: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Conference Room T2B3, 11545 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Angela R. Williamson, telephone (301) 415–5030; e-mail *arw@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Conduct of the Meeting

Manuel D. Cerqueira, M.D., will chair the meeting. Dr. Cerqueira will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Angela Williamson, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, Washington, DC 20555–0001. Submittals must be postmarked by October 24, 2002, and must pertain to the topics on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's web site (*www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about December 3, 2002. Minutes of the meeting will be available on or about January 7, 2003.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in title 10, *U.S. Code of Federal Regulations*, part 7.

Dated: October 17, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–27003 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Plant Operations; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Plant Operations will hold a joint meeting on November 1, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, November 1, 2002—8:30 a.m. until the conclusion of business.

The joint Subcommittees will be briefed by the staff on progress related to two risk-informed regulatory programs under the scope of the Reactor Oversight Program (ROP), namely: (a) efforts to develop risk-informed improvements to the technical specifications, and (b) progress related to the Industry Trends Program (ITP) index for initiating events. This joint Subcommittee meeting is a follow-up to a prior briefing on the ROP at the 493rd meeting of the ACRS on June 6, 2002. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify one of the staff engineers named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding these matters.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Ms. Maggalean W. Weston (telephone: 301–415–3151) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 17, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–26997 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Safeguards and Security; Notice of Meeting

The ACRS Subcommittee on Safeguards and Security will hold a closed meeting on October 31, 2002, NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows:

Thursday, October 31, 2002—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the NRC's ongoing work on the evaluation of NRC license facilities for safeguards and security vulnerabilities. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Further information contact: Dr. Richard P. Savio (telephone 301/415–7363) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: October 17, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–26998 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Safety Research Program; Notice of Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on November 6, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, November 6, 2002—8:30 a.m. until the conclusion of business.

The Subcommittee will review the NRC safety research program and prepare a draft of the ACRS Annual Research Report to the Commission. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Dr. Richard P. Savio (telephone 301/415–7363) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the proposed agenda.

Dated: October 17, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–26999 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on November 12–14, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of portions that will be closed to discuss Framatome ANP-Richland proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, November 12, 2002—1 p.m. until the conclusion of business.

The Subcommittee will discuss the status of the Office of Nuclear Regulatory Research Rod Bundle Heat Transfer Program experiments being conducted at Pennsylvania State University.

Wednesday and Thursday, November 13–14, 2002—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the Framatome ANP-Richland S–RELAP5 realistic thermal-hydraulic code version and its application to large-break LOCA analyses. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, Framatome ANP-Richland and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 5 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 17, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–27000 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Thermal-Hydraulic Phenomena (GSI–189); Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena (GSI–189) will hold a meeting on November 5, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, November 5, 2002—8:30 a.m. until 12:30 p.m.

The purpose of this meeting is to discuss the results of additional analyses to quantify uncertainties to support the NRC Office of Nuclear Regulatory Research's proposed recommendation to resolve GSI–189, Susceptibility of Ice Condenser and Mark III Containments to Early Failure from Hydrogen Combustion During a Severe Accident. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301–415–3151) between 7:30 a.m. and 5 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 17, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–27001 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. (as shown in Attachment 1) EA–02–104]

Order Modifying Licenses (Effective Immediately)

In the Matter of All 10 CFR part 50 licensees who currently store or have near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72.

I

The licensees identified in Attachment 1 to this Order have been issued a general license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, 10 CFR part 50, and 10 CFR part 72. This Order is being issued to all licensees who currently store spent fuel or have identified near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require these licensees to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 2[1] of this Order, on all licensees who currently store spent fuel or have identified near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by the licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat

[1] Attachment 2 contains SAFEGUARDS information and will not be released to the public.

environment, all general licenses issued pursuant to 10 CFR 72.210 to the licensees identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in the circumstances described above, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72 and 73, it is hereby ordered, effective immediately, that all general licenses identified in Attachment 1 to this Order are modified as follows:

A. All licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan. The licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by April 16, 2003, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

B.1. All licensees shall, within 20 days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensees' justification for seeking relief from or variation of any specific requirement.

2. Any licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe storage of spent fuel must notify the Commission, within 20 days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. All licensees shall, within 20 days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 2.

2. All licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding the provisions of 10 CFR 72.186, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

Licensee responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 72.4. In addition, licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

IV

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[2]

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

For the Nuclear Regulatory Commission.

[2] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.

Dated this 16th day of October, 2002.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1—Address List

Oliver D. Kingsley, Jr., President and Chief Nuclear Officer, Dresden Nuclear Power Station, Docket No. 72–37, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555

Michael B. Sellman, President and CEO, Point Beach Nuclear Plant, Docket No. 72–5, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016

Michael B. Sellman, President and CEO, Palisades Plant, Docket No. 72–7, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016

Robert F. Saunders, President and Chief Nuclear Officer, Davis-Besse Nuclear Power Station, Docket No. 72–14, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308

Robert G. Byram, Senior Vice President & Chief Nuclear Officer, Susquehanna Steam Electric Station, Docket No. 72–28, PPL Susquehanna, LLC, 2 North Ninth Street, Allentown, PA 18101

Oliver D. Kingsley, Jr., President and Chief Nuclear Officer, Peach Bottom Atomic Power Station, Docket No. 72–29, Exelon Generation Company, 4300 Winfield Road, Warrenville, IL 60555

Michael S. Tuckman, Executive Vice President Nuclear Generation, Oconee Nuclear Station, Docket No. 72–40, Duke Energy Corporation, 526 South Church St, Mail Code EC 07 H, Charlotte, NC 28242

Michael S. Tuckman, Executive Vice President, Nuclear Generation, William B. McGuire Nuclear Station, Docket No. 72–38, Duke Energy Corporation, 526 South Church St, Mail Code EC 07 H, Charlotte, NC 28242

W.G. Hairston, III, President and Chief Executive Officer, Edwin I. Hatch Nuclear Plant, Docket No. 72–36, Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, AL 35242

Gary J. Taylor, Senior Vice President and Chief Operating Officer, Arkansas Nuclear One, Docket No. 72–13, Entergy Operations Inc., 1340 Echelon Parkway, Jackson, MS 39213

Harold B. Ray, Executive Vice President, San Onofre Nuclear Generating Station, Docket No. 72–41, Southern California Edison, 8631 Rush Street, Rosemead, CA 91770

James M. Levine, Executive Vice President and Chief Operating Officer, Palo Verde Nuclear Generating Station, Docket No. 72–44, Arizona Public Service Company, 400 North 5th Street, MS 9046, Phoenix, AZ 85004

J.V. Parrish, Chief Executive Officer, Columbia Generating Station, Docket No. 72–35, Energy Northwest, MD 1023, Snake River Warehouse, North Power Plant Loop, Richland, WA 99352

Michael B. Sellman, President and Chief Executive Officer, Duane Arnold Energy Center, Docket No. 72–32, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016

Robert A. Fenech, Senior Vice President, Nuclear, Fossil, and Hydro Operations, Big Rock Point Nuclear Plant, Docket No. 72–43, Consumers Energy Company, 212 West Michigan Avenue, Jackson, MI 49201

Michael Kansler, Senior Vice President and Chief Operating Officer, James A. Fitzpatrick Nuclear Power Plant, Docket No. 72–12, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601

Russell A. Mellor, President, Yankee Nuclear Power Station, Docket No. 72–31, Yankee Atomic Electric Company, 19 Midstate Drive, Suite 200, Auburn, MA 01501

Michael J. Meisner, Chief Nuclear Officer, Maine Yankee Atomic Power Station, Docket No. 72–30, Maine Yankee Atomic Power Company, 321 Old Ferry Road, Wiscasset, ME 04578–4922

K. J. Heider, Vice President—Operations and Decommissioning, Haddam Neck Plant, Connecticut Yankee Atomic Power Co., Docket No. 72–39, 362 Injun Hollow Road, East Hampton, CT 06424–3099

Oliver D. Kingsley, Jr. President and Chief Nuclear Officer, Oyster Creek Nuclear Generating Station, Docket No. 72–15, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555

John A. Scalice, Chief Nuclear Officer and Executive Vice President, Sequoyah Nuclear Plant, Docket No. 72–34, Tennessee Valley Authority, 6A Lookout Place, 1101 Market Street, Chattanooga, TN 37402–2801

W.G. Hairston, III, President and Chief Executive Officer, Joseph M. Farley Nuclear Plant, Docket No. 72–42, Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, AL 35242

[FR Doc. 02–26986 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. (as shown in Attachment 1) EA–02–104]

Order Modifying Licenses (Effective Immediately)

In the matter of: all 10 CFR part 72 licensees who currently store or have near term plans to store spent fuel in an ISFSI under the specific license provisions of 10 CFR part 72.

I

The licensees identified in Attachment 1 to this Order have been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, and 10 CFR part 72. This Order is being issued to all licensees who currently store spent fuel or have identified near term plans to store spent fuel in an ISFSI under the specific license provisions of 10 CFR part 72. Commission regulations at 10 CFR 72.184(b) require these licensees to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent,

interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 [1] of this Order, on all licensees who currently store spent fuel or have identified near term plans to store spent fuel in an ISFSI under the specific license provisions of 10 CFR part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by the licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all specific licenses issued pursuant to 10 CFR 72.40 to the licensees identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in the circumstances described above, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 72 and 73, it is hereby ordered, effective immediately, that all specific licenses identified in Attachment 1 to this Order are modified as follows:

A. All licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan. The licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by April 16, 2003, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

B.1. All licensees shall, within 20 days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensees' justification for seeking relief from or variation of any specific requirement.

2. Any licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe storage of spent fuel must notify the Commission, within 20 days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. All licensees shall, within 20 days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 2.

2. All licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding the provisions of 10 CFR 72.186, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

Licensee responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 72.4. In addition, licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

IV

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either

[1] Attachment 2 contains SAFEGUARDS information and will not be released to the public.

by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[2]

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

For the Nuclear Regulatory Commission.

Dated this 16th day of October, 2002.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1—Address List

Steve Redeker, Manager, Plant Closure & Decommissioning, Rancho Seco, Docket No. 72–11, Sacramento Municipal Utility District, 14440 Twin Cities Road, Herald, CA 95638

Stephen M. Quennoz, Vice President Power Supply/Generation, Trojan Nuclear Plant, Docket No. 72–17, Portland General Electric Company, 121 South West Salmon Street, Portland, OR 97204

Mr. Warren Bergholz, Acting Manager, Idaho Operations Office, Docket Nos. 72–9 and 72–20, U.S. Department of Energy, 850 Energy Drive, Idaho Falls, ID 83401

Michael B. Sellman, President and CEO, Prairie Island Nuclear Generating Plant, Docket No. 72–10, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016

Charles Cruse, Vice President—Nuclear Energy, Calvert Cliffs Nuclear Power Plant, Docket No. 72–8, Constellation Energy Group, Inc., 1650 Calvert Cliffs Pkwy, Office 2–OTF, Lusby, MD 20657

David Christian, Sr. Vice President Nuclear and Chief Nuclear Officer, North Anna Power Station, Docket No. 72–16, Virginia Electric & Power Company, 5000 Dominion Blvd., Glen Allen, VA 23060–6711

David Christian, Sr. Vice President Nuclear and, Chief Nuclear Officer, Surry Power Station, Docket No. 72–2, Virginia Electric & Power Company, 5000 Dominion Blvd., Glen Allen, VA 23060–7611

C.S. (Scotty) Hinnant, Senior Vice President and Chief Nuclear Officer, H.B. Robinson Steam Electric Plant, Docket No. 72–3, Progress Energy, Inc., 410 South Wilmington St., Raleigh, NC 27601

Michael S. Tuckman, Executive Vice President Nuclear Generation, Oconee Nuclear Station, Docket No. 72–4, Duke Energy Corporation, 526 South Church St, Mail Code EC 07 H, Charlotte, NC 28242

[FR Doc. 02–26987 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

[2] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Science and Technology Policy

AGENCY: Office of Science and Technology Policy.

ACTION: Notice of availability.

SUMMARY: The Office of Science and Technology Policy (OSTP) has finalized its Information Quality Guidelines, which describe OSTP's pre-dissemination information quality control and an administrative mechanism for requests for correction of information publicly disseminated by OSTP. The final Information Quality Guidelines are posted on OSTP's web site, *http://www.ostp.gov.*

DATES: OSTP's pre-dissemination review applies to information that OSTP first disseminates on or after October 1, 2002. OSTP's administrative mechanism for correcting information that OSTP disseminates applies to information that OSTP disseminates on or after October 1, 2002, regardless of when OSTP first disseminated the information.

FOR FURTHER INFORMATION CONTACT: Stan Sokul, Office of Science and Technology Policy, Washington, DC 20502. Telephone: (202) 456–7116.

SUPPLEMENTARY INFORMATION: Pursuant to prior Office of Management and Budget (OMB) guidance, on May 1, 2002, OSTP posted an initial draft of these guidelines on its web site, and published a Notice of their availability in the **Federal Register** seeking public comment by June 14, 2002. OSTP submitted draft guidelines to OMB on August 1, 2002, and revised draft guidelines again on September 24, 2002. These final guidelines reflect the results of the OMB review process.

In response to OSTP's **Federal Register** Notice, two public comments were received, from the Competitive Enterprise Institute (CEI) and the Center for Regulatory Effectiveness (CRE). Both public comments consisted of identical commentary on federal agency compliance with the Data Quality Act generally. In addition, the CRE comment enclosed a legal opinion stating that no agency dissemination of information should be excluded from the Data Quality Act (*i.e.*, challenging any exclusions to the definition of ''information''), and the CEI comment included an argument why OSTP should cease disseminating the National Assessment on Climate Change. OSTP also received a June 10, 2002, and a September 5, 2002, ''Memorandum for President's Management Council'' from OMB. These OMB Memoranda provided agencies with additional guidance on designing information quality guidelines.

OSTP modified its May 1, 2002, draft guidelines in several respects in response to the OMB Memoranda and in response to OSTP–OMB discussions as part of OMB's review of OSTP's draft guidelines, but made no alterations in response to the public comments. While in many instances the OSTP guidelines conformed to the CRE/CEI commentary or the commentary was not applicable, in several instances the CRE/CEI commentary did challenge OMB guidelines that OSTP had followed. OSTP interprets the statute, however, as giving OMB broad discretion in

providing guidance under the Data Quality Act to federal agencies, so OSTP did not alter its own guidelines to deviate from OMB's guidance. A summary of significant amendments to OSTP's initial draft guidelines follows, in order of the text:

A new paragraph 2 was added to section I, to clarify that OSTP will treat information quality as integral to every step of the information creation, collection, maintenance and dissemination processes.

Paragraph 12 of section II(B) was modified to state that when reviewing the quality of information being prepared by other agencies (*e.g.*, when OSTP coordinates an inter-agency drafting process), OSTP may request that the agencies certify in writing that the information they are providing complies with their own pre-dissemination review processes and that, upon such certification, OSTP can presume such information complies with the Data Quality Act and OMB's guidelines.

Paragraph 1 of section III(A), involving correction requests, was modified to state that OSTP's failure to comply with its own or OMB's information quality guidelines can form the basis of a complaint.

Paragraph 2 of section III(A) was modified to delete any specific timeliness requirements.

Paragraph 3 of section III(A) was modified to require a complaint to reference OSTP's or OMB's information quality guidelines as well as the information alleged to be incorrect.

Paragraph 7 of section III(A) was modified to clarify that requestors bear the burden of proof with respect to the necessity of a correction and the type of correction to be made.

A new subsection C, Rulemaking and Other Public Comment Procedures, was added to section III, to clarify the circumstances under which OSTP would make corrections during a notice and comment proceeding prior to final agency action in that proceeding.

In section V, Definitions, paragraph 2(f) was modified to clarify that information contained in testimony before the courts, administrative bodies or Congress is excluded from the definition of ''information'' only to the extent that the information contained in such testimony was already previously disseminated. Paragraph 3 was similarly modified with respect to information contained in press releases.

Paragraph 6(b)(ii)(A) of section V was modified to clarify that reproducibility of original and supporting data will be assured according to commonly accepted scientific, financial, or statistical standards.

Dated: October 16, 2002.

Barbara Ann Ferguson,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 02–26899 Filed 10–22–02; 8:45 am]

BILLING CODE 3170–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46668; File No. 10–132]

Acknowledgement of Receipt of Notice of Registration as a National Securities Exchange Pursuant to Section 6(g) of the Securities Exchange Act of 1934 by the Chicago Mercantile Exchange Inc.

October 16, 2002.

Section 6(g) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] provides that an exchange may register as a national securities exchange solely for the purposes of trading security futures products by filing a written notice with the Securities and Exchange Commission (''Commission'') if such exchange is designated as a contract market by the Commodity Futures Trading Commission or registered as a derivative transaction execution facility under section 5a of the Commodity Exchange Act.[2] Rule 6a–4 under the Exchange Act[3] requires that such an exchange submit written notice of registration to the Commission on Form 1–N.[4] An exchange's registration as a national securities exchange becomes effective contemporaneously with the submission of the written notice on Form 1–N.[5]

On August 29, 2002, the Chicago Mercantile Exchange Inc. (''CME'') filed a Form 1–N with the Commission.[6] Pursuant to section 6(g)(3) of the Exchange Act,[7] the Commission hereby acknowledges receipt of the Form 1–N, as amended, submitted by CME. Copies of the Form 1–N submitted by CME, including all exhibits, are available in the Commission's Public Reference Room, File No. 10–132.

For questions regarding this Release, contact: Theodore Lazo, Senior Special Counsel at (202) 942–0745, or Jennifer Colihan, Special Counsel at (202) 942–0735; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26884 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78f(g).

[2] 7 U.S.C. 7a.

[3] 17 CFR 240.6a–4.

[4] Upon receipt of a Form 1–N, the Division of Market Regulation examines the notice to determine whether all necessary information has been supplied and whether all other required documents have been furnished in proper form. Exchange Act Rule 202.3(b)(3), 17 CFR 202.3(b)(3).

[5] Section 6(g)(2)(B) of the Exchange Act.

[6] CME provided the Commission with an initial Form 1–N on December 29, 2001. On August 29, 2002, CME filed an amendment to its Form 1–N to complete the required exhibits.

[7] 15 U.S.C. 78f(g)(3).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–01185]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Chicago Stock Exchange, Inc. (General Mills, Inc., Common Stock, $.10 Par Value)

October 17, 2002.

General Mills, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.10 par value (''Security''), from listing and registration on the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'').

The Issuer states in its application that it has met the complied with the requirements of the CHX Article XXVIII, Rule 4, by complying with Exchange's rules governing an issuer's voluntary withdrawal of a security from listing and registration. In making the decision to withdraw the Security from listing and registration on the CHX, the Issuer considered the annual volume of its Security trading on the Exhange, and the cost and expenses to maintain a dual listing of its Security on the New York Stock Exchange, Inc. (''NYSE'') and on the CHX. The Issuer states that the Security has traded on the NYSE since 1928.

The Issuer's application relates solely to the withdrawal of the Security from listing on the CHX and shall have no affect upon the Security's continued listing and registration on the NYSE under Section 12(b) of the Act.[3]

Any interested person may, on or before November 7, 2002, submit by

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the CHX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–26931 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13776]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (GreenMan Technologies, Inc., Common Stock, $.01 Par Value) From the Boston Stock Exchange, Inc.

October 17, 2002.

GreenMan Technologies, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'').

The Issuer stated in its application that it has complied with the Rules of the BSE that govern the removal of securities from listing and registration on the Exchange. In making the decision to withdraw the Security from listing and registration on the BSE, the Issuer states that the Security began trading on the American Stock Exchange LLC (''Amex'') on September 20, 2002, and that during the last seven years, there has been no trading activity in the Security on the BSE.

The Issuer's application relates solely to the Security's withdrawal from listing on the BSE and shall not affect its listing on the Amex or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before November 7, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–26928 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46670; File No. 10–134]

Acknowledgement of Receipt of Notice of Registration as a National Securities Exchange Pursuant to Section 6(g) of the Securities Exchange Act of 1934 by the Nasdaq Liffe Markets, LLC.

October 16, 2002.

Section 6(g) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] provides that an exchange may register as a national securities exchange solely for the purposes of trading security futures products by filing a written notice with the Securities and Exchange Commission (''Commission'') if such exchange is designated as a contract market by the Commodity Futures Trading Commission or registered as a derivative transaction execution facility under section 5a of the Commodity Exchange Act.[2] Rule 6a–4 under the Exchange Act [3] requires that such an exchange submit written notice of registration to the Commission on Form 1–N.[4] An exchange's registration as a national securities exchange becomes effective contemporaneously with the submission of the written notice on Form 1–N.[5]

On August 26, 2002, the Nasdaq Liffe Markets, LLC (''NQLX'') filed a Form 1–N with the Commission. Pursuant to section 6(g)(3) of the Exchange Act,[6] the Commission hereby acknowledges receipt of the Form 1–N submitted by NQLX.[7] Copies of the Form 1–N submitted by NQLX, including all exhibits, are available in the Commission's Public Reference Room, File No. 10–134.

For questions regarding this Release, contact: Theodore Lazo, Senior Special Counsel at (202) 942–0745, or Jennifer Colihan, Special Counsel at (202) 942–0735; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26886 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46669; File No. 10–133]

Acknowledgement of Receipt of Notice of Registration as a National Securities Exchange Pursuant to Section 6(g) of the Securities Exchange Act of 1934 by OneChicago, LLC

October 16, 2002.

Section 6(g) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] provides that an exchange may register as a national securities exchange solely for the purposes of trading security futures products by filing a written notice with the Securities and Exchange Commission (''Commission'') if such exchange is designated as a contract market by the Commodity Futures Trading Commission or registered as a derivative transaction execution facility under section 5a of the Commodity Exchange Act.[2] Rule 6a–4 under the Exchange Act [3] requires that such an exchange submit written notice of registration to the Commission on Form 1–N.[4] An exchange's registration

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[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78f(g).

[2] 7 U.S.C. 7a.

[3] 17 CFR 240.6a–4.

[4] Upon receipt of a Form 1–N, the Division of Market Regulation examines the notice to determine whether all necessary information has been supplied and whether all other required documents have been furnished in proper form. Exchange Act Rule 202.3(b)(3), 17 CFR 202.3(b)(3).

[5] Section 6(g)(2)(B) of the Exchange Act.

[6] 15 U.S.C. 78f(g)(3).

[7] Commissioner Goldschmid did not participate in this matter.

[1] 15 U.S.C. 78f(g).

[2] 7 U.S.C. 7a.

[3] 17 CFR 240.6a–4.

[4] Upon receipt of a Form 1–N, the Division of Market Regulation examines the notice to determine whether all necessary information has been

as a national securities exchange becomes effective contemporaneously with the submission of the written notice on Form 1–N.[5]

On August 22, 2002, OneChicago, LLC (''OneChicago'') filed a Form 1–N with the Commission. Pursuant to section 6(g)(3) of the Exchange Act,[6] the Commission hereby acknowledges receipt of the Form 1–N submitted by OneChicago. Copies of the Form 1–N submitted by OneChicago, including all exhibits, are available in the Commission's Public Reference Room, File No. 10–133.

For questions regarding this Release, contact: Theodore Lazo, Senior Special Counsel at (202) 942–0745, or Jennifer Colihan, Special Counsel at (202) 942–0735; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26885 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–16079]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC; (PracticeWorks, Inc., Common Stock, $.01 Par Value)

October 17, 2002.

PracticeWorks, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on August 13, 2002 to withdraw the Issuer's Security from listing on the Amex. The Issuer states that trading in the Security on the Nasdaq National Market commenced on October 1, 2002. The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before November 7, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–26930 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14760]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (RAIT Investment Trust, Common Stock of Beneficial Interest, $.01 Per Share) From the American Stock Exchange LLC

October 17, 2002.

RAIT Investment Trust, a Maryland real estate investment trust (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock of Beneficial Interest, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in State of Maryland, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on January 11, 2002 to withdraw the Issuer's Security from listing on the Amex. The Issuer states that the Security has traded on the New York Stock Exchange, Inc. (''NYSE'') since January 2002. The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and shall not affect its listing on the NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before November 7, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–26929 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25772; 812–12518]

BLDRS Index Funds Trust, Series 1, *et al.*; Notice of Application

October 17, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under (a) section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 4(2), 14(a), 22(d), 24(d) and

supplied and whether all other required documents have been furnished in proper form. Exchange Act Rule 202.3(b)(3), 17 CFR 202.3(b)(3).

[5] Section 6(g)(2)(B) of the Exchange Act.

[6] 15 U.S.C. 78f(g)(3).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

26(a)(2)(C) of the Act and rule 22c–1 under the Act, (b) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and (c) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Applicants: BLDRS Index Funds Trust, Series 1, 2, 3, 4, 5, 6 and 7 (the ''Fund''), Nasdaq Financial Products Services, Inc. (together with its successors in interest,[1] and with any person, directly or indirectly, controlling, controlled by, or under common control with, Nasdaq Financial Products Services, Inc., ''Sponsor''), and ALPS Distributors, Inc. (''Distributor'').

Summary of Application: Applicants request an order that would permit the following: (a) The Fund, a unit investment trust (''UIT'') with multiple series (each series, a ''Trust'') whose portfolios will consist of the component stocks of various specified indices (collectively, the ''Benchmark Indices,'' and each, a ''Benchmark Index''), to issue shares (''Trust Shares'') that are only redeemable in Creation Unit aggregations (as defined below); (b) secondary market transactions in Trust Shares to occur at negotiated prices; (c) dealers to sell Trust Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 (''Securities Act''); (d) the Trust, rather than the Sponsor, to bear certain expenses associated with its creation and maintenance; (e) certain ''affiliated persons'' of the Trust to deposit securities into, and receive securities from, the Trust in connection with the purchase and redemption of Trust Shares; and (f) the Trust to reimburse the Sponsor for payment of an annual licensing fee to The Bank of New York (''BoNY''). The order also would exempt the Sponsor from the Act's requirement that it purchase, or place with others, $100,000 worth of Trust Shares.

Filing Dates: The application was filed on May 15, 2001, and amended on October 15, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 November 7, 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, c/o John L. Jacobs, Executive Vice President, The Nasdaq Stock Market, Inc., 1735 K Street, NW., Washington, DC 20006–1500.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, or Michael W. Mundt, Senior Special Counsel, 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 at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. Each Trust is a unit investment trust that will be organized under the laws of the State of New York. Sponsor is a wholly owned subsidiary of The Nasdaq Stock Market, Inc. (''Nasdaq''). The Bank of New York (''BoNY'') will act as trustee to the Trusts (''Trustee'') pursuant to a trust agreement entered into by and between BoNY and the Sponsor (the ''Trust Agreement''). Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act'') and will serve, on an agency basis, as principal underwriter of the Trusts.

2. Each Trust will hold a portfolio of securities (''Portfolio Securities'') consisting of substantially all of the securities in substantially the same weighting as the component securities of the Benchmark Index that it tracks (the ''Index Securities''). There are seven initial Trusts. The Benchmark Indices for the seven initial Trusts (the ''Initial Benchmark Indices'') will be compiled by BoNY (the ''BoNY Index Provider'').[2] Pursuant to guidelines adopted by BoNY for the Index Provider, the BoNY personnel involved in compiling the Benchmark Indices cannot include any BoNY employees who are members of the BoNY division that provides trustee services to the Trusts, any broker-dealer affiliated with BoNY, BoNY's asset management division, or BoNY's private banking group.

3. In the future, applicants may offer additional Trusts based on other Benchmark Indices (''Future Trusts''). Any Future Trust will (a) be organized under New York state law pursuant to a trust agreement substantially identical to the Trust Agreement, (b) be sponsored by the Sponsor, and (c) comply with the terms and conditions of the requested order. No entity that creates, compiles, sponsors or maintains a Benchmark Index will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Sponsor, Distributor or promoter of the Trust.

4. Trust Shares, units of beneficial interest in the Trusts, are designed to provide investors with an instrument that closely tracks the Benchmark Indices, trades like a share of common stock, and pays periodic dividends proportionate to those paid by the Portfolio Securities held by the Trust.[3] The Trustee will make adjustments to the Portfolio Securities to reflect changes made by the BoNY Index Provider to the composition and weighting of the Index Securities.[4] All adjustments to the Portfolio Securities will be made by the Trustee as set forth in the Trust Agreement and will be non-discretionary. Applicants state that the Trustee, consistent with its fiduciary

[1] ''Successors in interest'' means any entity or entities that result from a reorganization into another jurisdiction, or a change in the type of business organization.

[2] The Initial Benchmark Indices are the (a) BoNY Asia 50 ADR Index, (b) BoNY Developed Markets 100 ADR Index, (c) BoNY Emerging Markets 50 ADR Index, (d) BoNY Europe 100 ADR Index, (e) BoNY Latin America 35 ADR Index, (f) BoNY International 100 Index, and (g) BoNY International Telecom 35 ADR Index. The Initial Benchmark Indices are sub-indices of the BoNY ADR Index, which is an index of all U.S. exchange-listed Depositary Receipts (''DRs''), subject to certain eligibility requirements. Applicants note that BoNY is a prominent participant in the DR market, and receives various fees and commissions in connection with its DR program functions. BoNY has informed applicants that the index compilation is bound by objective criteria, and that the identity of the depositary bank for a DR is never a criterion in the selection of Index Securities. As discussed in the application, BoNY represents that its DR sales efforts are not coordinated with the compilation of the Benchmark Indices.

[3] The Trusts will make quarterly distributions when dividends on the Portfolio Securities and other income of the Trust, if any, exceed fees and expenses accrued by the Trust during the previous quarter. The Trustee may vary the frequency of dividend distributions under certain circumstances.

[4] The BoNY Index Provider determines, comprises and calculates Benchmark Indices without regard to any Trust. BoNY has instituted formal firewall procedures to ensure that no BoNY personnel involved in providing trustee services to the Trusts have access to information regarding changes to the Benchmark Indices prior to their public announcement.

duties, may utilize a broker-dealer that is an ''affiliated person,'' as defined in section 2(a)(3) of the Act, of the Trustee (each, an ''Affiliated Broker-Dealer'') in executing the transactions that are necessitated by the required adjustment(s). Applicants state that neither BoNY nor any Affiliated Broker-Dealer purchases or sells DRs on a principal basis, or intends to sell DRs or any other securities to any Trust on a principal basis. BoNY and its Affiliated Broker-Dealers would engage in transactions with a Trust on an agency basis only.[5]

5. Each Trust will pay the Trustee a fee ranging from 0.06% to 0.10% of the net asset value (''NAV'') of the Trust on an annualized basis, such percentage to vary based on the NAV of the Trust. The Trustee in its discretion may waive all or any portion of such fee. Trust fees and expenses will be paid first out of income received by the Trust in the form of dividends and other distributions on Portfolio Securities.[6]

6. Pursuant to a license agreement (''License Agreement''), the BoNY Index Provider has granted Sponsor a license to use the Benchmark Indices and certain trademarks of BoNY. Sponsor will pay the BoNY Index Provider an annual licensing fee for each Benchmark Index and will seek reimbursement from each Trust for the fee charged in connection with its Benchmark Index. Sponsor will pay Distributor a flat annual fee for services provided to the Trusts. Sponsor will not seek reimbursement from any Trust for such payment without obtaining prior exemptive relief from the Commission.

7. Trust Shares will be issued in aggregations of 50,000 shares (''Creation Units''). The price of a Creation Unit for each of the initial Trusts will be approximately $2,500,000. Orders to purchase Creation Units generally must be delivered to the Distributor through a party that has executed a participant agreement with the Distributor and Trustee, and is either (a) a participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC,'' and the NSCC process of placing orders, the ''Trust Shares Clearing Process''), or (b) a Depository Trust Company (''DTC'') participant.

8. An investor wishing to purchase a Creation Unit from the Trust will have to transfer to the Trustee a ''Portfolio Deposit,'' consisting of the following: (a) A portfolio of securities substantially similar in composition and weighting to the Index Securities (''Deposit Securities''); (b) a cash payment equal to the dividends accrued on the Portfolio Securities since the last dividend payment on the Portfolio Securities, net of expenses and liabilities (''Income Net of Expense Amount''); and (c) a cash payment or credit to equalize any differences between the market value of the Deposit Securities and the NAV of the Trust on a per Creation Unit basis (''Balancing Amount,'' and together with the Income Net of Expense Amount, the ''Cash Component'').[7] The Sponsor, or its designee, will make available on each business day a list of the names and the required number of shares of each of the Deposit Securities in the current Portfolio Deposit, as well as the Income Net of Expense Amount, effective through and including the previous business day, per outstanding Trust Share.[8] The Sponsor will make available on the Exchange, every 15 seconds of each business day, the sum of the Income Net of Expense Amount and the value of the Deposit Securities, on a per Trust Share basis. An investor making a Portfolio Deposit will be charged a service fee (''Transaction Fee'') to be paid to the Trustee to defray the Trustee's costs in processing transactions for the Trust.[9]

9. Orders to purchase Creation Units will be placed with the Distributor, who will be responsible for transmitting orders to the Trustee. The Distributor will issue confirmations of acceptance, issue delivery instructions to the Trustee to implement the delivery of Creation Units, and maintain records of the orders and the confirmations. The Distributor also will be responsible for delivering prospectuses to purchasers of Creation Units and may provide certain other administrative services.

10. Persons purchasing Creation Units from the Trust may hold the Trust Shares or sell some, or all, of them in the secondary market. Trust Shares will be listed either on a national securities exchange, as defined in section 2(a)(26) of the Act, or on the Nasdaq Stock Market, Inc. (''Nasdaq'') with respect to National Market Securities as designated by Nasdaq pursuant to rule 11Aa3–1(6) under the Exchange Act, which is a subset of national market system securities, as defined by rule 11Aa2–1 under the Exchange Act (each, an ''Exchange''). Trust Shares will be traded in the secondary market as individual units (*i.e.*, in less than Creation Unit aggregations) in the same manner as other equity securities. Trust Shares of the initial Trusts will be listed on Nasdaq. The price of each Trust Share that trades on Nasdaq will be based on the current bid-offer market. Applicants expect the price of the initial Trust Shares trading on Nasdaq to be approximately $50 per Trust Share. Transactions involving Trust Shares on Nasdaq will be subject to customary brokerage commissions and charges. Applicants expect that the price at which Trust Shares trade will be disciplined by arbitrage opportunities created by the continuous ability to purchase or redeem Creation Units at their NAV, which should ensure that Trust Shares will not trade at a material premium or discount in relation to their NAV.[10]

[5] BoNY has adopted firewall procedures that prohibit communications regarding changes or proposed changes to the Benchmark Indices between any Affiliated Broker-Dealer and the BoNY personnel involved in the compilation of the Benchmark Indices.

[6] Applicants expect that the income of the Trust may be insufficient to pay the fees and expenses of the Trust. In such circumstances, the Trustee will sell Portfolio Securities to generate sufficient cash to pay the Trust fees and expenses in excess of Trust income. The Trustee is ordinarily required to sell Portfolio Securities whenever the Trustee determines that accrued fees and expenses exceed dividends and other Trust accrued income on a projected basis by more than 0.01% of the NAV of the Trust.

[7] At the close of the market on each business day, the Trustee will calculate the NAV of each Trust, divide that amount by the total number of shares outstanding (yielding a ''Per Trust Share NAV''), multiply the Per Trust Share NAV by the number of Trust Shares in a Creation Unit (*e.g.*, 50,000), thereby calculating the NAV per Creation Unit. The Trustee will then calculate the required number of shares of Index Securities and the Cash Component that will comprise a Portfolio Deposit for the following business day.

[8] The cash equivalent of an Index Security may be included in the Cash Component of a Portfolio Deposit in lieu of the Index Security if (a) the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for inclusion in a Portfolio Deposit, or (b) a particular investor is restricted from investing or engaging in transactions in the Index Security (for example, when the investor is a broker-dealer restricted by regulation or internal policy from investing in securities issued by a company on whose board of directors one of its principals serves or when the investor is a broker-dealer and the security is on its ''restricted list'').

[9] The Transaction Fee will be $10 per each security ''name'' (*i.e.*, each security identified by a separate CUSIP number) in the Portfolio Deposit, rounded to the nearest $500 per Participating Party (as defined below) per day, regardless of the number of Creation Units purchased by such Participating Party on such day. ''Participating Party'' means an NSCC participant who may place orders through the Trust Shares Clearing Process. The Transaction Fee may be changed by the Trustee with the Sponsor's consent, but will not exceed 0.20% of the value of a Creation Unit. Investors who purchase Creation Units outside the Trust Shares Clearing Process will pay the Transaction Fee plus an amount not to exceed three times the Transaction Fee. The amount of the Transaction Fee will be disclosed in the prospectus for the Trust.

[10] Applicants do not anticipate any special liquidity issues as to constituents in the Initial Benchmark Indices, in light of the fact that constituent DRs are selected based on liquidity that is high relative to DRs that would otherwise fit the relevant criteria. The constituent DRs of the Initial

Continued

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs, which could include institutional investors. Nasdaq market makers also may purchase Trust Shares in connection with their market making activities.[11] Applicants anticipate that several parties will act as market makers on Nasdaq, resulting in a highly efficient market for Trust Shares. Applicants expect that secondary market purchasers of Trust Shares will include both institutional and retail investors.[12]

12. Applicants will make available a standard Trust Shares product description (''Product Description'') to members and member organizations of the relevant Exchange for distribution to investors purchasing Trust Shares in accordance with the Exchange's rules. The rules of the National Association of Securities Dealers (''NASD'') require that NASD members distribute a Product Description to all purchasers of Trust Shares. The Product Description will provide a plain English overview of the relevant Trust, including the material risks and potential rewards of owning Trust Shares, and disclose the salient aspects of Trust Shares. The Product Description will advise investors that a prospectus for Trust Shares is available without charge upon request from the investor's broker or from the Distributor. Applicants believe that the volume of purchase transactions in which an investor will not receive a Product Description will not constitute a significant portion of the market activity in Trust Shares.

13. Trust Shares will not be individually redeemable, except upon termination of the Trust. Trust Shares will be redeemable in Creation Unit aggregations only. An investor redeeming a Creation Unit will receive a portfolio of securities typically identical in composition and weighting to the Deposit Securities as of the date the redemption request was made (''Redemption Securities''). The redeeming investor may receive the cash equivalent of an Index Security (a) when the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for delivery by the Trust, or (b) upon the request of the redeeming investor (because, for example, the redeeming investor is restricted by regulation or otherwise from holding an Index Security). The redeeming investor also may receive, or may pay, cash in an amount equal to the Cash Component in effect on the relevant business day for Portfolio Deposits (''Cash Redemption Amount''). The redeeming investor will pay a Transaction Fee, which will be calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit on the relevant business day.

14. Because each Trust will ordinarily redeem in kind, rather than in cash, the Trustee will not have to maintain cash reserves for redemptions. This will allow the assets of each Trust to be committed as fully as possible to tracking the relevant Benchmark Index, and allow each Trust to track the relevant Benchmark Index more closely than other market basket products that must allocate a portion of their assets to cash for redemptions.

Applicants' Legal Analysis

1. Applicants request an order under (a) section 6(c) of the Act granting an exemption from sections 2(a)(32), 4(2), 14(a), 22(d), 24(d) and 26(a)(2)(C) of the Act and rule 22c–1 under the Act, (b) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and (c) section 17(d) and rule 17d– 1 under the Act to permit certain joint transactions.

2.Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and to the extent that 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.

Sections 4(2) and 2(a)(32) of the Act

3. Section 4(2) of the Act defines a UIT as an investment company that, among other things, issues only redeemable securities. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Trust Shares would not be individually redeemable, applicants request an order that would permit the Trust to register as a UIT and issue Trust Shares that are redeemable in Creation Units only. Applicants state that investors may purchase and redeem Trust Shares through the Trust in Creation Units. Applicants further state that, because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell individual Trust Shares in the secondary market at approximately NAV.

Section 14(a) of the Act

4. Section 14(a) of the Act provides, in pertinent part, that no registered investment company may make an initial public offering of its securities unless it has a net worth of at least $100,000, or provision is made in connection with the registration of its securities that (a) firm agreements to purchase $100,000 of its securities will have been made by not more than 25 persons, and (b) all proceeds, including sales loads, will be refunded to investors if the investment company's net worth is less than $100,000 within 90 days after the effective date of the registration statement. Applicants state that section 14(a) was designed to address the formation of undercapitalized investment companies.

5. Rule 14a–3 under the Act exempts from section 14(a) UITs that invest only in ''eligible trust securities,'' which do not include equity securities, subject to certain safeguards, including the refund of any sales load collected from investors. Applicants will comply in all respects with rule 14a–3, except that the Trust will not restrict its investments to ''eligible trust securities'' and the Trustee will not refund the Transaction Fee. Applicants contend that the Trust's investment in equity securities does not negate the effectiveness of the rule's safeguards nor subject investors to any greater risk of loss due to investment in an undercapitalized investment company. With respect to the Transaction Fee, applicants assert that it is not a sales load in that it is not a profit-based amount representing compensation to the Sponsor, but rather reimbursement of settlement costs incurred by the Trustee in connection with Portfolio Deposits. Applicants note that the Transaction Fee will be paid not

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Benchmark Indices are traded and priced on national securities exchanges and Nasdaq, as are the constituent securities of other indices on which exchange-traded funds investing in domestic securities are based. Accordingly, applicants believe that the pricing transparency for DRs should be equivalent to that of other securities that are traded and priced on national securities exchanges and Nasdaq. Because there are no apparent differences in the pricing transparency between DRs and such other equity securities, applicants believe that there will be no corresponding differences in, and no deleterious effects on, the arbitrage efficiency of the Trusts.

[11] The listing requirements established by Nasdaq require that at least two market makers be registered in Trust Shares in order for the Trust to maintain a listing on Nasdaq. Registered market makers must make a continuous two-sided market in a listing or face regulatory sanctions. No particular market maker will be contractually obligated to make a market in Trust Shares.

[12] Trust Shares will be registered in book-entry form only. DTC or its nominee will be the record owner of all outstanding Trust Shares. Beneficial ownership of Trust Shares will be shown on the records of DTC or its participants.

by retail investors, but by institutional and other well-capitalized investors who can afford the purchase price of a Creation Unit, who are more sophisticated, and who do not require the protections of section 14(a).

Section 22(d) of the Act and Rule 22c–1 Under the Act

6. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at the current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV next computed after receipt of a tender of the security for redemption or of an order to purchase or sell the security. Applicants state that secondary market trading in Trust Shares will take place at negotiated prices, not at a current offering price described in the prospectus and not at a price based on NAV. Thus, purchases and sales of Trust Shares in the secondary market will not comply with section 22(d) and rule 22c–1, and applicants request an exemption from these provisions.

7. Applicants maintain that, while there is little legislative history regarding section 22(d), its provisions and those of rule 22c–1 appear to have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) assure an orderly distribution of shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price. Applicants believe that none of these purposes will be thwarted by permitting Trust Shares to trade in the secondary market at negotiated prices. Applicants state that secondary market trading in Trust Shares does not involve the Trust and cannot, therefore, result in dilution of Trust assets. Applicants also state that, to the extent different prices exist during a trading day, or from day to day, for Trust Shares, such variances occur as a result of third-party market forces, such as supply and demand, and not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in Trust Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Trust Shares and their NAV remains narrow.

Section 24(d) of the Act

8. Section 24(d) of the Act provides, in pertinent part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by a UIT. Applicants request an exemption from section 24(d) to permit dealers in Trust Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[13]

9. Applicants state that the secondary market for Trust Shares is significantly different from the typical secondary market for UIT securities, which is usually maintained by the sponsor of the UIT. Trust Shares will be listed on an Exchange and will be traded in a manner similar to the shares of common stock issued by operating companies and closed-end investment companies. Dealers selling shares of operating companies and closed-end investment companies in the secondary market are generally not required to deliver a prospectus to a purchaser.

10. Applicants contend that Trust Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Trust Shares will be exchange-listed, prospective investors will have access to several types of market information about the product. Applicants state that quotations, last sale price, and volume information will be continually available on a real-time basis through the consolidated tape and will be available throughout the day on broker's computer screens and other electronic services. The previous day's price and volume information also will be published in the financial section of newspapers. The Sponsor will publish daily, on a per Trust Share basis, the Income Net of Expense Amount. Applicants also provide that the Fund's Web site will contain quantitative information, updated on a daily basis, regarding the previous business day's NAV and the reported closing price. The Web site also will include for each Trust, a calculation of the premium or discount of the closing price against NAV and data, in chart format, displaying the frequency distribution of discounts and premiums of the closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

11. In addition, secondary market purchasers generally will receive the Product Description. Applicants state that, while the Product Description is not intended as a substitute for a prospectus, it will contain pertinent information about Trust Shares. Applicants also note that Trust Shares will be understandable to retail investors as a product that tracks the Benchmark Indices.

Section 26(a)(2)(C) of the Act

12. Section 26(a)(2)(C) of the Act requires, among other things, that a UIT's trust indenture prohibit payments to the trust's depositor (in the case of a Trust, the Sponsor), and any affiliated person of the depositor, except payments for performing certain administrative services. Applicants request an exemption from section 26(a)(2)(C) to permit any Trust to reimburse the Sponsor for certain licensing, registration, and marketing expenses.

13. Applicants state that, ordinarily, a sponsor of a UIT has an opportunity to profit in connection with the creation of a trust in two ways—through the difference between the acquisition cost of the securities and their value on the date of deposit in the trust and, to the extent a secondary market is maintained for units, through the imposition of sales charges on resales of units. Expenses normally incurred in the creation and maintenance of a trust can then be offset against such profits. Applicants assert, however, that under the proposed structure, the usual sources of income are not available because the Sponsor will not impose a sales load or deposit Index Securities

[13] Applicants are not seeking relief from the prospectus delivery requirement for non-secondary market transactions, including purchases of Creation Units or those involving an issuer. Applicants state that persons purchasing Creation Units will be cautioned in the prospectus that some activities on their part may, depending on the facts and circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Trust Shares, and sells Trust Shares directly to its customers, or if it chooses to couple the purchase of a supply of new Trust Shares with an active selling effort involving solicitation of secondary market demand for Trust Shares. The prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus will also state that dealers who are not ''underwriters'' but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Trust Shares that are part of an ''unsold allotment'' within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

into the Trust. Though the Trusts will be listed on Nasdaq (the parent company of Sponsor), which will receive trading fees in connection with the trading of Trust Shares on Nasdaq, the Sponsor will not be involved in the maintenance of a secondary market for Trust Shares. Applicants contend that motivation for the limitations imposed in section 26(a)(2)(C) of the Act was the fear that sponsors could take unfair advantage of a trust to profit, when profits were already being generated through sales charges and market gains (on the securities deposited by the sponsor). Applicants contend that in the proposed structure, no such opportunity to profit exists for Sponsor.

14. Applicants state that permitting a Trust to reimburse the Sponsor for the Trust's expenses, as discussed above, would be no more disadvantageous to the holders of Trust Shares than allowing the expenses to be imposed indirectly as offsets to sales loads and other charges, as is done by typical UITs. Applicants state that a Trust will pay the Sponsor only its actual out-of-pocket expenses. Finally, applicants state that the payment is capped at 30 basis points of the Trust's NAV on an annualized basis, with any expenses in excess of that amount to be absorbed by the Sponsor.

Section 17(a) of the Act

15. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from, the investment company. Section 2(a)(3) defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person, and any person controlling, controlled by or under common control with the other person. Section 2(a)(9) provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that, because the definition of ''affiliated person'' includes any person owning 5% or more, or more than 25%, of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be an affiliated person of the Trust so long as 20 or fewer Creation Units are in existence. Applicants request an exemption from section 17(a) under section 6(c) and 17(b) to permit persons that are affiliated persons solely by virtue of a 5% or more, or more than 25%, ownership interest in a Trust (or affiliated persons of such persons that are not otherwise affiliated with the Trusts) to purchase and redeem Creation Units through in-kind transactions.

16. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and with the general provisions of the Act. Applicants assert that no useful purpose would be served by prohibiting the affiliated persons described above from making in-kind purchases and redemptions of Creation Units. The composition of a Portfolio Deposit made by a purchaser, like the Redemption Securities and Cash Redemption Amount given to a redeeming investor, will be the same regardless of the investor's identity, and will be valued under the same objective standards applied to valuing the Portfolio Securities in connection with determining the Trust's NAV. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons described above to effect a transaction detrimental to other holders of Trust Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Funds.

Section 17(d) of the Act and Rule 17d–1 Under the Act

17. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of the affiliated person or the principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other arrangement or profit-sharing plan in which the investment company participates, unless an application regarding the joint transaction has been filed with the Commission and granted by order. Under rule 17d–1, in passing upon such applications, the Commission considers whether the participation of the registered investment company in the joint transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different or less advantageous than that of other participants.

18. Section 2(a)(3)(F) of the Act defines an ''affiliated person'' of another person to include, in the case of an unincorporated investment company not having a board of directors, its depositor. Applicants state that the Sponsor may be deemed to be an affiliated person of a Trust because it will bear all aspects of the role of depositor in structuring and creating the Trust, other than that of actually depositing Portfolio Securities into the Trust.

19. Applicants request an order under rule 17d–1 that would permit a Trust to reimburse the Sponsor for the payment to the BoNY Index Provider of an annual license fee under the License Agreement. Applicants believe that relief is necessary because the Trust's undertaking to reimburse the Sponsor might be deemed a joint enterprise or other joint arrangement in which the Trust is a participant, in contravention of section 17(d) and rule 17d–1.

20. The License Agreement allows applicants to use the Benchmark Indices as bases for Trust Shares and to use certain of BoNY's trade name and trademark rights. Applicants believe that BoNY is a valuable name that is well-known to investors and believe that investors will desire to invest in instruments that closely mirror the Benchmark Indices. In view of this, applicants state that it is necessary to obtain from BoNY the License Agreement so that appropriate reference to BoNY may be made in materials describing Trust Shares and the Trust. Applicants assert that the terms and provisions of the License Agreement are comparable to the terms and provisions of other similar license agreements and that the annual license fee is for fair value, is in an amount comparable to that which would be charged by the BoNY Index Provider for similar arrangements, and is in an amount comparable to that charged by licensors in connection with the formation of other UITs based on other indices. For these reasons, applicants state that the proposed license fee arrangement satisfies the standards of section 17(d) and rule 17d–1.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a Future Trust by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Trust, either exemptive relief from the Commission or a no action letter from the Division of Investment Management of the Commission, or (b) the Future Trust will

be listed on an Exchange without the need for filing pursuant to rule 19b–4 under the Exchange Act.

2. The prospectus and the Product Description of each Trust will clearly disclose that, for purposes of the Act, Trust Shares are issued by that Trust and the acquisition of Trust Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as a Trust operates in reliance on the requested order, the Trust Shares will be listed on an Exchange.

4. The Web site for the Trusts, which will be publicly accessible at no charge, will contain the following information, on a per Trust Share basis, for each Trust: (a) The prior business day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Trust will state that the Web site for the Trusts has information about the premiums and discounts at which the Trust Shares have traded.

5. The prospectus and annual report for each Trust will also include: (a) the information listed in condition 4(b) above, (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable), and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Trust Share basis for one, five and ten year periods (or life of the Trust), (i) the cumulative total return and the average annual total return based on NAV and market price, and (ii) the cumulative total return of the relevant Benchmark Index.

6. Before a Trust may rely on the order, the Commission will have approved pursuant to rule 19b–4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Trust Shares to deliver a Product Description to purchasers of Trust Shares.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26933 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46666; File No. SR–MSRB–2002–09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of the Proposed Rule Change Relating to Arbitration

October 16, 2002.

On August 19, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–2002–09). The proposed rule change relates to MSRB Rule G–35, on arbitration.

The Commission published the proposed rule change for comment in the **Federal Register**, September 9, 2002.[3] The Commission did not receive any comment letters relating to the forgoing proposed rule change.

I. Description of the Proposed Rule Change

In 1997, the MSRB amended Rule G–35, on arbitration, to provide that it would not accept any new arbitration claims filed on or after January 1, 1998 (the ''1997 amendments'').[4] The MSRB noted that any customer or securities dealer with a claim, dispute or controversy against a broker, dealer or municipal securities dealer (''dealer'') involving its municipal securities activities may submit that claim to the arbitration forum of any self-regulatory organization (''SRO'') of which the dealer is a member, including the National Association of Securities Dealers, Inc. (''NASD''). Bank dealers, however, are unique in that they are subject to the MSRB's rules but are not members of any other SRO. Thus, it was necessary to provide an alternative arbitration forum for claims involving the municipal securities activities of bank dealers. The 1997 amendments accomplished this by providing that as of January 1, 1998 every bank dealer, as defined in Rule D–8,[5] shall be subject to the NASD's Code of Arbitration Procedure (the ''NASD's Code'') for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. Furthermore, the 1997 amendments required that bank dealers abide by the NASD's Code as if they were ''members'' of the NASD for purposes of arbitration.

At the time of the 1997 amendments, the MSRB stated that it would ''continue to operate its program in order to administer its current, open cases and any new claims received prior to January 1, 1998, but will discontinue administering its arbitration program when all such cases have been closed.''[6] The MSRB further stated that, at such time, it would submit a filing to the Commission to delete sections 1 through 37 of Rule G–35, and rescind Rule A–16, on arbitration fees and deposits.[7] On May 14, 2002, the MSRB transferred its final, open arbitration case to the NASD. There are no further arbitration cases pending before the MSRB. Accordingly, the MSRB submitted the proposed rule change to delete sections 1 through 37 of Rule G–35, on arbitration, and to rescind Rule A–16, on arbitration fees and deposits. The proposed rule change also incorporates by reference into Rule G–35 changes to the NASD's Code.[8] The MSRB notes that any customer or securities dealer with a claim, dispute or controversy against a bank dealer involving its municipal securities activities may continue to submit that claim to the NASD's arbitration program.

As noted in the 1997 amendments, the MSRB deems it no longer appropriate to administer an arbitration program. All non-bank dealers engaged in municipal securities activities are members of the NASD, and the NASD's arbitration program is available to those dealers and their customers for any claim, dispute or controversy arising out of, or in connection with, the municipal securities activities of such dealers. The MSRB believes that the proposed rule change provides for the protection of investors and the public interest including those investors who wish to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–46440 (August 30, 2002), 67 FR 57255.

[4] File No. SR–MSRB–1997–04, *approved* in Release No. 34–39378 (Dec. 1, 1997).

[5] Rule D–8 defines ''bank dealer'' to mean a municipal securities dealer which is a bank or a separately identifiable department or division of a bank as defined in Rule G–1.

[6] File No. SR–MSRB–1997–04 at page 2.

[7] *Id.* at page 3.

[8] In April 2002, at the request of the SEC's Division of Market Regulation, the MSRB requested that, pursuant to section 36 of the Act and Rule 0–12 thereunder, the SEC grant an exemption from the requirements of section 19(b) of the Act and Rule 19b–4 thereunder to allow the MSRB to incorporate by reference into Rule G–35 any changes to the NASD's Code without requiring that the MSRB submit a separate filing for each such change. *See* letter from Diane G. Klinke, General Counsel, MSRB, to Jonathan G. Katz, Secretary, SEC, dated April 4, 2002.

pursue arbitration claims against bank dealers in connection with their municipal securities activities by ensuring that there is an arbitration forum available (*i.e.*, the NASD arbitration program) for such claims.

II. Summary of Comments

The Commission did not receive any comment letters addressing the MSRB's proposed rule change.

III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Act and the rules and regulations thereunder, which govern the MSRB.[9] The language of Section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[10]

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would continue to subject bank dealers to the NASD's Code of Arbitration Procedure in connection with their municipal securities activities. Non-bank dealers already are subject to the NASD's Code by virtue of being NASD members.

After careful review, the Commission finds that the MSRB's proposed rule change relating to Rule G–35, on arbitration, meets the requisite statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of section 15B(b)(2)(C) of the Act, as set forth above.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[11] that the proposed rule change (File No. SR–MSRB–2002–09) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26887 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

[9] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78o–4(b)(2)(C).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

The Ticket To Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Meeting.

DATES: November 12, 2002, 10 a.m.–4:20 p.m.; November 13, 2002, 9 a.m.–5 p.m.; November 14, 2002, 9 a.m.–1:00 p.m.

ADDRESSES: Hyatt Regency Albuquerque, at Albuquerque Convention Center, 330 Tijeras NW., Albuquerque, NM 87102, (505) 842–1234, Fax: (505) 842–1184.

SUPPLEMENTARY INFORMATION:

Type of meeting: This is a quarterly meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress and the Commissioner of the Social Security Administration on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA and receive public testimony. The focus of this meeting will be on marketing, public education, training and technical assistance activities in support of implementation of TWWIIA.

The Panel will meet in person commencing on Tuesday, November 12, 2002 from 10 a.m. to 4:20 p.m.; Wednesday, November 13, 2002 from 9 a.m. to 5 p.m.; and Thursday, November 14, 2002 from 9 a.m. to 1 p.m.

Agenda: The Panel will hold a quarterly meeting. Briefings, presentations, full Panel deliberations and other Panel business will be held Tuesday, Wednesday and Thursday, November 12, 13, and 14, 2002. Public testimony will be heard in person Tuesday, November 12, 2002 from 3:50 p.m. to 4:20 p.m. and on Thursday, November 14, 2002 from 9 a.m. to 9:30 a.m. The Panel is particularly interested in hearing public comment regarding marketing, public education, training and technical assistance activities in support of implementation of TWWIIA.

Members of the public must schedule a timeslot in order to comment. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chairperson in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in person or by mail, fax or email on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Kristen M. Breland, at *kristen.m.breland@ssa.gov* or calling (202) 358–6423.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the meeting or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff,

400 Virginia Avenue, SW, Suite 700, Washington, DC, 20024.

• Telephone contact with Kristen Breland at (202) 358–6423.

• Fax at (202) 358–6440.

E-mail to *TWWIIAPanel@ssa.gov.*

Dated: October 15, 2002.

Deborah M. Morrison,

Designated Federal Officer.

[FR Doc. 02–26917 Filed 10–22–02; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority that covers the Social Security Administration (SSA). Notice is hereby given that Subchapter S4E, which covers the Office of Telecommunications and Systems Operations, is being amended to reflect a realignment of functions and renaming of one subordinate organization. The new material and changes are as follows:

Section S4E.10 The Office of Telecommunications and Systems Operations—(Organization)

Delete: K. The Division of Telecommunications Systems (S4EN)

Establish: K. The Division of Monitoring and Online Systems (S4EN)

Section S4E.10 The Office of Telecommunications and Systems Operations—(Functions)

Replace in its entirety:

D. Division of Systems User Services and Facilities (S4EE)

1. Provides all data center computer hardware implementation support for OTSO and coordinates the installation of all major hardware and software. Provides technical evaluation support for the procurement, acceptance, testing, installation and implementation of equipment and software.

2. Plans and coordinates computer facility environmental systems requirements. Provides computer facilities support for all Agency computer processing centers.

3. Provides a centralized contact for the management of all online storage media resources in the National Computer Center (NCC) and the Program Service Centers (PSC). Manages enterprise-level data storage resources in both mainframe and open systems environments to maintain the integrity, reliability, and performance of state-of-the-art storage technology. Responsible for all business critical data backup and recovery planning and operation. Advises Agency management on all aspects of data and storage media management.

4. Provides technical oversight for the Agency on high volume, enterprise-class printing technology and hardware. Responsible for reengineering SSA print workloads to take advantage of new print technology and automated mail insertion technology.

5. Provides all electronic scanning and imaging computer hardware and software implementation support for SSA. Coordinates the installation of all major scanning and imaging hardware and software. Provides technical evaluation support for the procurement, acceptance, testing, installation and implementation of scanning and imaging equipment and software.

6. Responsible for the design, development, acquisition, implementation and management of automated data center operations management hardware and software tools for OTSO.

G. The Division of Operational Capacity Performance Management (S4EJ)

1. Evaluates computer performance and monitors resource utilization to ensure that OTSO's operational computer systems capacity is utilized effectively and efficiently. Ensures that OTSO's systems performance objectives are being met and that databases are efficiently implemented. Prepares recommendations to OTSO management and as directed, performs similar functions for other SSA components.

2. Ensures that sufficient IT capacity is available to process present and future workloads, coordinating decisions on target systems for new/modified workloads and systems configuration changes.

3. Serves as the Office of Systems resource and repository for Enterprise Capacity Planning data and reporting.

4. Provides recommendations and services to other OTSO components in the interpretation of reports and data resulting from evaluation and utilization studies.

5. Uses operational research tools to investigate operational efficiency problems and develop workload and utilization relationships.

6. Responsible for analysis of configuration, topology, connectivity, automation and availability of SSA's national network in support of performance management, resource utilization and capacity planning. Responsible for long-term network management resource utilization reporting and problem management reporting.

7. Performs modeling and analysis of new applications and designs to determine performance impacts. Projects future capacity requirements for Enterprise Systems components and continually monitors performance to validate projections.

8. Collects data necessary to measure operations performance in providing timely output services as delineated in the Service Level Agreements (SLA). Prepares periodic reports on SLA compliance.

9. Identifies the cause of Enterprise performance problems and reports the findings.

10. Directs the design, development and implementation of software to gather and report statistical information on the functioning of SSA Enterprise Systems. Evaluates and implements COTS performance management software, and designs, develops and implements custom capacity performance data collection and reporting system. Distributes the information to other SSA components to report on performance and utilization.

11. Responsible for 800 number voice utilization data collection and reporting.

H. The Division of Telecommunications Security and Standards (S4EK)

1. Develops, publishes and implements standards and operating procedures within OTSO. Develops and controls enforcement mechanisms to ensure adherence to operational standards. Administers the Federal systems standards program within OTSO.

2. Directs the planning, implementation and evaluation of the systems security program in OTSO and SSA privacy and security policies.

3. Serves as OTSO liaison with other SSA components in matters of privacy and security. Provides for the security of all OTSO resources in the centralized OTSO computer boundaries established by the Deputy Commissioner for Finance, Assessment and Management.

4. Provides planning, evaluation and oversight on disaster recovery capabilities in order to maintain continuity of data center operations. Develops, implements and evaluates systems and procedures for the security and protection of data. Directs the continuity of operations program for OTSO.

I. The Division of Resource Management and Acquisition (S4EL)

1. Directs OTSO's participation in the Information Technology Systems (ITS) procurement process. Manages, plans,

and coordinates the activities relating to business and financial planning of SSA's telecommunications needs.

2. Performs technical and cost reviews of all OTSO/ITS procurements. Performs technical review of procurement proposals for ITS resources, network hardware, software and related services.

3. Provides support for ITS Technical Evaluation Committees.

4. Supports contract administration for all OTSO/ITS contracts.

5. Provides technical support to Project Officers in the development, modification and administration of ITS contracts.

6. Directs the renewal process for existing lease and maintenance contracts for ITS and telecommunications equipment and services.

7. Manages the fiscal administration of ITS contracts, collecting, analyzing and reporting performance data to support required fiscal and other contractual proceedings.

8. Provides for the centralized certification and authorization for the lease and maintenance of SSA's ITS and telecommunications equipment.

9. Provides necessary staff support to users within OTSO for the development of procurement documents and documentation.

10. Develops short-term and long-range tactical and strategic planning and maintains the OTSO macro-procurement plan which relates to planned acquisitions of ITS and telecommunications equipment, software, system design and system support services and implementation of telecommunication expansion.

11. Serves as Project Officer for ITS re-competition/ongoing maintenance contracts.

12. Provides technical support to OTSO and other SSA components during major procurement activities. Ensures that procurement documentation complies with directives published by SSA and higher monitoring authorities. Provides recommendations for disposition of procurement proposals for ITS resources.

13. Formulates an OTSO-wide Systems Plan and assigns responsibility to OTSO components for various parts of the Plan. Works with OTSO components to evaluate their proposed systems objectives in terms of technical feasibility, availability of resources and systems costs. Identifies the major OTSO activities and resources needed to support these objectives. Directs and coordinates the OTSO technical work-power, equipment and other special costs for the SSA budget process and justifies these on the basis of the President's Management Agenda and the Commissioner's priorities.

14. Directs the preparation of detailed project plans, including resource estimates for projects of which OTSO has the lead. Monitors progress and use of work-power and equipment resources by OTSO components against their approved plans. Develops standard methods for project management and assists OTSO components in their use.

15. Manages a centralized inventory of all SSA ITS and telecommunications equipment, and manages the ITS excess equipment process.

J. The Division of Integration and Environmental Testing (S4EM)

1. Directs and controls all activities with the release of new or enhanced versions of host, client/server, and web (internet/intranet) programmatic and telecommunications-related software. Enforces software acceptance and certifications standards. Directs the staging of program modules to be tested.

2. Develops and maintains extensive test databases for use in the acceptance, integration and environmental testing processes. Develops and incorporates the use of software simulators and emulators in software acceptance testing.

3. Directs the integration testing of new or enhanced communications host, client/server, and web (internet/intranet) software, and network communications software. Participates in the movement and/or migration of software systems and associated files between complexes and processing components. Directs the migration of web software.

4. Directs environmental testing to ensure that all new or enhanced software is compatible with changing hardware configurations. Directs the integration of new or enhanced SSA programmatic software. Administers the generation of finalized testing results for evaluation. Directs software performance evaluations, parallel testing, timing studies, inter/intra-system relationship and testing trend analysis.

5. Responsible for administering integration and acceptance testing for production IT hardware.

6. Provides the checks and balances on SSA's production IT systems and equipment procurement for complying with contractual performance requirements throughout the life cycle of the procurement.

7. For all host, client/server, and web (internet/intranet) application software, manages and controls libraries, controls and migrates software into the production environment. For host implementations, designs and develops backup and recovery procedures. For client/server, develops installation scripts for migration of software to production.

8. Administers all activities pertaining to configuration management for the OTSO change management system.

9. Responsible for SSANet software distribution and version management.

10. Serves as the focal point for release coordination activities for the integration and production phases of the life cycle for host, client/server and web (internet/intranet) applications.

11. Develops and maintains pristine workstation images for the configurations/builds in the production environment.

K. The Division of Monitoring and Online Systems (S4EN)

1. Procures, installs, modifies and tunes all online/batch teleprocessing monitor systems software, vendor support products, data base management systems, web based and middle-ware solutions. Designs, modifies, implements and installs specialized teleprocessing system software to support new teleprocessing application software including in-house modifications.

2. Directs the continuous monitoring of all teleprocessing, data base and middle-ware system software and performs problem determination and resolution.

3. Participates in the establishment of teleprocessing software standards for application design and for the use of data base packages within the SSA network environment. Formulates policy for data base applications software systems and monitors and optimizes performance of that software.

4. Develops teleprocessing software procedures for computer operations components.

5. Manages all online teleprocessing and data base management systems.

6. Installs and manages Unix operating systems on distributed data base and data base backup servers.

M. The Division of National Network Services and Operations (S4EQ)

1. Manages the installation, relocation and operation of SSA's telecommunications network facilities for the transmission of program and management data over SSA established networks.

2. Monitors telecommunications operations, analyzes equipment problems and effects proper maintenance and repair.

3. Develops and directs the implementation of new procedures and updates existing procedures for network node operations.

4. Reports outages to vendor management for prompt resolution and is responsible for the repair of advanced communications electronics equipment.

5. Provides emergency support services for equipment reconfiguration as well as repair, assembly/disassembly and installation of advanced telecommunications electronics.

6. Serves as the initial point of contact for user and technical problem determination for telecommunications. Diagnoses data-center hardware and network problems and coordinates network operations issues with applications and systems support staff.

7. Monitors and controls functions for the nationwide telecommunications system. Develops operational procedures to modernize and streamline network operation and develops plans for automation.

8. Manages traffic flow between telecommunications complexes and other SSA complexes.

9. Communicates status of the network to other network nodes and advises users of abnormal or extraordinary situations affecting network operations.

10. Monitors voice communications operations, analyzes equipment problems and effects proper maintenance and repair.

11. Directs all teleprocessing system software problem determination and resolution.

12. Coordinates with other OTSO components in addressing teleprocessing software concerns regarding system capacity issues and system configuration proposals.

13. Operates and maintains an integrated systems and technical coordination control center and help desk to coordinate problem identification and resolution activities.

14. Operates large scale computer resources providing level 3 monitoring and problem determination for large scale operations, online teleprocessing regions and data base management systems.

15. Provides operational status and workload information to field offices using the SSA telecommunications network. Provides statistical analyses of, and reports on, operations performance at meeting both user and computer center management service objectives.

16. Serves as focal point for all user systems problems, questions, complaints and corrective actions regarding the full range of production services.

O. The Division of Client/Server Configuration (S4ES)

1. Directs the design, development, implementation, maintenance and support of specialized data communications software (*i.e.*, Email and Remote LAN Access) to support SSA's international network (SSANet).

2. Manages and coordinates all change management system control relating to client server hardware and software changes to SSANet under the auspices of the change management facility.

3. Performs Level 3 client server monitoring and problem determination for the SSANet.

4. Interfaces with SSANet users to determine the impact of new applications and workloads and supports user liaison and systems development activities of other SSA components in the resolution of client server problems.

5. Manages client server software changes to ensure compatibility with hardware modifications at Central Office and all remote network platform locations.

6. Directs the planning, analysis and design of specialized client server software systems for providing information relevant to the development of existing and proposed client server systems.

7. Responsible for client server projects, including acquisition, implementation, integration and control.

8. Develops, disseminates and enforces standards and policies relating to workstations, workstation configurations, peripherals, LANs and LAN operating systems (OS).

9. Works with SSA users to provide solutions to LAN telecommunications needs that are consistent with SSA-network architecture policies; determines client server interfacing hardware needs, implementing solutions, planning and expansion; and determines staff hardware training needs. Assists SSA client server users in determining and refining services and support requirements, configuration and engineering solutions, planning for future needs, coordinating implementation and evaluating effectiveness.

10. Develops and distributes research papers on applied technology and its relationship to existing and future client server requirements. Also develops alternate systems configurations to meet specific alternative requirements (non-traditional technology approaches).

11. Solves client server problems by applying information on state-of-the-art OS, and client server hardware currently available in the marketplace. Develops turn-key client server systems and special menus to meet unusual customer requirements.

12. Works with SSA client server users at the headquarters' campus and at OHA, OGC and OIG sites as well as the state DDS sites; to develop, test and support component specific applications, initiatives and configurations.

13. Performs systems analysis, configuration design, and software selection, implementation and procurement support for microcomputers, minicomputers and computer graphics system and equipment for various components of OTSO. Provides state-of-the-art technical expertise including the evaluation of new and existing systems activities and provides support for enhancements, modifications, design and/or redesign. Researches and tests current off-the-shelf products for their network configuration to LAN and workstation needs. Researches and analyzes emerging office systems developments to ensure technology awareness and provide supporting systems development, design and planning implementation.

14. Responsible for all aspects of engineering (hardware and software), design, configuration, implementation and maintenance of host architecture for multiple remote LAN access/mobile computing solutions for SSA. Includes all private host/client architectures, Virtual Private Network, and wireless access to SSANet via computers and PDAs.

15. Conducts research and development of state-of-the-art technology for the purpose of remote connectivity as well as improved remote systems security. This includes potential hardware and software solutions as well as biometrics technology.

16. Supports multiple telecommunications methods of remote connectivity including analog, ISDN, Cable/DSL and Satellite for both mobile and static locations.

17. Conducts hardware evaluation for notebook-computer products that may be used for remote access agencywide, including addressing compatibility issues with existing product lines as well as Section 508 considerations.

18. Supports configuration management and installation of local area networks including building, configuring and imaging workstations and servers.

Dated: October 15, 2002.

Reginald F. Wells,

Deputy Commissioner for Human Resources.

[FR Doc. 02–26918 Filed 10–22–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4172]

Office of Foreign Missions; 30-Day Notice of Proposed Information Collection: Form DS–98, Application for Diplomatic Exemption from Taxes on Utilities; Form DS–99, Application for Diplomatic Exemption from Taxes on Gasoline; OMB Control Number 1405–0069

AGENCY: Department of State, Bureau of Diplomatic Security, Office of Foreign Missions.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Re-instatement without change of expired information collection.

Originating Office: Bureau of Diplomatic Security, Office of Foreign Missions, Vehicle, Tax and Customs Unit, DS/OFM/VTC/TC.

Title of Information Collection: Application for Diplomatic Exemption from Taxes on Utilities, (Form DS–98); Application for Diplomatic Exemption from Taxes on Gasoline (Form DS–99).

Frequency: Typically, several applications are submitted by the entitled individual at the beginning of their tour of duty, and then none afterwards.

Form Numbers: DS–98 and DS–99.

Respondents: Foreign diplomatic or consular missions and their personnel; certain foreign government organizations, designated international organizations and certain of their personnel; and foreign military personnel assigned to the staff of a foreign mission in the United States.

Estimated Number of Respondents: Form DS–98, approximately 1250 individual; 25 organizational respondents; Form DS–99, approximately 1660 individual respondents, 30 organizational respondents.

Average Hours Per Response: the average time per response is approx. 1 minute.

Total Estimated Burden: 49 hours.

Public comments are being solicited to permit the agency to:

- Enhance the quality, utility, and clarity of the information being collected.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection form and supporting documents may be obtained from Mr. Edmond McGill, U.S. Department of State, DS/OFM/VTC/TC, SA–33, 3501 International Place, NW., Washington, DC 20008, 202–895–3618.

Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: September 18, 2002.

Lynwood M. Dent Jr.,

Deputy Assistant Secretary of State and Deputy Director, Office of Foreign Missions, Bureau of Diplomatic Security, Department of State.

[FR Doc. 02–27008 Filed 10–22–02; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 4174]

Office of the Coordinator for Counterterrorism; Designation of Foreign Terrorist Organizations

AGENCY: Department of State.

Pursuant to section 219 of the Immigration and Nationality Act (''INA''), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104–132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104–208, 110 Stat. 3009 (1996) and by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, P.L. 107–56 (2001), the Secretary of State hereby designates, effective October 23, 2002, the following organization as a foreign terrorist organization: Jemaah Islamiya.

Dated: October 16, 2002.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 02–27146 Filed 10–22–02; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4171]

Notice of Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Constructed and Maintained on the Border of the United States

AGENCY: Department of State, Office of International Energy and Commodities Policy.

ACTION: Notice.

Notice is hereby given that the Department of State has received an application from PMI Services North America, Inc. (PMI) for a Presidential permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, authorizing the construction, connection, operation, and maintenance at the U.S.-Mexican border in the vicinity of Brownsville, Texas of a liquid pipeline capable of carrying refined petroleum products, including diesel, motor gasoline, jet fuel and liquefied petroleum gas, and related facilities.

PMI is a corporation organized and existing under the laws of the State of Delaware and with its principal office located in Houston, Texas. The proposed new 10-inch diameter pipeline would originate at an existing Transmontaigne Product Services, Inc. (TPSI) storage and distribution terminal at the Port of Brownsville, Texas and cover approximately 27 miles, crossing under the Rio Grande River and terminating at a currently existing PEMEX pipeline in Curva, Texas, Tamaulipas, Mexico. It is anticipated that initial deliveries of diesel to the United States will be approximately 10,000 barrels per day in Brownsville, but the pipeline capacity would be approximately 100,000 barrels of liquid petroleum product per day in either direction.

As required by E.O. 11423, the Department of State is circulating this application to concerned federal agencies for comment.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before November 22, 2002, to Pedro Erviti, Office of International Energy and Commodities Policy, Department of State,

Washington, DC 20520. The application and related documents that are part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of International Energy and Commodities Policy during normal business hours.

FOR FURTHER INFORMATION CONTACT: Pedro Erviti, Office of International Energy and Commodities Policy (EB/ESC/IEC/EPC), Department of State, Washington, DC 20520; or by telephone at (202) 647–1291; or by fax at (202) 647–4037.

Dated: October 17, 2002.

Matthew T. McManus,

Acting Director, Office of International Energy and Commodities Policy, Department of State.

[FR Doc. 02–27009 Filed 10–22–02; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that, as of the date of publication of this notice in the **Federal Register,** the Republic of Sierra Leone will begin receiving the trade benefits provided for in the African Growth and Opportunity Act for articles other than textiles and apparel.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Constance Hamilton, Senior Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106–200) (AGOA) provides trade benefits to the countries of sub-Saharan Africa to promote increased trade and investment between the United States and sub-Saharan Africa to promote increased trade and investment between the United States and sub-Saharan Africa and economic development in the region.

In Proclamation 7360 (Oct. 2, 2000), the President designated Sierra Leone as a ''beneficiary sub-Saharan African country,'' as well as a ''lesser developed beneficiary sub-Saharan African country,'' but with delayed implementation. Proclamation 7360 delegated to the USTR the authority to determine the effective date of the designation of Sierras Leone as a beneficiary sub-Saharan African country, and, therefore, the date upon which Sierra Leone will be considered a lesser developed beneficiary sub-Saharan African country and begin receiving the trade benefits of the AGOA for articles other than textiles and apparel. The President directed the USTR to announce any such determination in the **Federal Register.** Based on progress that Sierra Leone has made in stabilizing its political and security situation, I have determined that Sierra Leone should begin receiving the trade benefits of the AGOA for articles other than textiles and apparel, effective as of the date of the publication of this notice in the **Federal Register.** Sierra Leone may now begin the process to become eligible for the trade benefits of the AGOA for textile and apparel articles.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 02–26900 Filed 10–22–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of intent to prepare an environmental impact statement and conduct public scoping meetings.

SUMMARY: This Notice provides information to Federal, state, and local agencies, affected Native American tribes, and other interested persons on the Federal Aviation Administration's (FAA's) intent to prepare an environmental impact statement (EIS) for the Oklahoma Space Industry Development Authority's (OSIDA's) proposal to operate a commercial launch site at the Clinton-Sherman Industrial Airpark (CSIA). The FAA, as the lead Federal agency, will prepare the EIS in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 United States Code (U.S.C.) 4321 *et seq.*) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations (CFR) parts 1500–1508), as part of its licensing process for the proposed Oklahoma Spaceport. Because the United States Air Force proposes to continue its use of CSIA (preferred alternative site for the Spaceport) as a training facility, the FAA has requested and the United States Air Force has agreed to be a cooperating agency (40 CFR 1501.6) on this EIS.

OSIDA has entered into memoranda of understanding (MOUs) with various interested parties who wish to construct and operate facilities for the purpose of conducting commercial space launches of reusable launch vehicles (RLVs) from the proposed Oklahoma Spaceport. The potential users of the launch site would be responsible for obtaining any necessary permits or approvals including a launch license from the FAA. Proposed operations include the launch, reentry, landing, and recovery of orbital and sub-orbital launch vehicles. OSIDA plans to support the launch of communications, commercial, and government satellites into low earth orbits, as well as using vehicles for travel to other parts of the world and space tourism.

Background

The FAA is preparing an EIS to analyze the environmental impacts of OSIDA's proposed operation of a launch facility in Oklahoma. The EIS will cover construction of facilities, ground activities (component testing, transportation and storage of fuels and explosives, *etc.*), pre-flight vehicle and payload preparation activities, launch, reentry, and landing/recovery operations.

The FAA is the lead Federal agency in preparing the EIS because of its licensing authority for commercial launch activities under 49 U.S.C. subtitle IX, ch. 701, formerly the Commercial Space Launch Act of 1984, as amended (CSLA). The CSLA authorizes the Secretary of Transportation to oversee, license and coordinate U.S. commercial space launch activities. Under the CSLA, the Secretary exercises this authority in a manner that ensures the protection of public health and safety, the safety of property, and national security and foreign policy interests of the United States. The Secretary has delegated this authority to the Administrator of the FAA, who in turn has delegated this authority to the Associate Administrator for Commercial Space Transportation (AST). OSIDA intends to apply for a license to operate a launch site at CSIA or an alternative location. Because licensing OSIDA's operations is a major Federal action, compliance with NEPA is required.

A license to operate a launch site authorizes a licensee to operate a launch site in accordance with the representations contained in the licensee's application, with terms and

conditions contained in any license order accompanying the license, and subject to the licensee's compliance with 49 U.S.C. subtitle IX, ch.701 and this chapter. 14 CFR part 420.41(a) A license to operate a launch site authorizes a licensee to offer its launch site to a launch operator for each launch point for the type and any weight class of launch vehicle identified in the license application and upon which the licensing determination is based. 14 CFR part 420.41(b) Issuance of a license to operate a launch site does not relieve a licensee of its obligation to comply with any other laws or regulations; nor does it confer any proprietary, property, or exclusive right in the use of airspace or outer space. 14 CFR part 420.41(c) A license to operate a launch site remains in effect for five years from the date of issuance unless surrendered, suspended, or revoked before the expiration of the term and is renewable upon application by the licensee. 14 CFR part 420.43

OSIDA is a state agency created by the Oklahoma legislature in 1999 by Senate Bill 720. The agency is governed by a Board of Directors appointed by the Governor and confirmed by the Senate. The mission of the agency is to create an Oklahoma Spaceport, attract space industry to the State and encourage space-related technology in the state school system at all levels. OSIDA has broad authority legislated by the State to attract industry and develop a Spaceport for economic development. Facilities at the Spaceport may be improved, newly constructed using bond revenues, and leased to companies located on-site. A 168-square mile area including the current CSIA has been designated by the legislature as the Oklahoma Spaceport Territory. OSIDA has been given the ownership of the 2,700-acre CSIA.

Proposed Action

The Proposed Action is to issue a launch site operator license to OSIDA for the CSIA or an alternative site. The launch site operator license is for the purpose of operating a facility in order to launch, reenter, land, or recover RLVs. In addition the proposed site may be available for static engine firings, launch vehicle manufacturing, and other testing and manufacturing activities. The operations will be conducted from a proposed site, which would include existing and newly constructed facilities and infrastructure. The function of the Spaceport will be to provide a facility to launch manned vehicles, satellites and other payloads into sub-orbital trajectories and eventually into prescribed orbits for commercial and government customers. Under the Proposed Action, the FAA would issue a launch site operator license to OSIDA for the operation of a site to launch, land, and recover RLVs. Upon issuance of required FAA approvals, OSIDA would open the site to commercial operations. The first sub-orbital launch is proposed for 2006. Launch providers may use vehicles that have been addressed in the launch site operator license application, proposed to include RLVs launched vertically, horizontally, or from the air. These RLVs may land vertically or horizontally.

Alternative Sites

A number of airports in Southwestern Oklahoma are being considered as alternative locations for OSIDA's proposed facility. Included among the alternatives that could be considered are airport facilities in the towns of Sayre, Frederick, and Hobart. These facilities are being considered in part because of their relatively remote locations. The FAA will work with OSIDA to ensure that a reasonable range of alternatives is evaluated in the EIS.

Scoping Meetings

The EIS will assess environmental impacts associated with the Proposed Action; reasonable alternatives including the No Action alternative; foreseeable future actions; and cumulative effects. Two public scoping meetings will be held to solicit input from the public on potential issues that may need to be evaluated in the EIS. The first public scoping meeting will be held on November 13, 2002, at 6 p.m., at the Western Technology Center located in Burns Flat, Oklahoma. The second public scoping meeting will be held on November 14, 2002, at 6 p.m., at the Metro Technology Center Springlake Campus located in Oklahoma City, Oklahoma. The exact locations will be published in local newspapers as well as on the FAA/AST website (*http://ast.faa.gov/*), OSIDA website (*http://www.okspaceport.state.ok.us*) and the EIS public information website (*http://www.okspaceporteis.com*).

FOR FURTHER INFORMATION CONTACT: Public input and comments are solicited concerning the proposed action. Comments and questions concerning the public scoping process or the EIS process should be addressed to Mr. Douglas W. Graham, Federal Aviation Administration, Office of the Associate Administrator for Commercial Space Transportation, Suite 331/AST–100, 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 267–8568 or by e-mail at *doug.graham@faa.gov.*

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 02–27034 Filed 10–22–02; 8:45 am]

BILLING CODE 4310–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA, Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

DATES: The meeting will be held November 5–7, 2002 from 9 am to 5 pm each day.

ADDRESSES: The meeting will be held at William J. Hughes Technical Center, Atlantic City Airport, ACB Conference Room, 2nd Floor, Column J267, Atlantic City, NJ

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, SW, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtea.org.* (2) FAA Technical Center Contact; Mr. Andy Colon; telephone (609) 485–4348; e-mail *andy.colon@tc.faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463, 5 U.S.C., Appendix (2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- November 5
- Opening plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of previous meeting)
- Form Working Group (WG)-2—continue plan of action and development for DO–224B, VHF Digital Link Minimum Aviation system Performance Standard
- November 6
- Continue in WG–2
- Reconvene Plenary to:
  - Review Status of DO–271A, Minimum Operational Performance

Standards for Aircraft VDL Mode 3 Transceiver Operating in the Frequency Range 117.975–137.000 MHz, and DO–224A change 2, Signal-In-Space Minimum Aviation System Performance Standards (MASPS) for Advanced VHF Digital Data Communications Including Compatibility with Digital Voice Techniques at the Program Management Council Meeting
- Review of Relevant International Activities
- EUROCAE WG–47 status and issues
- Others as appropriate

- Closing Plenary Session (Other Business, Date and Place of Next Meeting, Adjourn)
- November 7
- NEXCOM Demonstrations. For advance arrangements, contact the on-site representative.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on October 9, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–27038 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–06–U–00–BLI To Use the Revenue From a Passenger Facility Charge (PFC) at Bellingham International Airport, Submitted by the Port of Bellingham, Bellingham International Airport, Bellingham, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at Bellingham International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before November 22, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Brian Henshaw, Aviation Analyst, at the following address: PO Box 1677, Bellingham, WA 98227.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Bellingham International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 02–06–U–00–BLI to use PFC revenue at Bellingham International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 10, 2002, the FAA determined that the application to use the revenue from a PFC submitted by Port of Bellingham, Bellingham International Airport, and Bellingham, Washington was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 18, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: January 1, 2000.

Proposed charge expiration date: June 1, 2003.

Total requested for use approval: $1,200,000.

Brief description of proposed project: Terminal Rehabilitation and Expansion.

Class or classes of air carriers, which the public agency has requested not to be required to collect PFC's: Non-scheduled air taxi/commercial operators, utilizing aircraft having seating capacity of less than 20 passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bellingham International Airport.

Issued in Renton, Washington, on October 10, 2002.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–27039 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2003 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: Appendix A of this Notice contains the Federal Transit Administration's (FTA) comprehensive compilation of the Federal Fiscal Year 2003 certifications and assurances to be used in connection with all Federal assistance programs FTA administers during Federal Fiscal Year 2003, in compliance with 49 U.S.C. 5323(n).

EFFECTIVE DATE: These certifications and assurances became effective on October 1, 2002, the first day of fiscal year 2003.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate Regional Office listed below. For copies of other related documents, *see* the FTA Web Site at *http://www.fta.dot.gov* or contact FTA's Office of Public Affairs at (202) 366–4019.

Region 1: Boston

States served: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts

Telephone # (617) 494–2055

Region 2: New York

States served: New York, New Jersey, and the Virgin Islands

Telephone # (212) 668–2170

Region 3: Philadelphia

States served: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia
Telephone # (215) 656–7100

Region 4: Atlanta

States served: Kentucky, Georgia, North Carolina, South Carolina, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico
Telephone # (404) 562–3500

Region 5: Chicago

States served: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio
Telephone # (312) 353–2789

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico
Telephone # (817) 978–0550

Region 7: Kansas City

States served: Missouri, Iowa, Kansas, and Nebraska
Telephone # (816) 329–3920

Region 8: Denver

States served: Colorado, Utah, Wyoming, Montana, North Dakota, and South Dakota
Telephone # (303) 844–3242

Region 9: San Francisco

States served: California, Hawaii, Guam, Arizona, Nevada, American Samoa, and the Northern Mariana Islands
Telephone # (415) 744–3133

Region 10: Seattle

States served: Idaho, Oregon, Washington, and Alaska
Telephone # (206) 220–7954

SUPPLEMENTARY INFORMATION: Before FTA may award a Federal grant or cooperative agreement, the Applicant must submit all certifications and assurances pertaining to itself and its project as required by Federal laws and regulations. These certifications and assurances must be submitted to FTA irrespective of whether the project is financed under the authority of 49 U.S.C. chapter 53, or Title 23, United States Code, or another Federal statute.

The Applicant's Annual Certifications and Assurances for Federal Fiscal Year 2003 cover all projects for which the Applicant seeks funding during Federal Fiscal Year 2003 through the next fiscal year until FTA issues annual Certifications and Assurances for Federal Fiscal Year 2004. An Applicant's Annual Certifications and Assurances applicable to a specific grant or cooperative agreement generally remain in effect for either the life of the grant or cooperative agreement to closeout or the life of the project or project property when a useful life or industry standard life is in effect, whichever occurs later; except, if the Applicant provides certifications and assurances in a later year that differ from certifications and assurances previously provided, the later certifications and assurances will apply to the grant, cooperative agreement, project, or project property, unless FTA permits otherwise.

Background: Since Federal Fiscal Year 1995, FTA has been consolidating the various certifications and assurances that may be required into a single document for publication in the **Federal Register**. FTA intends to continue publishing this document annually in conjunction with its publication of the FTA annual apportionment Notice, which sets forth the allocations of funds made available by the latest U.S. Department of Transportation annual appropriations act.

Federal Fiscal Year 2003 Changes: Changes are as follows:

(1) In Certification 1(J)(18), a reference to the latest Office of Management and Budget (OMB) A–133 Compliance Supplement for the U.S. Department of Transportation, dated March 2002, has been substituted for the previous OMB A–133 Compliance Supplement.

(2) The titles of several categories of certifications and assurances have been shortened for consistency with the titles of those categories shown in TEAM–Web, FTA's electronic award and management system and other minor editorials changes have been made.

Text of Federal Fiscal Year 2003 Certifications and Assurances: The text of the certifications and assurances in Appendix A of this Notice also appears in TEAM–Web (*http://ftateamweb.fta.dot.gov/fta-flash2b.html*) in the ''Recipients'' option at the ''Cert's & Assurances'' tab of ''View/Modify Recipients.'' It is important that each Applicant be familiar with all sixteen (16) certification and assurance categories and their requirements, as they may be a prerequisite for receiving FTA financial assistance. Provisions of this Notice supersede conflicting statements in any FTA circular containing a previous version of the Annual Certifications and Assurances. The certifications and assurances contained in those FTA circulars are merely examples, and are not acceptable or valid for Federal Fiscal Year 2003; do not rely on the provisions of certifications and assurances appearing in FTA circulars.

Significance of Certifications and Assurances: Selecting and submitting certifications and assurances to FTA, either through TEAM–Web or submission of the Signature Page(s) of Appendix A, signifies the Applicant's intent to comply with the requirements of the certifications and assurances selected to the extent they apply to a project for which the Applicant submits an application for assistance in Federal Fiscal Year 2003.

Requirement for Attorney's Signature: FTA requires a current (Federal Fiscal Year 2003) affirmation, signed by the Applicant's attorney, of the Applicant's legal authority to certify compliance with the obligations imposed by the certifications and assurances the Applicant has selected. Irrespective of whether the Applicant makes a single selection for all 16 categories or selects individual options from the 16 categories, the Affirmation of Applicant's Attorney from a previous year is not acceptable.

Deadline for Submission: All Applicants for FTA formula program or capital investment program assistance, and current FTA grantees with an active project financed with FTA formula program or capital investment program assistance, are expected to provide Federal Fiscal Year 2003 Certifications and Assurances within 90 days from the date of this publication or with their first grant application in Federal Fiscal Year 2003, whichever is first. FTA encourages other Applicants to submit their certifications and assurances as soon as possible.

Preference for Electronic Submission: Applicants registered in TEAM–Web must submit their certifications and assurances, as well as their applications, in TEAM–Web. Only if an Applicant is unable to submit its certifications and assurances in TEAM–Web should the Applicant use the Signature Page(s) in Appendix A of this Notice.

Procedures for Electronic Submission: The TEAM–Web ''Recipients'' option at the ''Cert's & Assurances'' tab of ''View/Modify Recipients'' contains fields for selecting the categories of certifications and assurances to be submitted. Within that tab is a field for the Applicant's authorized representative to enter its personal identification number (PIN), which constitutes the Applicant's electronic signature for the certifications and assurances it has selected; in addition, there is a field for the Applicant's attorney to enter his or her PIN, affirming the Applicant's legal authority to make and comply with the certifications and assurances the Applicant has selected. In certain circumstances, the Applicant may enter its PIN in lieu of its Attorney's PIN, provided that the Applicant has on file the Affirmation of Applicant's Attorney

in Appendix A of this Notice, written and signed by the attorney and dated this Federal fiscal year. For more information, applicants may contact the appropriate Regional Office listed in this Notice or the TEAM–Web Helpdesk.

Procedures for Paper Submission: If an Applicant is unable to submit its certifications electronically, it must mark the certifications and assurances it is making on the Signature Page(s) in Appendix A of this Notice and submit it to FTA. The Applicant may signify compliance with all Categories by placing a single mark in the appropriate space or select the Categories applicable to itself and its projects. In certain circumstances, the Applicant may enter its signature in lieu of its Attorney's signature in the Affirmation of Applicant's Attorney section of the Signature Page(s), provided that the Applicant has on file the Affirmation of Applicant's Attorney in Appendix A of this Notice, written and signed by the attorney and dated this Federal fiscal year. For more information, applicants may contact the appropriate Regional Office listed in this Notice.

References: The Transportation Equity Act for the 21st Century, Pub. L. 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act, Pub. L. 105–206, July 22, 1998, 49 U.S.C. chapter 53, Title 23, United States Code, other Federal laws administered by FTA, U.S. DOT and FTA regulations at 49 CFR, and FTA Circulars.

Dated: October 15, 2002.

Jennifer L. Dorn,

Administrator.

Appendix A—Federal Fiscal Year 2003 Certifications and Assurances for Federal Transit Administration Assistance Programs

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which it will seek FTA assistance in Federal Fiscal Year 2003. FTA strongly encourages the Applicant to submit its certifications and assurances through TEAM–Web, FTA's electronic award and management system at *http://ftateamweb.fta.dot.gov/fta-flash2b.html.*

Sixteen (16) Categories of certifications and assurances are listed by numbers 01 through 16 in the TEAM–Web ''Recipients'' option at the ''Cert's & Assurances'' tab of ''View/Modify Recipients,'' and on the opposite side of the Signature Page(s) at the end of this document. Category 01 applies to all Applicants. Categories 02 through 16 will apply to and be required for some, but not all, Applicants and projects.

01. Required of Each Applicant

Each Applicant for FTA assistance must provide all certifications and assurances in this Category ''01.'' FTA may not award any Federal assistance until the Applicant provides these certifications and assurances by selecting Category ''01.''

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable state and local law and the Applicant's by-laws or internal rules to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant;

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and

(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal requirements in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The Applicant recognizes that Federal laws, regulations, policies, and administrative practices may be modified from time to time and those modifications may affect project implementation. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions

As required by U.S. DOT regulations regarding Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not, within a three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that, if it later becomes aware of any information contradicting the statements of paragraph (1) above, it will promptly provide that information to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to all statements in paragraphs (1) and (2) of this certification, it shall indicate so in its applications, or in the transmittal letter or message accompanying its annual certifications and assurances, and provide a written explanation to FTA.

D. Drug-Free Workplace Agreement

As required by U.S. DOT regulations, ''Drug-Free Workplace Requirements (Grants),'' 49 CFR part 29, Subpart F, and as modified by 41 U.S.C. 702, the Applicant agrees that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about:

(a) The dangers of drug abuse in the workplace;

(b) Its policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees to be engaged in the performance or implementation of the grant agreement or cooperative agreement be given a copy of the statement required by paragraph (1) of this certification;

(4) Notifying each of its employees in the statement required by paragraph (1) of this certification that, as a condition of employment financed with Federal assistance provided by the grant agreement or cooperative agreement, the employee will be required to:

(a) Abide by the terms of the statement; and

(b) Notify the employer (Applicant) in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after that conviction;

(5) Notifying FTA in writing, within ten (10) calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction; the Applicant, as employer of any convicted employee, must

provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working, and that notice shall include the identification number(s) of each affected grant agreement or cooperative agreement;

(6) Taking one of the following actions within thirty (30) calendar days of receiving notice under paragraph (4)(b) of this agreement with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(b) Requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) of this agreement. The Applicant agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA.

E. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance it submits to FTA has been or will be submitted for intergovernmental review to the appropriate state and local agencies in accordance with applicable state requirements. The Applicant also assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, ''Intergovernmental Review of Department of Transportation Programs and Activities,'' 49 CFR part 17.

F. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, ''Title VI Program Guidelines for Federal Transit Administration Recipients'', and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

(5) As required by 49 CFR 21.7(a)(2), the Applicant will include in each third party contract or subagreement provisions to invoke the requirements of 49 U.S.C. 5332 and 49 CFR part 21, and include provisions to invoke those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

G. Disadvantaged Business Enterprise Assurance

In accordance with 49 CFR 26.13(a), the Recipient assures that it shall not discriminate on the basis of race, color, national origin, or sex in the implementation of the project and in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from the U.S. DOT or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR part 26. The Recipient assures that it shall take all necessary and reasonable steps set forth in 49 CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from the U.S. DOT. The Recipient's DBE program, as required by 49 CFR part 26 and approved by the U.S. DOT, will be incorporated by reference and made part of the grant agreement or cooperative agreement for any Federal assistance awarded by FTA or U.S. DOT. Implementation of this DBE program is a legal obligation of the Recipient, and failure to carry out its terms shall be treated as a violation of the grant agreement or cooperative agreement. Upon notification by the Government to the Recipient of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*

H. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

I. Procurement Compliance Certification

The Applicant certifies that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' as amended and revised, as well as other requirements FTA may issue. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and each contractor will also include in its subagreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

J. Certifications and Assurances Required by the U.S. Office of Management and Budget (SF–424B and SF–424D)

As required by the U.S. Office of Management and Budget (OMB), the Applicant certifies that it:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application;

(2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally

accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;

(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,'' 49 CFR part 25, which prohibit discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, 21 U.S.C. 1174 *et seq.* relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, 42 U.S.C. 4581 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd–3 and 290ee–3, related to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;

(i) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited, to 49 U.S.C. 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity, and section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(j) Any other nondiscrimination statute(s) that may apply to the project;

(6) Will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable state and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR part 24, and will comply with or has complied with that Act and those U.S. DOT implementing regulations, including but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 276a through 276a(7), the Copeland Act, as amended, 18 U.S.C. 874 and 40 U.S.C. 276c, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 333, regarding labor standards for federally assisted subagreements;

(8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring recipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures;

(10) Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from the awarding agency;

(11) Will record the Federal interest in the title of real property in accordance with FTA directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;

(12) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, ''Seismic Safety,'' 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;

(13) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the state;

(14) Will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved state management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 *et seq.*;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300h *et seq.*;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and

(i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, state, or local significance or any land from a historic site of national, state, or local significance that will be used in a transportation project as required by 49 U.S.C. 303;

(j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 *et seq.*; and

(k) Provision of assistance to FTA in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a–1 *et seq.*; and Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;

(15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508, and 7324 through 7326, which limit the political activities of state and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;

(16) Will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.*, and U.S. DOT regulations, ''Protection of Human Subjects,'' 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;

(17) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.*, and U.S. Department of Agriculture regulations, ''Animal Welfare,'' 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;

(18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.* and by OMB Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' and OMB A–133 Compliance Supplement provisions for the Department of Transportation, March 2002; and

(19) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the project.

02. Lobbying

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. FTA may not award Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting Category ''02.''

A. As required by U.S. DOT regulations, ''New Restrictions on Lobbying,'' at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' including the information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352.

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

03. Private Mass Transportation Companies

A State or local government Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 to acquire the property or an interest in the property of a private mass transportation company or to operate mass transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing mass transportation company must provide the following certification. FTA may not award Federal assistance for that type of project until the Applicant provides this certification by selecting Category ''03.''

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires the property or an interest in the property of a private mass transportation company or operates mass transportation equipment or facilities in competition with, or in addition, to transportation service provided by an existing mass transportation company, it has or will have:

A. Found that the assistance is essential to carrying out a program of projects as determined by the plans and programs of the metropolitan planning organization;

B. Provided for the participation of private mass transportation companies to the maximum extent feasible consistent with applicable FTA requirements and policies;

C. Paid just compensation under state or local law to a private mass transportation company for its franchises or property acquired; and

D. Acknowledged that the assistance falls within the labor standards compliance requirements of 49 U.S.C. 5333(a) and 5333(b).

04. Public Hearing

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or a community's mass transportation service must provide the following certification. FTA may not award Federal assistance for that type of project until the Applicant provides this certification by selecting Category ''04.''

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, it will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;

C. Considered the economic, social, and environmental effects of the project; and

D. Determined that the project is consistent with official plans for developing the urban area.

05. Acquisition of Rolling Stock

An Applicant seeking FTA assistance to acquire rolling stock must provide the following certification. FTA may not provide assistance to acquire rolling stock until the Applicant provides this certification by selecting Category ''05.''

As required by 49 U.S.C. 5323(m) and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post-delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

06. Bus Testing

An Applicant seeking FTA assistance to acquire any new bus model or any bus model with a new major change in configuration or components must provide the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category ''06.''

As required by FTA regulations, ''Bus Testing,'' at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components, or before authorizing final acceptance of that bus (as described in 49 CFR part 665), the bus model:

A. Will have been tested at a bus testing facility approved by FTA; and

B. Will have received a copy of the test report prepared on the bus model.

07. Charter Service Agreement

An Applicant seeking FTA assistance to acquire or operate transportation equipment or facilities using Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C. must enter into the following Charter Service Agreement. FTA may not provide assistance for projects authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C. until the Applicant enters into this charter service agreement by selecting Category ''07.''

A. As required by 49 U.S.C. 5323(d) and FTA regulations, ''Charter Service,'' at 49 CFR 604.7, the Applicant agrees that it and its recipients will:

(1) Provide charter service that uses equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies; and

(2) Comply with the requirements of 49 CFR part 604 before providing any charter service using equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C. for transportation projects.

B. As The Applicant understands that:

(1) The requirements of 49 CFR part 604 will apply to any charter service it provides;

(2) The definitions of 49 CFR part 604 apply to this charter service agreement; and

(3) A violation of this charter service agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

08. School Transportation Agreement

An Applicant seeking FTA assistance to acquire or operate transportation facilities and equipment using Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23, U.S.C. must enter into the following School Transportation Agreement. FTA may not provide assistance for such projects until the Applicant enters into this agreement by selecting Category ''08.''

A. As required by 49 U.S.C. 5323(f) and FTA regulations, ''School Bus Operations,'' at 49 CFR 605.14, the Applicant agrees that it and all its recipients will:

(1) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by 49 U.S.C. 5323(f), and Federal regulations; and

(2) Comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance awarded by FTA and authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. for transportation projects.

B. As The Applicant understands that:

(1) The requirements of 49 CFR part 605 will apply to any school transportation service it provides;

(2) The definitions of 49 CFR part 605 apply to this school transportation agreement; and

(3) A violation of this school transportation agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

09. Demand Responsive Service

An Applicant seeking direct Federal assistance to support demand responsive service must provide the following certification. FTA may not award Federal assistance directly to an Applicant to support its demand responsive service until the Applicant provides this certification by selecting Category ''09.''

As required by U.S. DOT regulations, ''Transportation Services for Individuals with Disabilities (ADA),'' at 49 CFR 37.77, the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When viewed in its entirety, the Applicant's service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

10. Alcohol Misuse and Prohibited Drug Use

If the Applicant is required by Federal regulations to provide the following certification concerning its activities to prevent alcohol misuse and prohibited drug use in its transit operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category ''10.''

As required by FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' at 49 CFR part 655, subpart I, the Applicant certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' 49 CFR part 655.

11. Interest and Other Financing Costs

An Applicant that intends to request reimbursement of interest or other financing costs incurred for its capital projects must provide the following certification. FTA may not provide assistance to support those costs until the Applicant provides this certification by selecting Category ''11.''

In compliance with 49 U.S.C. 5307(g), 49 U.S.C. 5309(g)(2)(B), 49 U.S.C. 5309(g)(3)(A), and 49 U.S.C. 5309(n), the Applicant certifies that it will not seek reimbursement for interest and other financing costs unless its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

12. Intelligent Transportation Systems Program

An Applicant for FTA assistance for an Intelligent Transportation Systems (ITS) project, defined as any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the National ITS Architecture,'' must provide the following assurance. FTA may not award any Federal assistance for an ITS project until the Applicant provides this assurance by selecting Category ''12.''

In compliance with Section VII of FTA Notice, ''FTA National ITS Architecture Policy on Transit Projects,'' at 66 Fed. Reg. 1459, January 8, 2001, in the course of implementing an ITS project, the Applicant assures that it will comply, and require its third party contractors and subrecipients to comply, with all applicable requirements imposed by Section V (Regional ITS Architecture) and Section VI (Project Implementation) of that Notice.

13. Urbanized Area, JARC, and Clean Fuels Programs

Each Applicant for Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, each Applicant for Job Access and Reverse Commute Program assistance authorized by section 3037 of the Transportation Equity Act for the 21st Century, 49 U.S.C. 5309 note, and each Applicant for Clean Fuels Formula Program assistance authorized by 49 U.S.C. 5308 must provide the following certifications. FTA may not award Federal assistance for those programs until the Applicant provides these certifications and assurances by selecting Category ''13.'' A state or other Applicant providing certifications and assurances that require the compliance of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances.

In addition, each Applicant that received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1) must list the projects carried out during that Federal fiscal year with those funds in its quarterly report for the fourth quarter of the preceding Federal fiscal year. That list constitutes the report of transit enhancement projects carried out during that fiscal year, which report is required to be submitted as part of the

Applicant's annual certifications and assurances, in accordance with 49 U.S.C. 5307(k)(3), and is therefore incorporated by reference and made part of the Applicant's annual certifications and assurances. FTA may not award Urbanized Area Formula Program assistance to any Applicant that has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the requisite list.

A. Certifications Required for the Urbanized Area Formula Program

(1)As required by 49 U.S.C. 5307(d)(1)(A) through (J), the Applicant certifies that:

(a) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(b) It has or will have satisfactory continuing control over the use of Project equipment and facilities;

(c) It will adequately maintain the equipment and facilities;

(d) It will ensure that the elderly and handicapped persons, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307, or for the Job Access and Reverse Commute Program at section 3037 of the Transportation Equity Act for the 21st Century (TEA–21), 49 U.S.C. 5309 note, not more than fifty (50) percent of the peak hour fare;

(e) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program, 49 U.S.C. 5307, or the Job Access and Reverse Commute Program, section 3037 of TEA–21, 49 U.S.C. 5309 note, it: (1) Will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications, and (3) will comply with applicable Buy America laws;

(f) It has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) Has made available, or will make available, to the public information on the amounts available for the Urbanized Area Formula Program, 49 U.S.C. 5307 and, if applicable, the Job Access and Reverse Commute Grant Program, 49 U.S.C. 5309 note, and the program of projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, a proposed program of projects for activities to be financed; (3) has published or will publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; (5) has ensured or will ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final program of projects; and (7) has made or will make the final program of projects available to the public;

(g) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(h) It will comply with: 49 U.S.C. 5301(a) (requirements for transportation systems that maximize mobility and minimize fuel consumption and air pollution); 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); 49 U.S.C. 5303 through 5306 (planning requirements); and 49 U.S.C. 5301(d) (special efforts to design and provide mass transportation for the elderly and persons with disabilities);

(i) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and

(j) As required by 49 U.S.C. 5307(d)(1)(J), unless it has determined that it is not necessary to expend one (1) percent of the amount of Federal assistance it receives for this fiscal year apportioned in accordance with 49 U.S.C. 5336 for transit security projects, it will expend at least one (1) percent of the amount of that assistance for transit security projects, including increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system.

(2) As required by 49 U.S.C. 5307(k)(3), if it has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of the projects it has implemented during that fiscal year using those funds, and that report is incorporated by reference and made part of its certifications and assurances.

B. Certification Required for Capital Leasing

As required by FTA regulations, ''Capital Leases,'' at 49 CFR 639.15(b)(1) and 49 CFR 639.21, to the extent the Applicant acquires any capital asset by lease financed with Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, the Applicant certifies that:

(1) It will not use Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset;

(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(3) It will not enter into a capital lease for which FTA can only provide incremental funding unless it has the financial capacity to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for the Sole Source Acquisition of an Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), the Applicant certifies that when it procures an associated capital maintenance item as authorized by 49 U.S.C. 5307(b)(1), it will use competition, unless the original manufacturer or supplier of the item is the only source for the item and the price of the item is no more than the price similar customers pay for that item, and will, for each such procurement, maintain sufficient records on file and easily retrievable for FTA inspection.

D. Clean Fuels Formula Grant Program Certification

As required by 49 U.S.C. 5308(c)(2), the Applicant certifies that vehicles financed with Federal assistance provided for the Clean Fuels Formula Program, 49 U.S.C. 5308, will be operated only with clean fuels.

14. Elderly and Persons with Disabilities Program

An Applicant that intends to administer the Elderly and Persons with Disabilities Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award assistance for the Elderly and Persons with Disabilities Program until the Applicant provides these certifications and assurances by selecting Category ''14.''

The Applicant administering, on behalf of the state, the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The private nonprofit subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or

private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The state assures that, before issuing the state's formal approval of a project, its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; all projects to be implemented in urbanized areas recommended for approval are included in the metropolitan Transportation Improvement Program in which the subrecipient is located; and any public body that is a prospective subrecipient of capital assistance has provided an opportunity for a public hearing.

F. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. Having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment financed with Federal assistance awarded for its project;

(2) The subrecipient has coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(3) The subrecipient has complied or will comply with all applicable civil rights requirements;

(4) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(5) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(6) The subrecipient has complied or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(7) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(8) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' as amended and revised, and other Federal requirements that may be applicable;

(9) The subrecipient has complied or will comply with the requirement that its project provide for the participation of private mass transportation companies to the maximum extent feasible;

(10) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(11) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(12) The subrecipient has complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(13) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(14) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements to the extent required by FTA; and

(15) The subrecipient has complied or will comply with all applicable pre-award and post-delivery review requirements.

G. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that, until the required Federal environmental finding is made, financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c). The state further certifies that, until the required Federal conformity finding has been made, no financial assistance will be provided for a project requiring a Federal conformity finding in accordance with the U.S. Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93.

H. The state assures that it will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

I. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the State and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipients to assure compliance with applicable Federal requirements.

15. Nonurbanized Area Formula Program

An Applicant that intends to administer the Nonurbanized Area Formula Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting Categories ''1'' through 11'' and ''15.''

The Applicant administering, on behalf of the state, the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The state assures that before issuing the state's formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; and projects are included in a metropolitan Transportation Improvement Program, to the extent applicable.

D. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

E. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. Having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has or will have, by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment financed with Federal assistance awarded for its project;

(2) The subrecipient has coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(3) The subrecipient has complied or will comply with all applicable civil rights requirements;

(4) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(5) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(6) The subrecipient has complied or will comply with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (a) signing the Special Warranty for the Nonurbanized Area Formula Program, (b) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (c) obtaining

a waiver from DOL; and the state has certified the subrecipient's compliance to DOL;

(7) The subrecipient has complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(8) The subrecipient has complied or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(9) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(10) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' as amended and revised, and other Federal requirements that may be applicable;

(11) The subrecipient has complied or will comply with the requirement that its project provide for the participation of private enterprise to the maximum extent feasible;

(12) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(13) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(14) The subrecipient has complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(15) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(16) The subrecipient has complied or will comply with all applicable pre-award and post-delivery review requirements;

(17) The subrecipient has complied with or will comply with all assurances FTA requires for projects involving real property;

(18) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements, to the extent required by FTA; and

(19) The subrecipient has complied or will comply with applicable prevention of alcohol misuse and prohibited drug use program requirements, to the extent required by FTA.

F. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that, until the required Federal environmental finding is made, financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c). The state further certifies that, until the required Federal conformity finding is made, no financial assistance will be provided for a project requiring a Federal conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93.

G. The state assures that it will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

H. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the State and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipients to assure compliance with applicable Federal requirements.

I. In compliance with the requirements of 49 U.S.C. 5311(f), the state assures that it will expend not less than fifteen (15) percent of the amounts of Federal assistance as provided in 49 U.S.C. 5311(f) and apportioned during this Federal fiscal year to carry out a program within the State to develop and support intercity bus transportation, unless the chief executive officer of the state, or his or her designee, duly authorized under state law, regulations or procedures, certifies to the Federal Transit Administrator that the intercity bus service needs of the state are being adequately met.

16. State Infrastructure Bank Program

An Applicant for a grant of Federal assistance for deposit in its State Infrastructure Bank (SIB) must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award assistance for the SIB program to the Applicant until the Applicant provides these certifications and assurances by selecting Categories ''1'' through 11,'' and ''16.''

The state serving as the Applicant for Federal assistance for its State Infrastructure Bank (SIB) program authorized by either section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, certifies and assures that the following requirements and conditions have been or will be fulfilled pertaining to any transit Project financed with Federal assistance derived from its SIB:

A. The state organization serving as the Applicant (state) agrees and assures the agreement of the SIB and each recipient of Federal assistance derived from the SIB within the state (subrecipient) that each transit Project financed with Federal assistance derived from SIB will be administered in accordance with:

(1) Applicable provisions of section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or of the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, and any further amendments thereto;

(2) The provisions of any applicable Federal guidance that may be issued;

(3) The terms and conditions of Department of Labor Certification(s) of Transit Employee Protective Arrangements that are required by Federal law or regulations;

(4) The provisions of the FHWA and FTA cooperative agreement with the state to establish the state's SIB program; and

(5) The provisions of the FTA grant agreement with the state that provides Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or section 1511 of TEA–21, as amended, 23 U.S.C. 181 note, Federal guidance pertaining to the SIB program, the provisions of the cooperative agreement establishing the SIB program within the state, or the provisions of the FTA grant agreement.

B. The state agrees to comply with, and assures the compliance of the SIB and each subrecipient of assistance provided by the SIB with, all applicable requirements for the SIB program, as those requirements may be amended from time to time. Pursuant to the requirements of subsection 1511(h)(2) of TEA–21, 23 U.S.C. 181 note, the state understands and agrees that any previous cooperative agreement entered into with FHWA and FTA under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, has been or will be revised to comply with the requirements of TEA–21.

C. The state assures that the SIB will provide Federal assistance from its Transit Account only for transit capital projects eligible under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note or under section 1511 of TEA–21, 23 U.S.C. 181 note, and that those projects will fulfill all requirements imposed on comparable capital transit projects financed by FTA.

D. The state understands that the total amount of funds to be awarded for a grant agreement will not be immediately available for draw down. Consequently, the state assures that it will limit the amount of Federal assistance it draws down for deposit in the SIB to amounts that do not exceed the limitations specified in the underlying grant agreement or the approved project budget for that grant agreement.

E. The state assures that each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized by Federal statute for use in the SIB, and to implement, manage, operate, and maintain the project and project property for which such assistance will support.

F. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

G. The state recognizes that the SIB, rather than the State itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. Having taken appropriate measures to secure the necessary compliance by the SIB, the state assures, on behalf of the SIB, that:

(1) The SIB has complied or will comply with all applicable civil rights requirements;

(2) The SIB has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(3) The SIB will provide Federal assistance only to a subrecipient that is either a public or private entity recognized under state law as having the legal capability to contract with the state to carry out its proposed project;

(4) Before the SIB enters into an agreement with a subrecipient under which Federal assistance will be disbursed to the subrecipient, the subrecipient's project is included in the Statewide Transportation Improvement Program; all projects in urbanized areas recommended for approval are included in the metropolitan Transportation Improvement Program in which the subrecipient is located; and the requisite certification that an opportunity for a public hearing has been provided;

(5) The SIB will not provide Federal financial assistance for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until the required Federal environmental finding has been made. Moreover, the SIB will provide no financial assistance for a project requiring a Federal conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until the required Federal conformity finding has been made;

(6) Before the SIB provides Federal assistance for a transit project, each subrecipient will have complied with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project; and

(7) The SIB will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed, including specific provisions that any security or debt financing instrument the SIB may issue will contain an express statement that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

H. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. Having taken appropriate measures to secure the necessary compliance of each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has complied or will comply with all applicable civil rights requirements;

(2) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(3) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(4) The subrecipient has complied or will comply with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project;

(5) The subrecipient has complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(6) The subrecipient has complied with or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(7) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(8) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' as amended and revised, and other implementing requirements FTA may issue;

(9) The subrecipient has complied or will comply with the requirement that its project provides for the participation of private mass transportation companies to the maximum extent feasible;

(10) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(11) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(12) The subrecipient has complied or will comply with all nonprocurement suspension and debarment requirements;

(13) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(14) The subrecipient has complied or will comply with all applicable pre-award and post-delivery review requirements;

(15) The subrecipient has complied with or will comply with all assurances FTA requires for projects involving real property;

(16) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements, to the extent required by FTA; and

(17) The subrecipient has complied or will comply with applicable prevention of alcohol misuse and prohibited drug use program requirements, to the extent required by FTA.

I. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the SIB and its subrecipients, as well as the states, will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by the SIB and its subrecipients to assure compliance with applicable Federal requirements.

BILLING CODE 4910–57–P

Appendix A

FEDERAL FISCAL YEAR 2003 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

(Signature page alternative to providing Certifications and Assurances in TEAM-Web)

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Categories 01 - 16. _____
(The Applicant may make this selection in lieu of individual selections below.)

OR

The Applicant agrees to comply with the applicable requirements of the following Categories it has selected:

Category	Description	
01.	Required of Each Applicant	_____
02.	Lobbying	_____
03.	Private Mass Transportation Companies	_____
04.	Public Hearing	_____
05.	Acquisition of Rolling Stock	_____
06.	Bus Testing	_____
07.	Charter Service Agreement	_____
08.	School Transportation Agreement	_____
09.	Demand Responsive Service	_____
10.	Alcohol Misuse and Prohibited Drug Use	_____
11.	Interest and Other Financing Costs	_____
12.	Intelligent Transportation Systems Program	_____
13.	Urbanized Area, JARC, and Clean Fuels Programs	_____
14.	Elderly and Persons with Disabilities Program	_____
15.	Nonurbanized Area Formula Program	_____
16.	State Infrastructure Bank Program	_____

(Both sides of this Signature Page must be appropriately completed and signed as indicated.)

Appendix A

FEDERAL FISCAL YEAR 2003 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE

(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

AFFIRMATION OF APPLICANT

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and Federal requirements applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2003.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2003.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S.C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature_____ Date: _____

Name_____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature_____ Date: _____

Name_____
Attorney for Applicant

Each Applicant for FTA financial assistance (except 49 U.S.C. 5312(b) assistance) and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

[FR Doc. 02–26975 Filed 10–22–02; 8:45 am]
BILLING CODE 4910–57–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2000–6887]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 23, 2002.

ADDRESSES: Comments may be submitted in writing to the U.S. Department of Transportation's Docket Management Section, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. Alternatively, comments may be submitted electronically by logging onto the docket management Web site at *http://dms.dot.gov*. Click on ''Help'' or ''Electronic Submission'' to obtain instructions for filing the document electronically. In the submittal, the commenter should refer to the docket number.

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Joseph Scott, Office of Crash Avoidance Standards, 400 Seventh Street, SW., Washington, DC 20590. Mr. Scott's telephone number is (202) 366–8525. His fax number is (202) 493–2739. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) 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;

(3) How to enhance the quality, utility, and clarity of the information to be collected;

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Tires and Rim Labeling.

OMB Control Number: 2127–0503.

Affected Public: Tire and Rim Manufacturers.

Form Number: The tires and rims are labeled in accordance with the agency's Federal Motor Vehicle Safety Standards (FMVSSs) and regulations.

Abstract: Each tire manufacturer and rim manufacturer must label their tire or rim with the applicable safety information. These labeling requirements ensure that tires are mounted on the appropriate rims; and that the rims and tires are mounted on the vehicles for which they are intended. This requirement received its latest OMB clearance in the year 2000, and has a current expiration date of September 30, 2003.

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000 mandates a rulemaking proceeding to revise and update the safety performance requirements for tires. In response, NHTSA proposed a new Federal Motor Vehicle Safety Standard requiring all new tires for use on vehicles with a gross vehicle weight rating of 10,000 pounds or less to meet new and more stringent performance requirements. The new Federal Motor Vehicle Safety Standard (FMVSS) No. 139 is titled ''New pneumatic radial tires for motor vehicles with a GVWR of 10,000 pounds or less except motorcycles and low-speed vehicles.'' Most SUVs, vans, trailers, and pickup trucks will be required to comply with the same tire selection and rim requirements as passenger cars. FMVSS No. 120 continues to apply to vehicles over 10,000 pounds GVWR and motorcycles.

To accommodate the vehicles equipped with tires that comply with FMVSS No. 139, FMVSS No. 110 will be re-titled ''Tire selection and rims for motor vehicles with a GVWR of 10,000 pounds or less'' and the current non-passenger rim marking requirements of FMVSS No. 120 will be also be placed in FMVSS No. 110. These rim marking requirements mandate that each rim or, at the option of the manufacturer in the case of a single-piece wheel, each wheel disc shall be marked with the following: (1) The designation that indicates the source of the rim's published nominal dimensions, (2) the rim size designation, and in case of multipiece rims, the rim type designation, (3) the symbol DOT, constituting a certification by the manufacturer of the rim that the rim complies with all applicable Federal motor vehicle safety standards, and (4) a designation that identifies the manufacturer of the rim by name, trademark, or symbol, and (5) the month, day and year or the month and year of manufacture, expressed either numerically or by use of a symbol, at the option of the manufacturer.

Any manufacturer that elects to express the date of manufacture by means of a symbol shall notify NHTSA in writing of the full names and addresses of all manufacturers and brand name owners utilizing that symbol and the name and address of the trademark owner of that symbol, if any. The notification shall describe in narrative form and in detail how the month, day, and year or the month and year are depicted by the symbol. Such description shall include an actual size graphic depiction of the symbol, showing and/or explaining the interrelationship of the component parts of the symbol as they will appear on the rim or single piece wheel disc, including dimensional specifications, and where the symbol will be located on the rim or single piece wheel disc. The notification shall be received by NHTSA not less than 60 calendar days before the first use of the symbol. All information provided to NHTSA under this paragraph will be placed in the public docket. Each manufacturer of wheels shall provide an explanation of its date of manufacture symbol to any person upon request.

Based on the facts that these are existing rim labeling requirements that they do not affect either the production or quantity of rims produced, NHTSA believes that this maintenance effort will not result in any net increase in the burden on those parties currently covered by existing regulations; therefore, the estimated annual burden and estimated number of respondents remains unchanged with estimated annual burden of 5,679,585, and estimated number of respondents of 6,673.

Issued on: October 18, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–26972 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–12319; Notice 2]

Guardian Industries Corporation; Grant of Application for Decision for Determination of Inconsequential Noncompliance

This notice grants the application by Guardian Industries Corporation (Guardian) of Auburn Hills, Michigan to be exempted from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 for a noncompliance with 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, ''Glazing Materials.'' Guardian has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Pursuant to 49 CFR part 556, Guardian has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301, ''Motor Vehicle Safety.'' The basis of the grant is that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published June 3, 2002, (67 FR 38315) affording an opportunity for comment. The comment closing date was July 3, 2002. No comments were received.

From November 2000 to February 2001, Guardian manufactured 11,562 tempered glass sunroof parts that do not meet the labeling requirements of paragraph S6 of FMVSS No. 205. The parts were marked with the manufacturer's model number M–934, which corresponds to a tempered glass with 4.0 mm nominal thickness. The correct manufacturer's model number should have been M–937, which is tempered glass with a 5.0 mm nominal thickness.

FMVSS No. 205, paragraph S6 ''Certification and marking,'' requires that each piece of glazing material shall be marked in accordance with Section 6 of the American National Standard ''Safety Code for Safety Glazing Materials for Glazing Materials for Glazing in Motor Vehicles Operating on Land Highways'' Z–26.1–1977, January 26, 1977, as supplemented by Z26.1a, July 3, 1980 (ANS Z26). This specifies all safety glazing materials for use in accordance with this code shall be legibly and permanently marked in letters and numerals at least 0.070 inch (1.78 mm) in height, with the words ''American National Standard'' or the characters ''AS'' and, in addition, with a model number that will identify the type of construction of the glazing material.

Guardian submitted a test report indicating the tempered glass parts in question were in full compliance with 49 CFR 571.205 except that the parts were affixed with the incorrect manufacturer's model number. The noncompliance was discovered during a routine in-house quality control inspection.

NHTSA has reviewed Guardian's application and, for the reasons discussed in this paragraph, concludes that the noncompliance of the Guardian tempered glass sunroof parts is inconsequential to motor vehicle safety. Guardian has provided documentation indicating that the sunroof parts do comply with all other safety performance requirements of the standard except the labeling. In spite of the incorrect labeling being affixed to the tempered glass part described herein, the correct part was sold and shipped for use in the fabrication of the sunroof assemblies. Since the sunroof assemblies would be ordered by its unique part number and not the manufacturer's model number (*i.e.,* M–934), the noncompliance would not result in the wrong part being used in an original equipment manufactured (OEM) application. If there was an attempt to install a mislabeled sunroof part into the sunroof assembly, Guardian confirmed to NHTSA that the glass construction would not properly fit. NHTSA also has determined that the lack of proper labeling of the sunroof parts would not affect driver visibility. The sunroof is not in the driver's normal forward field of view. Since the sunroof parts comply with all other safety performance requirements of the standard except the labeling, NHTSA determined that the noncompliance would not affect the other purposes of FMVSS No. 205 that include reducing injuries from glazing surfaces or minimizing possibility of occupants being thrown through the vehicle windows in collisions.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety.

Accordingly, the application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

The applicant is hereby informed that all products manufactured on and after the date it determined the existence of this noncompliance must fully comply with the requirements of FMVSS No. 205.

Authority: 49 U.S.C. 30118(b), 30120(h), delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 17, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–26971 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34234]

Minnesota Prairie Line, Inc.—Modified Rail Certificate

On September 23, 2002, Minnesota Prairie Line, Inc. (MPL)[1] filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity,* to acquire the common carrier obligation for a rail line extending from approximately milepost 51.4, at or near Norwood, MN, to approximately milepost 145.7, at or near Hanley Falls, MN, a total distance of approximately 94 miles.

The line was abandoned in 1982. *Chicago and North Western Transportation Co.—Abandonment Between Norwood and Madison, MN,* ICC Docket No. AB–1 (Sub-No. 142) (ICC served Dec. 2, 1982; corrected decision served Dec. 12, 1982). Subsequently, the Minnesota Valley Regional Rail Authority (Authority), a political subdivision of the State of Minnesota, bought the line. Since the date of the acquisition, several railroads

[1] MPL is a subsidiary of Twin Cities & Western Railroad Company (TCW), a Class III carrier.

have attempted to acquire and operate the line without success. The most recent operator, Minnesota Central Railroad Co., filed for bankruptcy in August 2000, and MPL expresses its belief that rail freight service has not been provided over the line since that time. According to MPL, the line has been virtually inoperable for some time due to lack of maintenance, but the Authority is currently rehabilitating it.

The Authority and MPL have entered into a lease and operating agreement, effective January 15, 2002, with an initial term of 10 years, commencing upon the satisfaction of the conditions precedent set forth in the agreement, including receipt of necessary approval for rail operations.

As indicated, MPL will acquire the common carrier obligation to serve the line, pursuant to this modified certificate. MPL will contract with TCW to perform the actual service. It is currently intended that traffic will be moved east, interlining with TCW at or near Norwood, MN, though the line also connects to The Burlington Northern and Santa Fe Railway Company at or near Hanley Falls.

The line qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions,* Finance Docket No. 28990F (ICC served July 16, 1981).

At this time, the track rehabilitation is being subsidized, but there are no plans for rail operations to be subsidized. MPL represents that it has obtained liability insurance coverage.

MPL intends to restore service on segments of the line as rehabilitation progresses but before the entire line is rehabilitated.[2] Accordingly, the following preconditions for operations apply to the line: (i) The line must be rehabilitated to FRA class 1 operating condition; (ii) a shipper must install and maintain industry track that connects to a rehabilitated portion of the line; and (iii) the shipper must arrange, at its own cost, to have goods transported to an accessible point on a rehabilitated portion of the line and there transloaded to/from railcars.

This notice will be served on the Association of American Railroads as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads (Business Services Group), 50 F Street, NW., Washington DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 1120 G Street, NW., Suite 520, Washington, DC 20005.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: October 16, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–26964 Filed 10–22–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning October 1, 2002, the interest rates for overpayments will be 5 percent for corporations and 6 percent for non-corporations, and the interest rate for underpayments will be 6 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2002–59 (*see,* 2002–38 IRB 557, dated September 23, 2002), the IRS determined the rates of interest for the calendar quarter beginning October 1, 2002, and ending December 31, 2002. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). These interest rates are subject to change for the calendar quarter beginning January 1, 2003, and ending March 31, 2003.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-pay-ments (percent)	Over-pay-ments (percent)	Corporate overpay-ments (Eff. 1–1-99)
Prior to 070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	

[2] The Authority is performing its rehabilitation with deliberate speed, and MPL anticipates that some portions of the line may become serviceable earlier than others.

Beginning date	Ending date	Under-pay-ments (percent)	Over-pay-ments (percent)	Corporate overpay-ments (Eff. 1–1-99)
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5

Dated: October 17, 2002.

Robert C. Bonner,

Commissioner of Customs.

[FR Doc. 02–26920 Filed 10–22–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and for discount and rebate evaluation.

SUMMARY: Pursuant to Section 11 of the Debt Collection Act of 1982, as amended, 31 U.S.C. 3717, the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash management requirements (I TFM 6–8000) prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of cash discounts. In addition, 5 CFR 1315.8 of the Prompt Payment rule on ''Rebates'' requires that this rate be used in determining when agencies should pay purchase card invoices when the card issuer offers rebates. Notice is hereby given that the applicable rate is 2 percent for calendar year 2003.

DATES: The rate will be in effect for the period beginning on January 1, 2003 and ending on December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Risk Management Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227 (Telephone: (202) 874–6650).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Pub. L. 95–147, 91 Stat. 1227. The rate is computed each year by averaging Treasury Tax and Loan (TT&L) account investment rates for the 12-month period ending every September 30, rounded to the nearest whole percentage, for applicability effective January 1. The rate is subject to quarterly revisions if the annual average, on a 12-month moving average basis, changes by 2 per centum. The rate in effect for the calendar year 2003 reflects the average investment rates for the 12-month period that ended September 30, 2002.

Dated: October 18, 2002.

Bettsy H. Lane,

Assistant Commissioner, Federal Finance.

[FR Doc. 02–27005 Filed 10–22–02; 8:45 am]

BILLING CODE 7810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Information Reporting Program Advisory Committee (IRPAC) will hold a public meeting on Friday November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Lorenza Wilds, National Public Liaison, CL:NPL:PAC, Room 7567 IR, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: (202) 622–5188 (not a toll-free number). E-mail address: **public_liaison@irs.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section

10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRPAC will be held on Friday, November 8, 2002, from 9:00 a.m. to 4:00 p.m. in Room 2140, main Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC 20224. *Issues to be discussed include:* Tax Reporting Requirements for Required Minimum Distributions (RMD), Establishing Electronic Filing of the Form 990 Series as a Priority Because of its Far Reaching Impact on All Taxpayers, Expand the TIN Matching System to Allow Payers of Designated Distributions to Use the System, Sales of Single Stock Futures Should Not be Subject to Gross Proceeds Reporting on Form 1099–B, Schedule K–1 Enhancements, Eliminate Bad Debt Line on Schedule C, Separate Form W–4 for Nonresidents Aliens, and Penalties for Incorrect SSN Reported on Form W–2. Reports from the four IRPAC subgroups, Tax Exempt & Government Entities, Large and Mid-size Business, Small Business/Self-Employed, and Wage & Investment, will also be presented and discussed. Last minute agenda changes may preclude advance notice. The meeting room accommodates approximately 50 people, IRPAC members and Internal Revenue Service officials inclusive. Due to limited seating and security requirements, please call Lorenza Wilds to confirm your attendance. Ms. Wilds can be reached at (202) 622–5188. Attendees are encouraged to arrive at least 30 minutes before the meeting begins to allow sufficient time for purposes of security clearance. Please use the main entrance at 1111 Constitution Avenue to enter the building. Should you wish the IRPAC to consider a written statement, please call (202) 622–5188, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:PAC, 1111 Constitution Avenue, NW., Room 7567 IR, Washington, DC 20224 or e-mail: **public_liaison@irs.gov*.

Dated: October 17, 2002.

Nancy A. Thoma,

Designated Federal Official, Branch Chief, Planning & Advisory Councils.

[FR Doc. 02–27043 Filed 10–22–02; 8:45 am]

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Federal Register

Wednesday,
October 23, 2002

Part II

Federal Election Commission

11 CFR Parts 100 and 114

FCC Database on Electioneering Communications; Final Rules

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 114

[Notice 2002–20]

Electioneering Communications

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission promulgates new rules regarding electioneering communications, which are certain television and radio communications that refer to a clearly identified Federal candidate and that are publicly distributed to the relevant electorate within 60 days prior to a general election or within 30 days prior to a primary election for Federal office. The final rules implement a portion of the Bipartisan Campaign Reform Act of 2002 (''BCRA'') that adds to the Federal Election Campaign Act (''FECA'') new provisions regarding electioneering communications. BCRA defines ''electioneering communications,'' exempts certain communications from the definition, provides limited authorization to the Commission to promulgate additional exemptions, and requires public disclosure of specified information regarding who made the electioneering communication and its cost. Additionally, BCRA prohibits corporations and labor organizations from making electioneering communications, and the final rules also implement this prohibition. Further information is provided in the Supplementary Information that follows.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh Jr., Acting Special Assistant General Counsel, or Mr. Anthony T. Buckley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81 (Mar. 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* This is one of a series of rulemakings the Commission is undertaking to implement the provisions of BCRA.

Section 402(c)(1) of BCRA establishes a general deadline of 270 days for the Commission to promulgate regulations to carry out BCRA. The President of the United States signed BCRA into law on March 27, 2002, so the 270-day deadline is December 22, 2002. The final rules will take effect on November 6, 2002, which is the day following the November 5, 2002 general election, except the final rules do not apply to any runoff elections required by the results of the November 2002 general election. 2 U.S.C. 431 note.

Because of the brief time period before the deadline for promulgating these rules, the Commission received and considered public comments expeditiously. The Notice of Proposed Rulemaking (''NPRM'') on which these final rules are based was made publicly available on the FEC's Website on August 2, 2002 and was published in the **Federal Register** on August 7, 2002. 67 FR 51,131 (Aug. 7, 2002). The written comments were due by August 21, 2002 for those who wished to testify or by August 29, 2002 for all other commenters. The names of commenters and their comments are available at *http://www.fec.gov/register.htm* under ''Electioneering Communications.'' The Commission held a public hearing on the NPRM on August 28 and 29, 2002, at which it heard testimony from 12 witnesses. Transcripts of the hearing are available at *http://www.fec.gov/register.htm* under ''Electioneering Communications.''[1]

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on electioneering communications were transmitted to Congress on October 11, 2002.

Explanation and Justification

Introduction

BCRA at 2 U.S.C. 434(f)(3) defines a new term, ''electioneering communications.'' This term includes broadcast, cable, or satellite communications: (1) That refer to a clearly identified Federal candidate; (2) that are transmitted within certain time periods before a primary or general election; and (3) that are targeted to the relevant electorate, which is the relevant Congressional district or State that candidates for the U.S. House of Representatives or the U.S. Senate seek to represent. Those paying for electioneering communications cannot use funds from national banks, corporations, foreign nationals,[2] or labor organizations to pay for electioneering communications. *See* 2 U.S.C. 441b(b)(2) and 441e(a)(2). They must also meet certain disclosure requirements. *See* 2 U.S.C. 434(f). BCRA's sponsors have explained in the legislative debates and in their comments on this rulemaking that these new ''electioneering communications'' provisions, set out at 2 U.S.C. 434(f) and 441b(b)(2), are designed to ensure that such communications are paid for with funds subject to the prohibitions and limitations of FECA. According to the sponsors, ''putative 'issue ads' '' have been used to circumvent FECA's prohibition on the use of labor organization and corporate treasury funds in connection with Federal elections. *See* 148 Cong. Rec. S2141 (daily ed. Mar. 20, 2002) (statement of Sen. McCain). In the sponsors' view, this is accomplished by creating and airing advertisements that avoid the specific language that the Supreme Court said expressly advocates the election or defeat of a candidate. *See* 148 Cong. Rec. at S2140–2141; *see also Buckley* v. *Valeo,* 424 U.S. 1, 44 n.52 (1976); 11 CFR 100.22.[3]

BCRA's principal sponsors cited various studies and investigations that they say show that the express advocacy test does not distinguish genuine issue ads from campaign ads. 148 Cong. Reg. at S2140–2141 (statement of Sen. McCain). For example, Senator McCain cited a study by the Brennan Center for Justice, *Buying Time 2000,* that found that ''97 percent of the electioneering ads reviewed'' did not use the words and phrases cited by the *Buckley* Court, and that more than 99 percent of the ''group-sponsored soft money ads'' studied were in fact campaign ads. 148 Cong. Rec. at S2141. *See also* 148 Cong. Rec. S2137 (statement of Sen. Snowe referencing Annenberg Public Policy

[1] Oral testimony at the Commission's public hearing and written comments are both considered ''comments'' in this document.

[2] The ban on foreign national funds is being addressed in a separate rulemaking. *See* NPRM on Contribution Limitations and Prohibitions, 67 *FR* 54,366, 54,372–75 and 54,379 (Aug. 22, 2002).

[3] ''Express advocacy'' was first defined by the Supreme Court as ''communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" *Buckley,* 424 U.S. at 44 n.52. The Supreme Court created the express advocacy test to save the statutory phrase ''for the purpose of * * * influencing''—the ''critical phrase'' within the definitions of ''expenditure'' and ''contribution'' at 2 U.S.C. 431(8) and (9)—from unconstitutional vagueness and overbreadth while furthering the goal of Congress ''to insure both the reality and the appearance of the purity and openness of the federal election process.'' *Buckley,* 424 U.S. at 77–78. The Supreme Court's express advocacy test marks the dividing line between candidate advocacy regulated by the FECA and issue advocacy. *Id.* at 42, 44, 80.

Center, *Issue Advertising in the 1999–2000 Election Cycle* (2001)). Senators Snowe and Jeffords stated that, because the electioneering communications provisions focus on the key elements of when, how, and to whom a communication is made, rather than relying on the express advocacy test or the intent of the advertiser, they are a clearer, more accurate test of whether an advertisement is campaign-related. *Id.* at S2117–18 (statement of Sen. Jeffords); S2135–37 (statement of Sen. Snowe).

The final rules add a new definition of ''electioneering communication,'' located at 11 CFR 100.29. The new definition is added to current 11 CFR part 100 because it has general applicability to Title 11 of the Code of Federal Regulations. The final rules also amend 11 CFR 114.2 and 114.10 and create new § 114.14 to address the prohibition on corporations and labor organizations directly or indirectly disbursing funds for electioneering communications. In conjunction with these final rules, the Commission is also issuing Interim Final Rules regarding a Federal Communications Commission database that can be used to determine whether a communication is an electioneering communication.

Please note that the reporting requirements for electioneering communications are not part of the final rules. The Commission intends to incorporate the revised proposed rules into a Consolidated Reporting NPRM as discussed below in connection with 11 CFR part 104. However, it is important to note that the Commission agrees with a commenter who observed that BCRA imposes reporting obligations and fund source limitations and prohibitions on the person making the electioneering communication, not on the broadcaster or satellite or cable system operator who publicly distributes it.

I. Definition of ''Electioneering Communication''

A. 11 CFR 100.29(a) Operative Definition of ''Electioneering Communication''

The definition of ''electioneering communication'' at 11 CFR 100.29(a) largely tracks the definition in BCRA at 2 U.S.C. 434(f)(3). Paragraph (a) defines ''electioneering communication'' as any broadcast, cable, or satellite communication that: (1) Refers to a clearly identified Federal candidate; (2) is publicly distributed within certain time periods before an election; and (3) is targeted to the relevant electorate, that is, the relevant Congressional district or State that candidates for the U.S. House of Representatives or the U.S. Senate seek to represent.

Paragraph (a)(2) refers to the ''public distribution'' of a communication, while BCRA refers to the ''making'' of a communication. Making a communication could be interpreted to mean any of a number of actions in the process of issuing a communication, from the formulation of a concept for the communication through the public distribution of a communication. The regulation uses a different term than the statute to clarify that the operative event is the dissemination of the communication, rather than the disbursement of funds related to creating a communication. All of the commenters who addressed this provision, including the principal Congressional sponsors of BCRA, agreed with this clarification.

B. Alternative Definition of ''Electioneering Communication''

BCRA at 2 U.S.C. 434(f)(3)(A)(ii) provides an alternative definition of ''electioneering communication'' that would take effect in the event the definition in 2 U.S.C. 434(f)(3)(A)(i) is held to be constitutionally insufficient ''by final judicial decision.'' The alternative definition of ''electioneering communication'' is ''any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.'' 2 U.S.C. 434(f)(3)(A)(ii). The Commission did not propose regulations to implement this alternative statutory definition in the NPRM. 67 FR 51,132. The Commission, however, did seek comment as to whether it should promulgate an alternative definition as part of these final rules. Specifically, the Commission inquired whether such a regulation should simply reiterate the wording of the statute, or whether it should provide additional guidance as to what types of communications promote, support, attack, or oppose a candidate and suggest no plausible meaning other than an exhortation to vote for or against a candidate.

Most of the commenters who addressed BCRA's alternative definition of ''electioneering communication'' agreed with the Commission's proposed approach to promulgate regulations to implement this alternative definition only when and if it becomes necessary to do so. In the absence of a judicial decision invalidating the existing definition, regulations related to the alternative definition would be potentially confusing and premature or even entirely unnecessary, according to these commenters. Additionally, some argued that any court decision regarding 2 U.S.C. 434(f)(3)(A) may provide guidance for the appropriate standard that the Commission should use in promulgating regulations under the alternative definition. Two commenters advocated promulgating regulations now so that the pending litigation could be informed by the manner in which the Commission would enforce the alternative definition. They also argued that the period between a final decision in that litigation and the 2004 elections is likely to be too short to permit the Commission to complete a rulemaking in time to provide guidance, if the operative definition is invalidated. They further argued that the alternative definition's application to the entire election cycle, and not just the 30- or 60-day periods to which the current definition is limited, exacerbates the timing issue.

Because promulgating regulations that implement the alternative definition is premature and may cause confusion, the Commission does not intend to do so unless and until a final judicial decision makes it necessary to do so by holding that 2 U.S.C. 434(f)(3)(A)(i) is constitutionally insufficient. The Commission notes that if such a decision issues, the statutory alternative definition would become effective, and the decision may supplement the statute's language to provide guidance until the Commission issues implementing regulations.

C. Terms Used in ''Electioneering Communication'' Definition

Paragraph (b) of 11 CFR 100.29 defines some of the terms used in paragraph (a)'s definition of ''electioneering communication.'' It has been reorganized from the NPRM so that the terms are defined in the order in which they appear in paragraph (a).

1. 11 CFR 100.29(b)(1) Definition of ''Broadcast, Cable, or Satellite Communication''

BCRA's legislative history establishes that electioneering communications are limited to television and radio communications, and not other media. The electioneering communication provisions originated as an amendment to the predecessor of BCRA introduced by Senators Snowe and Jeffords in 1998. That amendment, and all of the subsequent versions of that amendment prior to the 107th Congress, defined an

electioneering communication to include ''any broadcast from a television or radio broadcast station.'' *See* 144 Cong. Rec. S938 (daily ed. Feb. 24, 1998); *see also* S.26 (106th Congress), 145 Cong. Rec. S425 (daily ed. Jan. 19, 1999). Likewise, the floor debates on the electioneering communications provision during the 107th Congress frequently referred to television and radio ads. *See, e.g.*, 148 Cong. Rec. S2117 (daily ed. Mar. 20, 2002) (remarks of Sen. Jeffords). During a final explanation of these provisions, Senator Snowe again stated that they would apply to ''so-called issue ads run on television and radio only.'' 148 Cong. Rec. S2135 (daily ed. Mar. 20, 2002). During an early debate on the amendment, Senator Snowe was asked whether the definition of electioneering communication would ''apply to the Internet.'' She replied, ''No. Television and radio.'' *See* 144 Cong. Rec. S973 and S974 (daily ed. Feb. 25, 1998). Consistent with Congressional intent, new 11 CFR 100.29(b)(1) states that a broadcast, cable, or satellite communication is a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system. This definition limits the scope of electioneering communications to television and radio. (The exclusion of the Internet and other forms of communication is further discussed below in connection with 11 CFR 100.29(c)(1).)

Proposed 11 CFR 100.29(b)(2) would have exempted Low Power FM Radio, Low Power Television, and citizens band radio from inclusion in broadcast, cable, or satellite communication. NPRM, 67 FR 51,133. The commenters were divided on whether these communications media should be included or excluded. While many would probably agree with the commenter who stated that BCRA was primarily aimed at ''traditional'' radio and television, most who specifically mentioned Low Power FM Radio, Low Power Television, and citizens band radio believed that BCRA provided no authority to exclude these forms of radio and television. Among those opposed to the exemption were the six principal Congressional sponsors of BCRA. Considering BCRA's unqualified language, particularly in light of the comments, the Commission has decided not to exclude these forms of radio and television from the definition of ''electioneering communications'' in the final rule. In doing so, the Commission notes that any communication over these media would have to be received by 50,000 persons or more in the relevant Congressional district or State before the communication could be considered an electioneering communication. Additionally, the costs of the communication would have to exceed $10,000 before disclosure requirements applied. Finally, to the extent a fee for the public distribution of a communication is not charged, the communication is excluded from the definition of ''electioneering communication'' pursuant to 11 CFR 100.29(b)(3)(i).

2. 11 CFR 100.29(b)(2) Definition of ''Refers to a Clearly Identified Candidate''

Section 100.29(b)(2) defines the phrase ''refers to a clearly identified candidate.'' This phrase is already defined in the Commission's rules at 11 CFR 100.17, which states that ''clearly identified'' means the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as ''the President,'' ''your Congressman,'' or ''the incumbent,'' or through an unambiguous reference to his or her status as a candidate such as ''the Democratic presidential nominee'' or ''the Republican candidate for Senate in the State of Georgia.'' The final rule tracks the language of the current rule in 11 CFR 100.17. This approach appears to be consistent with legislative intent. *See* 148 Cong. Rec. S2144 (daily ed. Mar. 20, 2002) (statement of Sen. Feingold indicating that a communication ''refers to a clearly identified candidate'' if it ''mentions, identifies, cites, or directs the public to the candidate's name, photograph, drawing or otherwise makes an 'unambiguous reference' to the candidate's identity''). Please note that the definition would not be based on the intent or purpose of the person making the communication. Of the six commenters who addressed this issue, five supported the Commission's proposal, while the sixth found it vague and too broad. Given the well-established body of law construing this term, the Commission does not agree with this latter comment.

3. 11 CFR 100.29(b)(3) Definition of ''Publicly Distributed''

a. 11 CFR 100.29(b)(3)(i) General definition

Section 100.29(b)(3)(i) defines ''publicly distributed'' as ''aired, broadcast, cablecast or otherwise disseminated for a fee through the facilities of a television station, radio station, cable television system, or satellite system.'' Because BCRA applies expressly to ''any broadcast, cable, or satellite communication,'' the Commission intends this definition to include any technological methods of disseminating a communication through the facilities listed above. One commenter cautioned that some telephone calls and e-mail messages can be transmitted, in part, through the facilities of a television station, radio station, cable television system, or satellite system and might therefore meet the definition of ''publicly distributed'' as proposed in the NPRM. 67 FR 51,145. However, a communication must be available to 50,000 or more persons in a particular Congressional district or State in order to be an electioneering communication, and it is highly unlikely the communications the commenter addressed would be so widely disseminated.

b. 11 CFR 100.29(b)(3)(i) ''For a fee''

The Commission specifically asked in the NPRM if the definition of ''electioneering communication'' should be limited to paid advertisements. *See* 67 FR 51,136. Much of the legislative history and virtually all of the studies cited in legislative history and presented to the Commission in the course of this rulemaking focused on paid advertisements in considering what should be included within electioneering communications. *See, e.g.*, 148 Cong. Rec. S2112, S2114–16, S2117, S2124, S2135, S2140–41, S2154, and S2155 (daily ed. Mar. 20, 2002) (remarks of Sens. Schumer, Levin, Cantwell, Jeffords, McConnell, Snowe, McCain, Feinstein, and Dodd, respectively); Campaign Finance Institute Task Force on Disclosure, *Issue Ad Disclosure: Recommendations for a New Approach* (2001); Annenberg Public Policy Center, *Issue Advertising in the 1999–2000 Election Cycle* (2001); Craig B. Holman and Luke P. McLoughlin, Brennan Center for Justice, *Buying Time 2000: Television Advertising in the 2000 Federal Elections* (2001), Executive Summary *reprinted in* 148 Cong. Rec. S2118 (daily ed. Mar. 20, 2002); and Jonathan S. Krasno and Daniel E. Seltz, Brennan Center for Justice, *Buying Time: Television Advertising in the 1998 Congressional Elections* (2000).

Many commenters who addressed this specific issue agreed that the legislative history abundantly documents that paid advertisements were the focus of the electioneering communication provisions. One commenter suggested that the electioneering communication

regulations should cover program-length, paid advertisements, known as ''infomercials,'' as well as the shorter paid advertisements, known as commercials. Several other commenters discussed entertainment programming, educational programming, or documentaries and argued that BCRA was not intended to reach these communications.

One commenter argued, however, that limiting electioneering communications to paid programming would permit corporations that operate broadcast, cable, or satellite systems to distribute communications that would be electioneering communications but for this limitation, and that such a result is plainly inconsistent with BCRA. This commenter also cited the $10,000 threshold for reporting electioneering communications, which provides partial relief to those who distribute advertisements or programming without paying for distribution costs.

Based on the legislative history of BCRA, the Commission has determined that electioneering communications should be limited to paid programming. The Commission has added an additional element to the definition of ''publicly distributed'' in the final rules that was not in the definition proposed in the NPRM. The final rule at 11 CFR 100.29(b)(3)(i) includes the qualifier ''for a fee'' to reflect the Commission's determination that electioneering communications should be limited to paid programming. By including this qualifier, the Commission limits the definition of ''electioneering communications'' to those communications for which the operator of a broadcast station, cable system, or satellite system seeks or receives payment for the public distribution of the communication.[4] The Commission believes the addition of ''for a fee'' to the definition of ''publicly distributed'' implements the well-documented Congressional intent regarding which communications are included within the definition of ''electioneering communications.'' As suggested by the question in the NPRM, the Commission believes this is best accomplished by incorporating the criterion in the definition, rather than creating an exemption from the definition.

A communication's production costs will not be considered fees for this purpose; the fees included in the definition are limited to charges for distribution. Therefore, under this criterion both program-length paid shows, including infomercials, and commercials are subject to the electioneering communication requirements.

The Commission has carefully considered the concern that corporate-owned broadcast, cable, or satellite systems could evade the prohibition on corporate contributions by providing free airtime for communications. The Commission notes that a broadcaster, or a cable or satellite system operator's judgment to provide free distribution services shares some characteristics of the broadcaster or system operator's editorial judgments involved in the use of the news story exemption, which is recognized in FECA, BCRA, and Commission regulations. 2 U.S.C. 431(9)(B); 2 U.S.C. 434(f)(3)(B)(i); and 11 CFR 100.132. Thus, a broadcaster's decision to provide free airtime for communications will not create liability for the person that produced the communication.

c. 11 CFR 100.29(b)(3)(ii) Additional Definition for Presidential Primaries and Conventions

BCRA defines electioneering communication to include communications that ''in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.'' 2 U.S.C. 434(f)(3)(A)(i)(III). BCRA then defines ''targeting to the relevant electorate,'' referring to Congressional candidates only. 2 U.S.C. 434(f)(3)(C). Thus, as discussed in the NPRM, a plausible reading of BCRA is that a communication that refers to a presidential or vice-presidential candidate does not need to be targeted to the relevant electorate to qualify as an electioneering communication. 67 FR 51,134. Under this interpretation, a communication that refers to a clearly identified presidential or vice-presidential candidate and that meets the timing and medium requirements for electioneering communications would be considered an electioneering communication, without considering the number or geographic locations of persons receiving the communication. For example, a television ad that clearly identifies a presidential primary candidate that is run anywhere in the United States could be considered an electioneering communication if the ad aired within 30 days of a primary election taking place anywhere in the United States, even if, in the States in which the ad actually aired, the primary election were months away or had already taken place.

The Commission expressed concerns regarding this interpretation in the NPRM. Such a sweeping impact on communications would be insufficiently linked to pending primary elections, may not have been contemplated by Congress, and could raise constitutional concerns.[5] So interpreted, the restrictions on electioneering communications would take effect even if an ad were aired only in a State that has already held its primary, and thus would restrict ads more than 60 days before a general election, arguably in contravention of BCRA.

The Commission invited comment on three different interpretations of BCRA's requirements for an electioneering communication that refers to presidential or vice-presidential primary candidates. The Commission first proposed two alternative regulatory provisions addressing this issue when it defines how a BCRA provision would apply with respect to presidential candidates. 67 FR 51,134. One alternative was linked to BCRA's definition of ''electioneering communications'' as communications ''made within * * * 30 days before a primary * * * election.'' 2 U.S.C. 434(f)(3)(A)(i)(II)(bb). In contrast to 2 U.S.C. 434(f)(3)(A)(i)(III), which is expressly limited to candidates other than President or Vice President, section 434(f)(3)(A)(i)(I) refers to ''candidate[s] for Federal office'' without qualification. Thus, candidates for President are included among those contemplated in section 434(f)(3)(A)(i)(I) and (II). Consequently, the express language of the statute permits the Commission to define when a communication that refers to a clearly identified candidate for President is made within 30 days before a primary or national nominating convention.

The Commission proposed that a communication that refers to a clearly identified candidate for President would be ''publicly distributed within 30 days before a primary election, preference election, or convention or caucus of a political party,'' only where and when the communication can be received by 50,000 or more persons within the State holding such election, convention or caucus. (This portion of the ''electioneering communication'' definition was included as Alternative 1–B in proposed 11 CFR 100.29(b)(4).)

[4] Thus, the maker of an electioneering communication cannot avoid the definition of ''electioneering communications'' by failing to pay the distributor's fee.

[5] Considering the 2000 calendar, such an interpretation would have resulted in nationwide application of the electioneering communication rules to communications mentioning a presidential or vice-presidential candidate for more than 270 days between late-December of 1999 to the election in November 2000.

As an alternative means of addressing the concerns about the potential sweep of the electioneering communication provisions to presidential primary candidates, the Commission proposed that a communication would be considered an electioneering communication only if it can be received by 50,000 or more persons in either a State in which a presidential primary will occur within 30 days, or nationwide if within 30 days of the national nominating convention of that candidate's party. (This provision appeared in the proposed rules as Alternative 1–A in 11 CFR 100.29(a)(1)(iv).)

Separately, the Commission sought comments on whether BCRA's electioneering communications restrictions as applied to communications depicting presidential and vice-presidential candidates could not be triggered by a primary election, but would be limited to the 30 days before a party's national nominating convention and the 60 days before the general election. 67 FR 51,135. This interpretation was based on the phrasing of BCRA's limitation of electioneering communications to those made ''within 30 days before a primary or preference election, or a convention or caucus of a political party *that has authority to nominate a candidate,* for the office sought by the candidate.'' 2 U.S.C. 434(f)(3)(A)(i)(II)(bb) (emphasis added). This interpretation viewed the restrictive adjective clause ''that has authority to nominate a candidate'' as modifying all the preceding objects: Both ''a convention or caucus of a political party'' and ''a primary or preference election.'' Because the presidential candidates of the two major parties can only be nominated at their party's national nominating convention, no State primary or preference election would satisfy this aspect of the definition. Thus, the only communications that refer to major party presidential candidates that could be considered electioneering communications are those within 30 days of the convention or 60 days of the general election.

Many commenters addressed this issue. Three commenters believe that any effort by the Commission to make the 50,000 person standard applicable to communications that refer to presidential candidates is inconsistent with the plain language of the statute. Twelve commenters rejected this view, supporting either Alternative 1–A or 1–B. Many of the comments discussed the effect of the alternatives on national nominating conventions. Most of those who favored Alternative 1–A, the addition to the general definition of ''electioneering communications,'' stated that they did so because they approved of its express application to communications 30 days before the national nominating convention. They argued that the national nominating conventions are elections with a national effect, so the relevant base of viewers or listeners for a communication shortly before a convention is nationwide, like the general election. One of those who favored Alternative 1–B, the specification of how ''made within 30 days before a primary election'' would apply to presidential primaries, suggested that the Commission expand the alternative to cover ads 30 days prior to the conventions. Another commenter who favored Alternative 1–A also stated that Alternative 1–B would be sufficient if expanded to address explicitly national nominating conventions. Only one commenter was opposed to including national nominating conventions. That commenter argued that because only delegates can vote at national nominating conventions, it is inappropriate to require that the communication reach more than 50,000 persons nationally.

Commenters who rejected the interpretation that electioneering communications cannot be related to presidential primaries because none have ''the authority to nominate a candidate'' described the narrow interpretation as plainly inconsistent with BCRA.[6] In doing so, the comments argued that the clause ''that has authority to nominate a candidate,'' modifies ''a convention or caucus of a political party'' only, so that ''a primary or preference election * * * for the office sought by the candidate'' is not modified by the ''authority'' clause. The enclosure of the ''authority'' clause in a pair of commas supports this reading of the provision, according to these commenters. The principal Congressional sponsors of BCRA were among those who endorsed this interpretation.

The Commission declines to interpret BCRA to exempt presidential primaries from the electioneering communication provisions. The Commission also rejects the interpretation of BCRA that would lead to a nationwide application of the electioneering communication provisions with respect to presidential primaries. Instead, the Commission has determined that in defining ''publicly distributed,'' the regulation will further specify how a communication is publicly distributed within 30 days of a presidential primary or preference election or a national nominating convention. Given the number of states that hold presidential primaries over the course of several months using a variety of methods to select delegates to the national nominating conventions, the Commission is issuing clarifying regulations. Similarly, the multiple days over which national nominating conventions generally are conducted also call for specificity as to precisely when the 30-day period begins and ends. New § 100.29(b)(3)(ii) incorporates the language from Alternative 1–A in the NPRM and uses the device of Alternative 1–B, which was defining ''publicly distributed'' in these circumstances. Thus, under 11 CFR 100.29(b)(3)(ii)(A), in order to qualify as an electioneering communication, a broadcast, cable, or satellite communication that refers to a clearly identified candidate for his or her party's nomination for President or Vice President must be publicly distributed within 30 days before a primary election in such a way that the communication can be received by 50,000 or more persons within the State holding the primary election.

One commenter inquired whether the 30-day period prior to a national nominating convention begins 30 days prior to the first or last day of the convention. A plain language reading of BCRA leads to the conclusion that the period to which the electioneering communication provisions apply begins 30 days prior to the first day of a convention or caucus and continues to the end of the convention or caucus. For each day within this period, at least one day of the convention or caucus will be in the subsequent 30 days. The Commission specifies in the final rule at § 100.29(b)(3)(ii)(B) that the period begins running 30 days before the first day of the national nominating convention.

The Commission notes that a caucus or convention that selects or apportions delegates to a national nominating convention or expresses a preference for the nomination of presidential candidates would be considered a primary election pursuant to 11 CFR 100.2(c)(2), 100.2(c)(3), and 9032.7. In some States, caucuses or conventions that occur prior to the statewide caucus, convention, or primary determine the distribution of the statewide delegation to the national nominating convention among candidates for President or Vice President. In such cases, the Commission would likely consider the

[6] The lone commenter who supported the interpretation preferred it because of the more limited result.

caucus or convention that selects or apportions delegates to a national nominating convention to be the triggering event for purposes of the 30-day period in 11 CFR 100.29(a)(2). In light of the variations in party procedures among the States, and in order to avoid confusion over which event in a political party's nominating process in a particular State will trigger the 30-day electioneering communication period for candidates for President or Vice President who seek that political party's nomination, the Commission will publish on its Web site a list of the one event for each political party in each State that triggers the 30-day period for candidates for President or Vice President who seek that political party's nomination.

The Commission has also determined that a similar clarification for the 60 days preceding the general election is unnecessary because the date of the general election does not vary across the States. Without the ambiguity caused by the multiple dates and jurisdictions of the primary elections, BCRA's plain language clearly establishes the time period for electioneering communications related to the presidential general election. 2 U.S.C. 434(f)(3)(A)(i)(II)(aa).

4. 11 CFR 100.29(b)(4) Clarifying Primary and General Elections

The Commission's current rules at 11 CFR 100.2 contain definitions of ''general election,'' ''primary election,'' ''runoff election,'' ''caucus or convention,'' and ''special election'' that will be applicable to 11 CFR 100.29. Under 11 CFR 100.2(f), a ''special election'' can be a primary, general, or runoff election. BCRA, however, groups ''special election'' with general and runoff elections for purposes of an electioneering communication. In the NPRM, proposed § 100.29(a)(2) would have clarified that, for purposes of section 100.29, ''special elections'' and ''runoff elections'' would be treated consistently with 11 CFR 100.2(f); that is, they could be considered primary elections, if held to nominate a candidate; and general elections, if held to elect a candidate. 67 FR 51,132.

Several commenters supported proposed § 100.29(a)(2). The principal Congressional sponsors of BCRA were among the supporters, and they also noted that Title II of BCRA will not apply to any runoff or special election resulting from the 2002 general election. *See* 2 U.S.C. 431 note (BCRA, § 402(a)(4), 116 Stat. at 112). In order to be consistent with section 100.2(f), the final rules incorporate the language of proposed § 100.29(a)(2). However, the final rules place the provisions pertaining to special or runoff elections in 11 CFR 100.29(b)(4).

One commenter found the Commission's definition of these terms, both in existing regulations and in the proposed regulations, to be problematic. This commenter argued that the definition of ''election'' should be restricted to include only elections in which the candidate referred to is running, citing another party's primary as an example that should be excluded. The Commission agrees, and has added language to proposed § 100.29(a)(2) to clarify that a primary, preference election, convention or caucus held by a political party (including those that constitute a special election or a run-off election) triggers a 30-day period that is only applicable to candidates who seek the nomination of that political party. Thus, for example, the date on which the Libertarian Party's candidate for Senate is nominated would have no bearing on communications that refer to a clearly identified candidate who seeks the Democratic Party's nomination for the same Senate seat, unless a candidate were to seek the nomination of both parties for that Senate seat.

The same commenter also stated that no legitimate purpose is served by including elections in which a candidate is unopposed, as required by current 11 CFR 100.2(a). The final rules follow the proposed rules because nothing in BCRA or its legislative history reflects any Congressional intent to distinguish between elections in which a candidate has opposition and those in which he or she does not.

A commenter requested clarification regarding ''preference election'' as used in 2 U.S.C. 434(f)(3)(A)(i)(II)(bb) and 11 CFR 100.29(a)(2). Section 100.2(c)(2) defines a ''preference election'' to be a primary election, while, in contrast, BCRA's electioneering communication provision refers separately to primary and preference elections. However, the Commission believes no substantive difference was intended, so the proposed regulation at 11 CFR 100.29(a)(2) follows the statute.

The same commenter also raised the issue of an independent candidate's ability to choose when the primary is considered to occur pursuant to 11 CFR 100.2(a)(4). The final rule text does not specifically state the Commission's intention in this regard, as the Commission decided it was not necessary to address the issue at this time.

This commenter also expressed concern that the dates of non-major parties nominating conventions may not be widely known among members of the public. BCRA's reference to a convention of a political party that has authority to nominate a candidate for the office sought by the candidate is not limited to major party conventions. Consequently, the Commission does not have the authority under BCRA to exclude non-major parties by regulation.

Finally, the commenter questions the application of the timing requirements for electioneering communications in States that may have precinct, county, district, or regional caucuses or conventions that select delegates to the statewide caucus or convention. As the commenter points out, the statewide caucus or convention has the authority to nominate a candidate, so the statewide caucus or convention satisfies § 100.29(a)(2). If none of the earlier caucuses or conventions has the authority to nominate a candidate, by definition, they would not mark the end of a 30-day period under §100.29(a)(2). This same analysis also answers the commenter's concern about States that have caucuses or conventions prior to a primary election. For example, Connecticut and Utah have conventions prior to primary elections scheduled for the 2002 Congressional races. BCRA's limitation on ''conventions and caucuses'' to those ''that [have] the authority to nominate a candidate'' addresses this situation by excluding convention and caucuses that do not have that authority. As noted above in connection with 11 CFR 100.29(b)(4), a caucus or convention that selects or apportions delegates to a national nominating convention would likely mark the end of a 30-day period of electioneering communications; the Commission will provide guidance on its web site on a State-by-State, party-by-party basis.

5. 11 CFR 100.29(b)(5) Definition of ''Targeted to the Relevant Electorate''

BCRA defines ''targeted to the relevant electorate'' at 2 U.S.C. 434(f)(3)(C) as a communication that can be received by 50,000 or more persons either in the Congressional district the candidate seeks to represent, in the case of a candidate for Representative, Delegate, or Resident Commissioner to the U.S. House of Representatives; or in the State the candidate seeks to represent, in the case of a candidate for the U.S. Senate. The NPRM included proposed § 100.29(b)(3) that followed the statutory language, and that proposal is now made final at 11 CFR 100.29(b)(5). NPRM, 67 FR 51,133. The commenters who addressed this provision agreed with tracking the statutory language in the regulation and focused their comments on the

interpretative questions posed in the NPRM.[7]

The definition of ''targeted to the relevant electorate'' includes communications that can be received beyond the relevant geographical area. A communication that can be received by large numbers of persons outside the relevant district or State is nonetheless a targeted communication, as long as 50,000 persons in the relevant area can also receive it. Conversely, an electioneering communication would not include a communication that reaches fewer than 50,000 persons in the State or district where the clearly identified candidate is running, even if at the same time it also reaches 50,000 or more persons in a State or district where the clearly identified candidate is not running. The Commission noted this interpretation in the NPRM, and most of the commenters who addressed it supported the interpretation. One commenter suggested that the Commission address in the final rule what it deemed an adjoining market problem. The commenter thought an ad that is broadcast on stations intended for an audience in one State might reach more than 50,000 persons in another State, for example, because media markets may extend beyond State lines. The commenter posited the example of an ad broadcast on Massachusetts television stations that is intended to influence a Member of Congress from Massachusetts with respect to a bill that is supported by the President. Such an ad might be broadcast more than 30 days before the Massachusetts primary, so it would not be an electioneering communication, even if it clearly identified the Member who is seeking reelection. However, because several Massachusetts television stations' broadcast signals reach a large audience in New Hampshire, if the ad also clearly identifies a President seeking reelection, it would constitute an electioneering communication if it is broadcast within 30 days of the New Hampshire presidential primary election. However, BCRA is clear: If a communication can be received in a State or district by 50,000 or more persons, and if it meets the timing, content, and medium requirements related to electioneering communications, the communication is an electioneering communication, regardless of how many potential audience members or what percentage of the total potential audience reside in another State or district. Therefore, the final rule at § 100.29(b)(5) does not reflect the commenter's suggestion.

D. The Federal Communications Commission and Determining the Size of a Potential Audience

The subsidiary definitions proposed in the NPRM included a provision at 11 CFR 100.29(b)(5) that addresses how to obtain information about a communication's potential audience. 67 FR 51,134. The proposed provision explained that the Federal Communications Commission's web site would provide information about the number of individuals in Congressional districts or States that can receive a communication publicly distributed by a television station, radio station, cable television system, or satellite system. Based on this proposal and the comments received on the issues raised by it, the Commission is promulgating an Interim Final Rule in a separate rulemaking.

E. Exemptions From Definition of ''Electioneering Communication'' in BCRA

BCRA generally defines ''electioneering communications'' at 2 U.S.C. 434(f)(3)(A) and provides three exceptions to the definition in section 434(f)(3)(B)(i) through (iii). BCRA also provides the Commission with authority to promulgate regulations that exempt additional communications from the definition of ''electioneering communications.'' 2 U.S.C. 434(f)(3)(B)(iv). BCRA also imposes a significant limitation on this authority: the Commission may exempt only communications that do not promote, support, attack, or oppose a Federal candidate. *Id.*

In the Commission's regulations, 11 CFR 100.29(a) and (b) define ''electioneering communications,'' and § 100.29(c) provides for exceptions to the definition. The exceptions in 11 CFR 100.29(c)(1) through (4) are based on the express language of BCRA. The Commission proposed a number of additional exemptions in the NPRM. After carefully considering the extensive written comments and testimony, which highlighted the difficulties involved in crafting permissible exemptions, the Commission has decided to promulgate two exemptions: one for State and local candidates, 11 CFR 100.29(c)(5), and another for certain nonprofit organizations operating under 26 U.S.C. 501(c)(3). The Commission has also decided not to promulgate any further exemptions.

1. 11 CFR 100.29(c)(1) Communications Other Than Broadcast, Cable or Satellite

BCRA expressly limits electioneering communications to broadcast, cable, or satellite communications. As discussed above in connection with 11 CFR 100.29(b)(1), the legislative history establishes that BCRA's focus was on radio and television ads. Based on the statutory language and the legislative history, the final rule at 11 CFR 100.29(c)(1) provides examples of communications that are *not* included in the definition of electioneering communication. The list of exemptions includes communications appearing in print media, including a newspaper or magazine, handbills, brochures, bumper stickers, yard signs, posters, billboards, and other written materials, including mailings; communications over the Internet, including electronic mail; and telephone communications.

Most of the comments received on proposed 11 CFR 100.29(c)(1) discussed the exemption for the Internet. Those who did comment on the remainder of the paragraph, including the principal Congressional sponsors of BCRA, agreed that it conformed to BCRA.

The Internet is included in the list of exceptions in the final rules in section 100.29(c)(1) because, in most instances, it is not a broadcast, cable, or satellite communication. BCRA's legislative history, which is discussed above in connection with 11 CFR 100.29(b)(1), establishes Congress's intent to exclude communications over the Internet from the electioneering communication provisions. The Commission concludes that Congress did not seek to regulate the Internet in subtitle A of Title II of BCRA. The relatively few commenters who opposed the Internet exemption did not disagree with this conclusion; rather, they argued that as the Internet develops, aspects of it might come to be used in a manner like radio or television. To these commenters, this potential evolution of the Internet calls for a more precise approach and makes the exemption as proposed too broad a treatment of this issue. The Commission has decided to include the exemption in the final rules, rather than attempt to craft a regulation that responds to unknown, future developments.

The NPRM noted that ''webcasts'' or other communications that are distributed only over the Internet would be excluded from the definition of electioneering communications, but television or radio communications that

[7] One commenter claimed that BCRA's targeting definition is backward. This commenter argued that targeting should be limited to ads crafted specifically for a particular district or State. Such a focus would ensure that the ad's purpose was to influence the election in a manner objectively discernible, and it would distinguish an electioneering communication from an issue ad, which presumably would seek a broader audience. However, even this commenter recognized at the Commission's hearing that the Commission must use BCRA's targeting definition.

are simultaneously ''webcast'' over the Internet or archived for viewing or listening over the Internet would be included in the definition of electioneering communications. 67 FR 51,133. Some comments on the definition of ''broadcast, cable, or satellite communication'' in proposed § 100.29(b)(1) and the exemption in proposed § 100.29(c)(1) suggest that a clarification is in order. The discussion in the NPRM was intended to make clear that if a communication meets the content, timing, media, and potential audience criteria for an electioneering communication, webcasting that communication, or archiving it for later viewing via the Internet, will not remove the television or radio aspect of the communication from the definition of ''electioneering communication.'' Thus, the exemption for communications on the Internet is not so broad that it could inoculate a television and radio communication that otherwise satisfies the electioneering communication criteria from the electioneering communication rules, merely because the communications is also webcast or archived for later viewing or listening over the Internet. The Internet aspect of the communication, including the number of potential recipients, will not be considered in determining whether a communication meets the definition of an ''electioneering communication.''

The NPRM also asked how WebTV should be treated. 67 FR 51,133. One commenter stated that WebTV is an alternative means of accessing the Internet, so it would be subject to the Internet exemption in § 100.29(c)(1). Another commenter argued that the regulation should explain that the Internet exemption applies no matter what equipment is used to access the Internet. The Commission agrees that accessing the Internet with WebTV or any other technology is included within the Internet exemption. Because the exemption is not limited to any particular technology to access the Internet, the text of the final rule follows the proposed rule.

Some argued that the exemption in proposed 11 CFR 100.29(c)(1) should be expanded to include public access television and radio channels and digital audio radio satellite. Others argued that because those services are undeniably television, radio, and satellite, any exemption for them would be contrary to the plain language of BCRA. The Commission agrees with the latter viewpoint, so no specific exemption of this nature is included in the final rules.

2. 11 CFR 100.29(c)(2) Exemption for a News Story, Commentary or Editorial

The exemption for a news story, commentary or editorial in 11 CFR 100.29(c)(2) closely follows the statutory language from 2 U.S.C. 434(f)(3)(B)(i), which exempts such communications from the definition of ''electioneering communication,'' unless the facilities distributing the communication are owned or controlled by any political party or committee, or a candidate. The final rule adds that communications distributed by such facilities are exempt from the electioneering communication definition if the communications meet the requirements of 11 CFR 100.132(a) and (b).

The commenters supported a rule that refers to the existing media exemption. The commenters also supported the regulation's inclusion of broadcast, cable, and satellite communications, in place of the statute's reference to broadcast communications. The legislative history gives no reason to narrow this particular aspect of electioneering communications, and the commenters, including the principal Congressional sponsors of BCRA, agreed with the consistent use of the broader phrase.

Some of the comments suggested additional exemptions for documentaries, educational programming, or entertainment, which apparently reflects a concern that this exemption would be narrowly interpreted. The Commission interprets ''news story commentary, or editorial'' to include documentaries and educational programming in this context. Entertainment programming is not mentioned in BCRA, so the final regulation does not include it either. Please note, however, that the limitation of the definition of ''electioneering communications'' to those in which a fee is charged or paid for a public distribution will likely exempt from the definition of ''electioneering communications'' nearly all of the entertainment programming discussed by the commenters.

3. 11 CFR 100.29(c)(3) Exemption for Expenditures and Independent Expenditures

Title II, subtitle A of BCRA also specifically provides an exemption for communications that constitute expenditures or independent expenditures under the Federal Election Campaign Act. 2 U.S.C. 437(f)(3)(B)(ii). In the NPRM, two alternatives were proposed to implement this provision. 67 FR 51,135–36. The first alternative reiterated the statutory exemption as proposed in § 100.29(c)(3). Under this alternative, any expenditure of a Federal political committee and any independent expenditure would not be subject to the electioneering communication reporting requirements, but would remain subject to FECA's other reporting requirements and its prohibitions and limitations on funding sources. The comments from BCRA's principal sponsors explained that the electioneering communication provisions were ''mainly concerned with election-related disbursements that avoided regulation under FECA.'' They stated that because expenditures and independent expenditures are subject to regulation under FECA, the statutory exemption from Title II, subtitle A of BCRA ensures that BCRA's Title II, subtitle A applies to disbursements that are not subject to FECA's other requirements, prohibitions, and limitations. The exemption's purpose, the sponsors therefore argue, is to avoid requiring political committees to report the same expenditures twice.

Most who commented on this issue urged the Commission to implement Alternative 2–A, which repeats the statutory language. Only one commenter preferred Alternative 2–B, which would have limited the exemption to ''candidate-specific expenditures'' that are reportable as an in-kind contribution or a party committee coordinated expenditure, or an independent expenditure. This commenter preferred what it characterized as duplicative reporting required under that alternative to a reporting scheme it considered incomplete. The commenter agreed, however, that the purpose of the exemption for expenditures was to avoid duplicative and potentially conflicting reporting requirements. Because Alternative 2–B would lead to duplicative reporting and because Alternative 2–A includes BCRA's language, the Commission has decided that the final rule will include Alternative 2–A's language, with one modification.

It is possible that a group could pay for an ad and claim that the payment is an expenditure because it was for the purpose of influencing a Federal election, as expenditure is defined in 2 U.S.C. 431(9). As such, the group could claim that the ad was exempt from the definition of ''electioneering communication'' as an expenditure pursuant to 2 U.S.C. 437(f)(3)(B)(ii). However, the group could simultaneously claim that it does not meet the major purpose test, and therefore it is not required to register as a political committee or to report its expenditures. Thus, the group running

an ad could invoke the BCRA exemption for expenditures, which prevents double reporting, and simultaneously claim the expenditure is not subject to FECA reporting requirements because the group is not a political committee under FECA. To prevent such a situation, the Commission has clarified the final rule at 11 CFR 100.29(c)(3) to limit the exemption to expenditures and independent expenditures that are required to be reported as such under the Act and the Commission's regulations. This clarification follows suggestions from several commenters, including the principal Congressional sponsors of BCRA. Under this regulation, the campaign committees of Federal candidates and the national party committees will be totally exempt from the electioneering communications provisions.

4. 11 CFR 100.29(c)(4) Exemption for Candidate Debates or Forums

BCRA includes an exemption at 2 U.S.C. 434(f)(3)(B)(iii) for a communication that ''constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum.'' The final rules in 11 CFR 100.29(c)(4) implement this provision and refer to 11 CFR 110.13, which contains the Commission's current regulation on candidate debates. All of the commenters that addressed this issue agreed with the proposed rules in 11 CFR 100.29(c)(4), except that one commenter argued that the requirements of § 110.13 should not apply in this context to limit the exemption from the electioneering communication definition. However, BCRA expressly refers to regulations adopted by the Commission in this regard, and 11 CFR 110.13 applies to candidate debates. The Commission finds no reason to adopt a different standard in the electioneering communication exemption. Additionally, pursuant to the operation of §§ 110.13 and § 114.4(f),[8] if the conduct of a debate does not meet the requirements of § 110.13, any corporate or labor organization funding for such a debate would constitute a prohibited contribution or expenditure.[9]

F. Regulatory Exemptions From Definition of ''Electioneering Communication''

In addition to the exemptions expressly created by BCRA, the statute also provides that ''to ensure the appropriate implementation'' of the electioneering communication provisions, the Commission may promulgate regulations exempting other communications from the ''electioneering communications'' definition. 2 U.S.C. 434(f)(3)(B)(iv). However, the statutory authorization to exempt communications is expressly limited in two ways. The exemption must be promulgated consistent with the requirements of the new electioneering communication provision, and the exempted communication must not be a ''public communication'' that refers to a clearly identified candidate for Federal office and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office. 2 U.S.C. 434(f)(3)(B)(iv) (referencing 2 U.S.C. 431(20)(A)(iii)).

Some of the commenters argued that the exemption authority provided to the Commission is extremely limited. Relying upon legislative history, the principal Congressional sponsors of BCRA explained the exemption authority would ''allow the Commission to exempt communications that 'plainly and unquestionably' are 'wholly unrelated' to an election and do not 'in any way' support or oppose a candidate. In addition, any exemption that applies to entities other than parties and candidates must preserve the 'bright line' quality of the original provision.'' *See* 148 Cong. Rec. H410–411 (daily ed. Feb. 13, 2002) (statement of Rep. Shays).

In its consideration of potential exemptions, the Commission has used the express language of the statute as its guide for the extent of its exemption authority. Thus, the Commission acknowledges that the statute limits its exemption authority by providing that the Commission may not exempt communications that promote, support, attack or oppose a candidate. The Commission's exemption authority is also limited by BCRA's use of ''bright line'' distinctions between electioneering communications and other communications.

In the NPRM, the Commission proposed regulatory text for three exemptions in addition to the statutory exemptions. Proposed 11 CFR 100.29(c)(5) through (7). Among these was a proposed exemption available to State and local candidates. See NPRM, proposed 11 CFR 100.29(c)(7), 67 FR 51,145. Additionally, several commenters suggested an exemption for any communication made by a tax-exempt organization described in 26 U.S.C. 501(c)(3). As described in detail below, the Commission adopted only these two exemptions, one for communications paid for by State or local candidates that is similar to the exemption at proposed 11 CFR 100.29(c)(7), and the other for communications paid for by certain nonprofit organizations operating under 26 U.S.C. 501(c)(3).

1. 11 CFR 100.29(c)(5) Exemption for State and Local Candidates

The Commission proposed an exemption in the NPRM that would cover communications by State and local candidates and officeholders that refer to a clearly identified Federal candidate, provided that mention of a Federal candidate is merely incidental to the candidacy of one or more individuals for State or local office. 67 FR 51,136. For example, under this approach, an ad for a State or local candidate that featured such candidate's views on education would not have been rendered an electioneering communication if the ad were to indicate whether the candidate supported or opposed the President's education policy.

Four commenters thought the Commission's formulation of such an exemption was vague, subject to abuse, not supported by BCRA, and therefore beyond the Commission's exemption authority. Nonetheless, these same commenters supported an alternative

[8] Nonprofit corporations are permitted by 11 CFR 114.4(f) to use their funds and funds donated by corporations or labor organizations to stage debates in accordance with 11 CFR 110.13. 11 CFR 114.1(a)(2)(x) exempts any activity specifically permitted by 11 CFR part 114 from the definition of ''contribution and expenditure.''

[9] The Commission received a Petition for Rulemaking from a number of corporations owning and operating news organizations, television stations, newspapers, cable channels, and other media ventures, as well as media trade associations. The petition asked the Commission to amend its regulation on sponsorship of candidate debates to ''make clear that it does not apply to the sponsorship of a candidate debate by a news organization or a trade organization composed of, or representing, members of the press.'' The petition asserts that any regulation of the sponsorship of debates by news organizations or related trade associations is contrary to the clear intent of the U.S. Congress, irreconcilable with other FEC decisions, in conflict with the regulatory decisions of the Federal Communications Commission, and unconstitutional. A Notice of Availability for the petition was published on May 9, 2002. 65 FR 31,164. Two comments were received by the end of the public comment period, on June 10, 2002. Some commenters on the Electioneering Communications rulemaking urged the Commission to accelerate consideration of the petition. However, the Commission intends to defer consideration of whether to issue a Notice of Proposed Rulemaking until after the statutorily required BCRA rulemakings are completed by the end of the year. In the meantime, the Commission's debate regulations remain in effect.

formulation that exempts communications by State or local candidates or State or local political parties that refer to clearly identified Federal candidates, provided the communications do not promote, support, attack or oppose a Federal candidate. By using that standard, the commenters believed the exemption would also serve to harmonize the operation of Title I and subtitle A of Title II of BCRA as they apply to State and local parties and their candidates.

Title I of BCRA permits State, district, or local party committees, organizations, or their candidates to use non-Federal funds for communications that clearly identify a Federal candidate, but do *not* promote, support, attack, or oppose any Federal candidate. *See* 2 U.S.C. 431(20)(A)(iii) and 11 CFR 100.24(b)(3) (defining Federal election activity to include only those public communications that promote, support, attack or oppose a clearly identified Federal candidate); 2 U.S.C. 441i(b)(1) and 11 CFR 300.32(a)(1) (association of State office candidates or incumbents required to use Federal funds for Federal election activity); 2 U.S.C. 441i(b)(1) and 11 CFR 300.32(a)(2) (same for State, district, and local party committees); 2 U.S.C. 441i(f)(1) and 11 CFR 300.71 (State and local candidates required to use Federal funds for a communication that does promote, support, attack or oppose a Federal candidate). Therefore, according to these commenters, absent an exemption, if a State, district, or local party committee, organization, or a State or local candidate creates and distributes a radio or television communication that refers to a clearly identified Federal candidate, but does *not* promote, support, attack or oppose any Federal candidate, and is not otherwise a contribution or expenditure, Title I of BCRA would permit the use of non-Federal funds to pay for that communication. However, if the same communication were publicly distributed and met the timing and targeting requirements of subtitle A of Title II, then the communication would also be an electioneering communication, so the use of corporate or labor organization funds to pay for it would be prohibited by subtitle A of Title II. According to these commenters, this inconsistent result is contrary to the intention of Title I in permitting the use of non-Federal funds for these purposes. Additionally, the principal Congressional sponsors argue that ''effectively tak[ing] state candidates and parties out of the Title II prohibitions and reporting requirements * * * is consistent with the purposes of BCRA.''

The Commission agrees that an exemption for State and local candidates that is within the parameters of 2 U.S.C. 434(f)(3)(B)(iv) is appropriate in order to harmonize Title I and subtitle A of Title II of BCRA. Accordingly, the final rules include an exemption from the definition of ''electioneering communication'' for communications that are not described in 2 U.S.C. 431(20)(A)(iii) and that are paid for by State or local candidates in connection with an election to State or local office. *See* 11 CFR 100.29(c)(5). Thus, this exemption covers public communications by State and local candidates that do *not* promote, support, attack, or oppose federal candidates. *See* new 11 CFR 300.72 exempting these communications from certain requirements of Title I of BCRA.

In contrast, however, State and local candidates making public communications that satisfy the description set forth in 2 U.S.C. 431(20)(A)(iii) (i.e. public communications by State and local candidates that promote, support, attack, or oppose Federal candidates), are governed by Title I of BCRA and not by subtitle A of Title II of BCRA. Thus, under 2 U.S.C. 441i(f), 11 CFR 100.5(a), and 11 CFR 300.71, these communications must be paid for with Federal funds meeting the limits, prohibitions, and reporting requirements of the Act, including the contribution limits set forth at 2 U.S.C. 441a(a)(1)(C) applicable to political committees that are not the authorized campaign committees of Federal candidates. The reporting obligations of State and local candidates making communications promoting, supporting, attacking, or opposing federal candidates are governed by a number of provisions depending on the exact nature of the communications and the persons making them. *See, e.g.,* 11 CFR 300.36(a)(associations and groups of State and local candidates that are not political committees), 11 CFR 300.36(b)(associations and groups of State and local candidates that are political committees), 11 CFR 300.71(individuals who are State or local candidates), and 2 U.S.C. 434(g)(any person who makes an independent expenditure).

2. 11 CFR 100.29(c)(6) Exemption for 501(c)(3) Organizations

The Commission received comment from members of the non-profit community expressing concern that subtitle A of Title II of BCRA could inadvertently stifle the ability of charitable organizations to carry out their core functions by limiting or prohibiting their advertising on television and radio. One commenter wrote that a broad reading of BCRA could mean that ''[c]harities would be prohibited from broadcasting fundraising appeals or public service announcements that feature people who are candidates if the appeals run within 30 days of a primary or 60 days of a general election. Documentaries and other educational programming featuring individuals who are candidates would also be banned.''

Several commenters requested that the Commission exercise its authority to craft exemptions for communications that do not promote, support, attack, or oppose a candidate for federal office when made by corporations organized under 26 U.S.C. 501(c)(3). These commenters pointed out that the tax code expressly prohibits organizations described in section 501(c)(3) from ''participat[ing] in, or interven[ing] in * * * any political campaign on behalf of (or in opposition to) any candidate for public office.'' 26 U.S.C. 501(c)(3). As such, noted another commenter, because ''501(c)(3) organizations are absolutely prohibited by the [Internal Revenue Code] from engaging in or funding any activity that even insinuates support or opposition to a candidate for public office, they are held to a demonstrably higher regulatory standard than other corporations.'' Therefore, the commenter concluded, ''BCRA's application to 501(c)(3)s [would] prohibit[ ] activity that is already forbidden,'' and the activities the Internal Revenue Service permits 501(c)(3) organizations to engage in are activities ''that BCRA was not intended to reach.''

Many commenters noted that the penalties for violating the Internal Revenue Code prohibitions are severe, *viz.,* ''revocation of tax-exempt status [and] other potential penalties * * * including substantial taxes on the electioneering activity and penalties that personally apply to managers of an organization that knowingly violate the prohibition.''

Some supporters of BCRA submitted comments discouraging the creation of a categorical exemption for 501(c)(3) organizations. Many such commenters referred to statements made by Representative Shays, a chief sponsor of the BCRA legislation, as definitive evidence that Congress did not intend BCRA to give the Commission authority to create such an exemption. *See* 148 Cong. Rec. H411 (daily ed. Feb. 13, 2002) (Statement of Rep. Shays). In written comments to the Commission,

however, the congressional sponsors, including Representative Shays, drew a distinction between Congress' decision not to include a statutory exemption and the Commission's discretion to create a regulatory exemption, based upon the Commission's understanding of the needs of these organizations balanced against the past practices of non-profits in this area. ''(W)hile the issues of Public Service Announcements and ads created by 501(c)(3) charities were raised during the drafting of Title II, Congress did not create statutory exemptions for these types of ads. Before doing so, the Commission must be convinced that such ads have been run in the past during the pre-election windows and that exempting them will not create opportunities for evasion of the statute.''

Testimony on these issues was elicited in a public hearing, specifically, as to whether there is a history of ads run by 501(c)(3) organizations close to elections and whether theses organizations tend to violate the Internal Revenue Service prohibitions against political activity. Witnesses agreed that this activity was rare, but also that 501(c)(3) corporations make extraordinary efforts to avoid Internal Revenue Service prohibitions against political activity when ads are run. The representative of one non-profit organization testified that ''(t)here's no demonstrated record of abuse by public charities in terms of electioneering. That's not the group that the campaign finance laws were meant to address. * * *.'' The Commission also notes that all of the examples mentioned in testimony as the type of ads that Congress meant to limit were based on ads run by 501(c)(4) or other types of organizations, not 501(c)(3) organizations.

More compelling, however, was the testimony of one non-profit organization as to the effect on charitable organizations that could arise should the Commission fail to provide an exemption. One witness testified that, ''already the tax rules are complicated enough. If you throw in election law on top of that, there are many groups that will just throw up their hands and say we're not going to get involved (in grassroots lobbying activity), it's just too risky, it's too much to take on.''

Second, many commenters expressed concern that investigations under BCRA, even when a complaint is without merit, could have a disastrous effect on a charitable organization. One witness stated, ''(w)e've already seen some evidence of people on different sides of issues reporting the groups that have opposed them on the issues to various authorities looking for an investigation, and even if a non-profit had in no way violated campaign finance laws, especially if it were a public charity, just being investigated by the FEC would have a devastating effect on the organization.'' The same witness also noted that the Commission's advisory opinion process would not be a satisfactory alternative, as too many organizations would fear that any request they direct to the Commission would only raise with the Internal Revenue Service the issue of whether they are contemplating electoral activity. Other non-profit organizations testified that they did not have the financial resources to retain legal counsel and seek an advisory opinion from the Commission, although legal counsel is not required to seek an advisory opinion. The Commission also notes that the rationale for exempting 501(c)(3) organizations applies to all such organizations, which makes a regulatory exemption more appropriate than an exemption granted in an advisory opinion, which is necessarily limited to the particular facts and circumstances of the request and is granted on a case-by-case basis.

Section 501(c)(3) of the Internal Revenue Code exempts from taxation certain trusts and corporations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals. It is the communications of these organizations that the Commission exempts from Title II, subtitle A of BCRA at 11 CFR 100.29(c)(6).

Section 501(c)(3) organizations are barred as a matter of law from being involved in partisan political activity. The Commission believes the purpose of BCRA is not served by discouraging such charitable organizations from participating in what the public considers highly desirable and beneficial activity, simply to foreclose a theoretical threat from organizations that has not been manifested, and which such organizations, by their very nature, do not do.

In exempting 501(c)(3) organizations from Title II, subtitle A of BCRA, the Commission is not delegating enforcement of the electioneering communication provisions to the Internal Revenue Service. Rather the Commission anticipates that the Internal Revenue Service will continue to review the activities of 501(c)(3) organizations to make sure those organizations comply with the tax code, without reference to Title II of BCRA. Should the Internal Revenue Service determine, under its own standards for enforcing the tax code, that an organization has acted outside its 501(c)(3) status, the organization would be open to complaints that it has violated or is violating Title II of BCRA. Additionally, under 2 U.S.C. 438(f), the Commission and the Internal Revenue Service must work together to promulgate rules that are mutually consistent. The final rules, including new 11 CFR 100.29(c)(6), therefore, do not permit any activity that is prohibited under the Internal Revenue Code and regulations prescribed thereunder.

G. Other Exemptions Considered

In the NPRM, the Commission proposed for an exemption related to the popular name of legislation. Proposed 11 CFR 100.29(c)(5). Four alternatives, designated Alternative 3-A through 3-D, were included for another exemption related to grass-roots lobbying. 11 CFR 100.29(c)(6). Additionally, the Commission sought comment on several other potential exemptions. 67 FR 51,136. As described in detail below, the Commission has concluded that none of these exemptions is consistent with the limited authority provided to the Commission by the statute to make exemptions for communications that do not promote, support, attack or oppose a Federal candidate. Consequently, the Commission is not promulgating any of the other exemptions to the definition of ''electioneering communication'' proposed in the NPRM.

1. Proposed 11 CFR 100.29(c)(5) Popular Name of Legislation

In the NPRM, the Commission proposed an exemption at 11 CFR 100.29(c)(5) that would have exempted a communication that refers to a bill or law by its popular name where that name happens to include the name of a Federal candidate, if the popular name is the sole reference made to a Federal candidate. 67 FR 51,136. Many commenters were opposed to this exemption.

The argument most frequently cited in opposition to this exemption is the absence of an objective standard for the popular name of a bill or law. This lack of an objective standard would make the proposed exemption an easy means of evading the electioneering communication provisions, because a constructed popular name could be used to link a candidate to a popular or unpopular position. In the view of these commenters, such communications could easily promote, support, attack or

oppose a Federal candidate, which would make an exemption for these communications beyond the Commission's authority.

Even some of the supporters of this exemption acknowledged the problem of the lack of an objective standard as to what constitutes a popular name of a bill or law. Three supporters proposed responses: one suggested that the Commission limit its exemption to only the original sponsors of the legislation, which would exclude co-sponsors. Another suggested that the Commission limit the exemption to ''the unique name generally used by the media.'' A third suggested that the exemption be limited to communications publicly distributed nationwide. According to this commenter, if such communications use a candidate's name as the popular name of a bill, the nationwide audience would demonstrate the purpose of the communication is truly related to the legislation, and not the particular candidate's election because only a small portion of the audience for a nationwide communication could vote for or against the candidate. This rationale for this proposal applies only to non-presidential candidates.

Opponents of this proposed exemption also argued it was unnecessary. They observed that speakers who wished to communicate about a bill or legislation could use the candidate's name and simply avoid that candidate's particular State or Congressional district during the narrow time period covered by the definition of ''electioneering communication.'' Additionally, even during that time and in that district, the commenters pointed out that the legislation could be discussed without mentioning the particular candidate. Thus, to these commenters, the absence of the exemption would have a limited impact on speakers, but the presence of an exemption would provide the opportunity for significant abuse.

The Commission is persuaded by the examples cited by the commenters and other examples from its own history of enforcement actions that communications that mention a candidate's name only as part of a popular name of a bill can nevertheless be crafted in a manner that could reasonably be understood to promote, support, attack or oppose a candidate. Furthermore, this type of exemption is not necessary because communications can easily discuss proposed or pending legislation without including a Federal candidate's name by using a variety of other means of identifying the legislation. In addition, the Commission recognizes that there are valid concerns as to which names to include in a bill's popular name, which are not necessarily resolved by the mechanical use of the name of only the original sponsors. Nor would this approach adequately address the names of the sponsors of amendments to the legislation. Consequently, the final rules do not include an exemption for such communications.

2. Proposed 11 CFR 100.29(c)(6) Exemption for Lobbying Communications

The Commission proposed four alternatives designated Alternatives 3–A through 3–D in the NPRM that would exempt communications that are devoted to urging support for or opposition to particular pending legislation or other matters, where the communications request recipients to contact various categories of public officials regarding the issue. 67 FR 51,136.

Alternative 3–A would have excluded any communication devoted exclusively to urging support for or opposition to particular pending legislation or executive matters, where the communication only requests recipients to contact an official without promoting, supporting, attacking, or opposing a candidate or indicating the candidate's position on the legislation in question. Alternative 3–B would have excluded any communication concerning only a pending legislative or executive matter, in which the only reference to a Federal candidate is a brief suggestion that the candidate be contacted and urged to take a particular position, and no reference to a candidate's record, position, statement, character, qualifications, or fitness for an office or to an election, candidacy, or voting is included. Alternative 3–C would have excluded any communication that does not include express advocacy, and that refers either to a specific piece of legislation or to a general public policy issue and contains contact information for the person whom the communication urges the audience to contact. Alternative 3–D would have excluded any communication that urges support of or opposition to any legislation or policy proposal and only refers to contacting a clearly identified incumbent candidate to urge the legislator to support or oppose the matter, without referring to any of the legislator's past or present positions.

A wide range of commenters addressed these alternatives, and none of the alternatives was favorably received. The most frequently expressed comments were that each of the alternatives could be easily evaded so that a communication that met the requirements for an exemption nonetheless would also promote, support, attack, or oppose a Federal candidate. Each of the alternatives included terms that commenters found vague. The ''promote, support, attack, or oppose'' standard was considered inappropriate by some for this context, which will apply to entities other than candidates and political party committees. Alternative 3–C's exemption of all communications was singled out by some commenters who argued it would completely undermine BCRA's requirement because it would exempt virtually all of the ads that led Congress to enact the electioneering communication provisions; however, this alternative was also supported by other commenters who found it the least objectionable of the four alternatives. Several commenters argued that the apparent distinction between incumbent legislators and all other candidates in Alternative 3–D could raise constitutional issues.

Some commenters urged the Commission to promulgate another proposal that shares most of the elements of Alternative 3–B. With disagreement about only one issue, these commenters proposed an exemption for communications that contain the following elements: (A) The communication is devoted exclusively to a pending legislative or executive branch matter and (B) its only reference to a clearly identified Federal candidate is a statement urging the public to contact the Federal candidate or a reference that asks the candidate to take a particular position on the pending legislative or executive branch matter. The proposed formulation of the exemption advocated by these commenters would *not* extend to any communication that included any reference to any of the following: any political party, the candidate's record or position on any issue, or the candidate's character, qualifications or fitness for office or to the candidate's election or candidacy. Other commenters went further than this proposal and also required that the candidate not be named or appear in the communication; the candidate could only be identified as ''Your Congressman'' or a similar reference that does not include the candidate's name.

The Commission concludes that communications exempted under any of the alternatives for this proposal could well be understood to promote, support, attack, or oppose a Federal candidate. Although some communications that are devoted exclusively to pending public

policy issues before Congress or the Executive Branch may not be intended to influence a Federal election, the Commission believes that such communications could be reasonably perceived to promote, support, attack, or oppose a candidate in some manner. The Commission has determined that all of the alternatives for this proposed exemption, including those proposed by the commenters, do not meet this statutory requirement.

3. Exemption for Business Advertisements

In the NPRM, the Commission invited suggestions on whether to promulgate an exemption for communications that refer to a clearly identified candidate in the context of promoting a candidate's business, including a professional practice, for example. 67 FR 51,136. However, no draft exemption was included in the proposed rules.

The commenters who addressed this issue urged the Commission to adopt an exemption for such advertisements, arguing that candidates who use television or radio to promote their commercial interests have an interest in continuing to do so during the relevant periods before elections. One commenter suggested that a narrowly drawn exemption would be appropriate and that it should be limited to ads that promote the business's product or service and that identify the candidate only by stating his or her name as part of the name of the business. This commenter believed that if the candidate appeared or spoke in such ads, they would constitute electioneering communications.

The Commission has determined that a narrow exemption for such ads is not appropriate and cannot be promulgated consistent with the Commission's authority under 2 U.S.C. 434(f)(3)(B)(iv). Based on past experience, the Commission believes that it is likely that, if run during the period before an election, such communications could well be considered to promote or support the clearly identified candidate, even if they also serve a business purpose unrelated to the election.

4. Ballot Initiatives and Referenda

In the NPRM, the Commission invited specific suggestions on whether communications that promote a ballot initiative or referendum should be exempt from the definition of ''electioneering communications.'' 67 FR 51,136. The NPRM did not, however, include regulatory language for this potential exemption.

The comments received on this issue were divided. Supporters of this exemption argued that the subject matters of these communications and the purpose of those who sponsor these ads make them an unlikely vehicle to be used to promote, support, attack, or oppose a Federal candidate. One of the commenters argued that disbursements promoting or opposing a ballot initiative or referendum represent ''the type of speech indispensable to decisionmaking in a democracy'' and are therefore entitled to the highest degree of First Amendment protection. *See First National Bank of Boston* v. *Bellotti,* 435 U.S. 765, 777 (1978). Opponents of the exemption argued that such an exemption would be subject to abuse because communications that promote, support, attack, or oppose a Federal candidate could be tailored easily to qualify for any such exemption. In fact, one commenter directly challenged the argument that communications about ballot initiatives or referenda are unlikely to relate to Federal candidates. This commenter stated: ''Increasingly, political consultants have been putting initiatives * * * on the ballot specifically to [affect] candidate races. It is too easy to imagine an initiative designed to provoke a backlash against a targeted candidate for the House or Senate.'' This commenter distinguished *Bellotti's* protections as applying to communications about referenda, but not necessarily communications that clearly identify a Federal candidate.

No such exemption is included in the final rules. The Commission believes that communications qualifying for a ballot initiative or referendum exemption could well be understood to promote, support, attack, or oppose Federal candidates. As ballot initiatives or referenda become increasingly linked with the public officials who support or oppose them, communications can use the initiative or referenda as a proxy for the candidate, and in promoting or opposing the initiative or referendum, can promote or oppose the candidate. Consequently, it would be quite difficult to exempt such communications without violating the limited exemption authority provided to the Commission by BCRA in 2 U.S.C. 434(f)(3)(B)(iv).

5. Public Service Announcements

The NPRM asked whether public service announcements should be exempted. Generally speaking, public service announcements (or ''PSAs'') can be communications for which the broadcaster or satellite or cable system operator does not charge a fee for publicly distributing. 67 FR 51,136. As such, these communications would not meet the definition of ''electioneering communications'' pursuant to the operation of 11 CFR 100.29(b)(3)(i). However, broadcasters, and satellite and cable system operators do sometimes charge fees for publicly distributing other communications commonly known as PSAs and either the person who produced the PSA or some third party pays for its public distribution. Because of this fee, these PSAs would be subject to the definition of ''electioneering communications,'' unless exempted. In support of an exemption for all PSAs, several commenters pointed to the many worthy causes that use PSAs to accomplish their missions and not to influence Federal elections. Other commenters, however, did not dispute the existence of PSAs that are not related to Federal elections, but instead pointed to the possibility that such an exemption could be easily abused by using a PSA to associate a Federal candidate with a public-spirited endeavor in an effort to promote or support that candidate. Other commenters explained that historically PSAs have been used for ''electorally related purposes'' and that such communications are ''at the very heart of what the statute is trying to get to.''

While the Commission acknowledges that many worthy causes use PSAs for purposes wholly unrelated to Federal elections, the Commission nonetheless concludes that television and radio communications that include clearly identified candidates and that are distributed to a large audience in the candidate's State or district for a fee are appropriately subject to the electioneering communications provisions in BCRA. Even without such an exemption, an enormous array of communications could still promote PSA subject matters during the periods before elections, so long as Federal candidates are not clearly identified. Consequently, a PSA exemption is not included in the final rules.

6. Local Tourism

The NPRM asked if communications that use Federal candidates to encourage local tourism should be exempted from the ''electioneering communications'' definition. 67 FR 51,136. Only a few commenters addressed this issue, and they supported such an exemption. However, the Commission believes that these communications could serve two purposes: promoting local tourism, but doing so in a way that also could be reasonably perceived to promote or support the Federal candidate appearing in the communication. Because such an exemption may encompass communications that could be viewed to promote, support, attack, or oppose a

Federal candidate, the Commission has decided not to include such an exemption in the final rules.

II. Ban on the Use of Corporate and Labor Organization Funds

BCRA amends 2 U.S.C. 441b by extending the prohibition on the use of corporate and labor organization treasury funds to the financing, directly or indirectly, of electioneering communications. The NPRM proposed to implement this restriction in several ways: through the amendment of 11 CFR 114.2 to reflect the stated restriction; through the amendment of 11 CFR 114.10 to allow qualified non-profit corporations (''QNCs'') to make not only independent expenditures, but also electioneering communications; and through the creation of 11 CFR 114.14 to restrict the indirect use of corporate and labor organization treasury funds to finance electioneering communications.

A. 11 CFR 114.2 Prohibitions on Contributions and Expenditures by Corporations and Labor Organizations.

In the NPRM, the Commission proposed to revise 11 CFR 114.2(b) by restructuring the current provisions into paragraphs (b)(1) and (b)(2)(i) and (ii). The proposed rule would also add a new paragraph (b)(2)(iii) that would address electioneering communications by corporations and labor organizations. For the reasons stated below, the Commission has adopted the language of proposed section 114.2(b) in the final rules. Therefore, paragraph (b)(1) states the general prohibition on corporations and labor organizations making contributions; paragraph (b)(2)(i) provides for the corresponding prohibitions on corporate and labor organization expenditures; paragraph (b)(2)(ii) restricts express advocacy by corporations and labor organizations to those outside the restricted class; and paragraph (b)(2)(iii) prohibits electioneering communications by corporations and labor organizations to those outside the restricted class. Additionally, paragraph (b)(2)(iii) does not apply to State party committees and State candidate committees that incorporate under 26 U.S.C. 527(e)(1) and are not political committees. The additional language to this paragraph is to ensure that these incorporated State party and candidate committees are permitted to engage in electioneering communications in the same manner as unincorporated State party committees and candidate committees that are not political committees. The prohibitions in paragraph (b)(2) do not apply to qualified nonprofit corporations (''QNCs'') as described in 11 CFR 114.10.

1. Qualified Nonprofit Corporations

Several commenters addressed the application of 11 CFR part 114 to QNCs. The Commission received three comments regarding the overall revisions to section 114.2, one of which was from the sponsors of BCRA. All three sets of comments agreed with the revisions that implement BCRA's changes to 2 U.S.C. 441b, and specifically agreed with the proposed rules permitting QNCs to make electioneering communications. Several other commenters addressed only the provision that allows QNCs to make electioneering communications. These commenters supported the proposal, viewing this as a correct application of the Supreme Court's decision in *FEC* v. *Massachusetts Citizens for Life, Inc.,* 479 U.S. 238 (1986) (*''MCFL''*).

Two commenters responded in favor of a proposal in the NPRM that the Wellstone amendment, which establishes rules for ''targeted communications,'' should not be read to apply to communications that refer to a clearly identified candidate for President or Vice President. *See* 2 U.S.C. 441b(c)(6). Under this interpretation, incorporated 501(c)(4) organizations that do not qualify as QNCs, and incorporated section 527 organizations that are not political committees registered with and reporting to the Commission, would be able to make electioneering communications that refer to a clearly identified candidate for President or Vice President, as long as they did not use impermissible funds, because such communications are not ''targeted.'' These commenters both argued that this interpretation can be supported by the language of the statute and that it would mitigate constitutional concerns about the statute's application.

Two other commenters argued specifically against this view, one of whom noted that this is an incorrect interpretation of 2 U.S.C. 441b(c)(6) and that this section is properly interpreted to cover all communications that mention candidates for President or Vice President. The second commenter stated that, to the extent that the Commission proposes to construe presidential primary elections to be subject to a targeting requirement for purposes of the definition of ''electioneering communication,'' it should also construe the Wellstone amendment to apply to such targeted communications. A third commenter argued that the Wellstone provision is directly contrary to *MCFL,* and that, as a result, this commenter supported in principle the application of the QNC exception.

Three commenters argued that the ban on corporate expenditures is unconstitutional under the *MCFL* ruling. According to one of these commenters, Congress was aware of the *MCFL* ruling when it passed BCRA, and could have made an exemption for *MCFL* corporations if it had wanted to. Because Congress did not create such an exemption, the Commission has no legal ability to do so, according to this commenter. This commenter also stated that the Commission should ''follow a policy of non-enforcement with regard to qualified non-profits.'' The other commenters presented similar arguments. They argued that it was clear that ''the purpose of the provision was to close a 'loophole' that would allow all 'interest groups,' regardless of their status, to run 'sham issue ads.'' *See, e.g.*, 147 Cong. Rec. S2846 (daily ed. Mar. 26, 2001) (statement of Sen. Wellstone). These commenters further argued that, ''even supporters of BCRA recognized that the Wellstone amendment would present constitutional problems in the wake of the Supreme Court's decision in *MCFL. See, e.g.*, 147 Cong. Rec. S2883 (Mar. 26, 2001) (statement of Sen. Edwards).'' According to these commenters, it is undeniable from the text of BCRA that Congress intended to ban even *MCFL* corporations from making expenditures for electioneering communications, and the Commission cannot save the statute from facial invalidity by promulgating contradictory regulations.

With respect to the argument that the Commission cannot allow QNCs to make electioneering communications because to do so would violate BCRA, the Commission notes that, during the final passage of BCRA, additional statements were made regarding the prohibition on corporate expenditures. At that time, one of the principal sponsors of BCRA stated that, ''[t]he legislation does not purport in any way, shape or form to overrule or change the Supreme Court's construction of the Federal Election Campaign Act in *MCFL.* Just as an *MCFL*-type corporation, under the Supreme Court's ruling, is exempt from the current prohibition on the use of corporate funds for expenditures containing 'express advocacy,' so too is an *MCFL*-type corporation exempt from the prohibition in the Snowe-Jeffords amendment on the use of its treasury funds to pay for 'electioneering communications.' Nothing in the bill purports to change *MCFL.*'' 148 Cong. Rec. S2141 (daily ed. Mar. 20, 2002) (statement of Sen. McCain).

Although Senator McCain referred to ''Snowe-Jeffords'' without mentioning the Wellstone amendment, he clearly explained that under the proposed legislation, an *MCFL* corporation would be allowed to use its treasury funds to pay for electioneering communications. He specifically referred to that part of the Snowe-Jeffords amendment that prohibits the ''use of (a corporation's) treasury funds to pay for 'electioneering communications,''' the main provision of this amendment that remains unaltered by the passage of the Wellstone amendment. *See id.*

In addition, the original Snowe-Jeffords amendment applied to all section 501(c)(4) and 527 corporations, not just *MCFL* corporations. Senator McCain's statement thus recognizes that *MCFL* will have the same effect under BCRA for electioneering communications as it did under the FECA for independent expenditures, which must contain express advocacy.

Further, the original Snowe-Jeffords amendment would not have allowed the use of treasury funds that came from corporations and labor organizations; rather, entities that accept corporate and labor organization funds would have been required to pay for electioneering communications exclusively with funds provided by individuals who are United States citizens or nationals or lawfully admitted for permanent residence, 2 U.S.C. 441b(c)(2), and unless a section 501(c)(4) corporation deposited these funds into a separate account, the statute would have considered that 501(c)(4) corporation to have paid for the electioneering communication with impermissible corporate or labor organization funds. 2 U.S.C. 441b(c)(3)(B). Senator McCain's reference to treasury funds, therefore, manifests an understanding that the *MCFL* protections are built into the Snowe-Jeffords and Wellstone amendments.

Thus, the Commission concludes that the legislative history indicates that the intent of BCRA was to treat electioneering communications in a similar manner as independent expenditures. Part of that treatment is the application of *MCFL* to electioneering communications made by these QNCs.

2. Affiliation of Entities Permitted To Make Electioneering Communications With Those Entities That Are Not Permitted; Effect of Prior Incorporation

The Commission sought comments on whether an entity prohibited from making an electioneering communication, *i.e.* a labor organization or a corporation that is not a QNC, may be affiliated with an entity that is permitted to make electioneering communications, provided that the entity permitted to make such communications received no prohibited funds from the entity prohibited from doing so.

Several commenters offered interpretations of section 441b(c)(3)(A), which treats an electioneering communication as made by a prohibited entity if the prohibited entity ''directly or indirectly disburses any amount'' for the cost of the communication. One commenter interpreted this to mean that a permitted entity may not receive any funds or financial support from a prohibited entity if the permitted entity intends to make electioneering communications. Another commenter stated that Congress expressly determined that corporate and union funds may not be used by any person to make electioneering communications, but that Congress stopped short of prohibiting ''affiliated'' organizations from using funds from individuals to make electioneering communications. That commenter also stated that it would be inappropriate for the Commission to consider unilaterally imposing restrictions that are not required by statutory language, particularly when Congress expressly included provisions addressing closely related entities elsewhere. *See, e.g.* 2 U.S.C. 323(d).

Other commenters, including BCRA's sponsors, did not specifically refer to the affiliation question, but stated that corporations and labor organizations must be prohibited from setting up, operating, or controlling unincorporated accounts that are not federal political committees. However, BCRA's sponsors and other commenters agreed that BCRA does not prohibit corporations or labor organizations from using their separate segregated funds to pay for electioneering communications, even though corporate treasury funds may be used for the establishment, administration, and solicitation of contributions to these separate segregated funds. *See* 11 CFR 114.5(b). BCRA's sponsors noted that this situation was specifically discussed during the Senate debate concerning BCRA. *See, e.g.*, 148 Cong. Rec. S2141 (daily ed. Mar. 20, 2002) (statement of Sen. McCain) (''Under the bill, corporations and labor unions could no longer spend soft money on broadcast, cable or satellite communications that refer to a clearly identified candidate for federal office during the 60 days before a general election and the 30 days before a primary, and that are targeted to the candidate's electorate. These entities could, however, use their PACs to finance such ads. This will ensure that corporate and labor campaign ads proximate to Federal elections, like other campaign ads, are paid for with limited contributions from individuals and that such spending is fully disclosed.'')

Several commenters argued that nothing in BCRA prevents an organization that is prohibited from making an electioneering communication from affiliating with an organization that can. One pointed out that organizations that are not permitted to make electioneering communications may be affiliated with a QNC, which is expressly permitted to make electioneering communications.

One commenter supporting this position argued that, on at least one occasion, the Supreme Court has ''allowed Congress to restrict constitutionally protected speech while noting that the organization subject to the restriction was permitted to create an affiliate organization that was not subject to the restriction,'' citing *Regan* v. *Taxation With Representation,* 461 U.S. 540 (1983) (where the Supreme Court upheld statutory limits on lobbying by charitable organizations, but noted that such organizations had the option of creating an affiliated section 501(c)(4) organization to engage in unlimited lobbying). This commenter also argued that *MCFL* demonstrated the Supreme Court's ''reluctance to burden protected speech, and, at the very least, suggests that the Court would reject any restriction on organizations affiliating to expand the scope of permissible communications.''

The Commission has concluded that section 441b(c)(3)(A) and its legislative history support the determination that the general treasury funds of a corporation or labor organization may not be used to establish, administer, or solicit funds for, an affiliated organization that would accept funds from individuals to pay for electioneering communications. This is because the establishment, administration, or solicitation of funds for, the affiliate would result in the indirect payment of impermissible funds for electioneering communications. Senator McCain's statement above reflects Congressional intent that communications meeting the timing, content and audience elements of an electioneering communication must be financed with permissible funds contributed by individuals to separate segregated funds, and not with corporate or labor organization funds. Such communications are considered expenditures, not electioneering

communications. *See* 11 CFR 100.29(c)(3). As expenditures, they are paid for by an entity, the SSF, which is permitted under section 441b of the FECA to use corporate or labor organization funds for its establishment, administration, and for the solicitation of contributions. However, BCRA provides no comparable opportunity for a corporation or labor organization to establish, administer, or solicit for an entity that makes electioneering communications.

The Commission does not, however, see any statutory basis for creating restrictions on electioneering communications by a permitted entity whose affiliation with a prohibited entity is based on non-financial factors (*e.g.*, overlapping officers or members). *See* 11 CFR 100.5(g). So long as such entities maintain separate finances, the permitted entity's electioneering communications would not be treated as having been made by the prohibited entity, because there would be no direct or indirect disbursement by the prohibited entity. Likewise, the Commission does not see any basis for restricting individuals who work for entities barred from making electioneering communications from pooling their own funds to finance electioneering communications, provided no corporate or labor organization funds are used.

The Commission also sought comment on whether a 501(c)(4) organization or a 527 organization that was previously incorporated and has changed its status to become a limited liability company or similar type of entity under State law would be permitted to pay for electioneering communications with funds that were donated by individuals to the organization during the time it was incorporated. One commenter who addressed this question argued that these funds should be considered corporate funds that cannot be used to pay for electioneering communications. The Commission agrees.

B. 11 CFR 114.10 Exemption for Qualified Nonprofit Corporations

MCFL's exemption for QNCs to make independent expenditures is codified in 11 CFR 114.10.[10] In the NPRM, the Commission proposed revising 11 CFR 114.10 to set out standards for establishing QNC status for those section 501(c)(4) corporations wishing to make electioneering communications as well as independent expenditures. For the reasons stated below, the Commission has decided to incorporate the language of the proposed rules, with certain modifications for filing certification of QNC status, into the final rules. Therefore, the title of § 114.10 is redrafted to reflect its application to electioneering communications, as is the discussion of the scope of § 114.10 found in paragraph (a). The title of § 114.10 is slightly different from what was proposed in the NPRM. There are no changes to paragraphs (b) and (c). Paragraph (d) is redesignated as ''Permitted corporate independent expenditures and electioneering communications.'' Paragraph (d)(1) remains unchanged substantively, but contains a correction to the citation of the definition of ''independent expenditure.'' Paragraph (d)(2) tracks the language of paragraph (d)(1), except that it substitutes ''electioneering communication'' for ''independent expenditure,'' and it references the definition of ''electioneering communication'' at 11 CFR 100.29. Former paragraph (d)(2) is redesignated as paragraph (d)(3), with an additional reference to paragraph (d)(2).

1. Certifying QNC Status

The NPRM also proposed that the procedures for the certification of qualified nonprofit corporation status be revised to provide separate procedures for those making electioneering communications. The Commission has decided to adopt the proposed rules pertaining to these procedures. Thus, the procedures for corporations making independent expenditures, which were found at 11 CFR 114.10(e)(1)(i) and (ii), are now redesignated as 11 CFR 114.10(e)(1)(i)(A) and (B). Paragraphs (e)(1)(ii)(A) and (B) are added to describe the procedures for demonstrating qualified nonprofit corporation status when making electioneering communications. These provisions are similar to the provisions for qualified nonprofit corporations making independent expenditures, except that the threshold for certification is $10,000. Further, corporations are not required to submit certifications prior to making independent expenditures or electioneering communications. The pre-BCRA rules are being modified to permit corporations that have received a favorable judicial ruling concerning their QNC status, in litigation in which the same corporation was a party, to certify that application of that ruling to the corporation's activities in subsequent years confers QNC status. Advance certifications are not necessary given that the Commission anticipates that reporting will be tied to the date that the independent expenditure is publicly disseminated or the electioneering communication is publicly distributed. The Explanation and Justification for the Commission's decision to adopt the proposed revisions to 11 CFR 114.10 are discussed in further detail below.

Several commenters asserted that the threshold for certifying QNC status should be lower, and they specifically mentioned setting it at the same level as that for QNCs that wish to make independent expenditures. One commenter argued that setting the level at $10,000 would only make sense if a corporation could only spend $10,000 of its treasury funds on electioneering communications before encountering the 2 U.S.C. 441b prohibition. Another commenter stated that the level for certifying should be set at $250 for the QNC ''to establish its right to spend any corporate funds on electioneering communications,'' and that ''an *MCFL* corporation can spend its funds on electioneering communications only if it establishes it is qualified to do so, even if its spending never reaches the $10,000 threshold amount.'' The sponsors of BCRA also argued that the threshold for certifying QNC status should be $250, using the same reasoning as above.

Certain commenters suggested that the Commission should establish a different QNC standard for corporations that wish to make electioneering communications than the standard for those that wish to make independent expenditures, noting, in one instance, that ''the *MCFL* exemption must be expanded * * * in response to the greater speech burden at issue in the context of 'electioneering communications' versus express advocacy.'' According to this commenter, ''[w]ith respect to express advocacy, the Government's regulatory interest (however weak) is at its zenith, and the category of speech that is burdened is strictly defined. 'Electioneering communications,' however, constitute a much larger

[10] In filing for QNC status, a corporation certifies that it meets five qualifications: (1) That it is a social welfare organization as described in 26 U.S.C. 501(c)(4); (2) that its only purpose is issue advocacy, election influencing activity or research, training or educational activities tied to the corporation's political goals; (3) that the corporation does not engage in business activities; (4) that the corporation has no shareholders or persons, other than employees and creditors, who either have an equitable or similar interest in the corporation or who receive a benefit that they lose if they end their affiliation; and (5) that the corporation was not established by a corporation or labor organization, does not accept direct or indirect donations from such organizations and, if unable to demonstrate that it has not accepted such donations, has a written policy against accepting donations from them. *See* 11 CFR 114.10(c)(1) through (5).

category of political expression that is further removed from advocating for a particular candidate; the Government's regulatory interest is therefore even more attenuated and the burden upon political speakers' expression is heightened.'' Another commenter argued that ''the regulatory regime managing any exemption from coverage should be tailored to reflect the much weaker interests at stake.'' This commenter also stated that, under the proposed regulations, groups can never know in advance whether their QNC certification will be accepted, thus leaving them to ''speak at their peril.''

Several commenters, as noted above, argued that the Commission could not create an exception for *MCFL* corporations. By extension, these commenters opposed the certification procedure at 11 CFR 114.10.

The Commission concludes that the proposed rule is better left intact in the final rules. Several reasons lead to this conclusion. First, the Commission is aware of nothing suggesting that Congress intended a threshold lower than $10,000 for filing the certification, and setting the certification threshold at the level that first triggers reporting under the statute minimizes the burden on QNCs. In this respect, the certification threshold for electioneering communications is comparable to the certification threshold for independent expenditures. Further, as noted above, the Commission has concluded that statements of electioneering communications need not be filed until the communication is publicly distributed, because until such time as the communication can be received by 50,000 persons, it is not an ''electioneering communication.'' Likewise, until a person makes an electioneering communication, the Commission has no reason to seek certification of QNC status. Further, the threshold provides a clear rule that is easy to follow.

Moreover, while one commenter argued that ''an *MCFL* corporation can spend its funds on electioneering communications only if it establishes it is qualified to do so,'' this misconstrues the certification of QNC status. Corporations may spend funds for electioneering communications as long as they meet the requirements of qualified non-profit corporation status. If they spend $10,000 or more, they must certify to the Commission that they meet this status. However, they need not obtain prospective approval of QNC status prior to making electioneering communications or, for that matter, independent expenditures.[11] Further, if a corporation does not qualify for QNC status, it is not permitted to use any general treasury funds for electioneering communications, and there was nothing in the proposed rules, nor is there anything in the final rules, to suggest otherwise.

Further, the commenters advancing the argument that the Commission should create an entirely different standard for QNC status with respect to electioneering communications, than the standard for QNC status with respect to independent expenditures, miss a central point that concerned the sponsors of BCRA: that certain communications that do not necessarily expressly advocate for a candidate's election or defeat, may nevertheless have an impact on an election. There is no indication that Congress intended the *MCFL* exception to apply differently to groups making electioneering communications than to those making independent expenditures. The qualifications for QNC status in pre-BCRA 11 CFR 114.10(c) are objective qualifications that would be apparent to any corporation contemplating whether to make an electioneering communication.

Nevertheless, the Commission recognizes that certain courts have held that organizations incorporated under 26 U.S.C. 501(c)(4) that do not meet all of the strictures contained in the Commission's regulations at 11 CFR 114.10(c)(1) through (c)(5) may still make independent expenditures without violating the prohibition at 2 U.S.C. 441b(a). It is appropriate for the Commission to allow the prevailing organization to certify its status based on the court ruling. Accordingly, the Commission is modifying pre-BCRA 11 CFR 114.10(e)(1) (new § 114.10(e)(1)(i)(B)), to allow organizations that prevail in litigation to certify their QNC status based on the favorable ruling. This modification to the rules does not require any modification to the current certification on the Commission's Form 5 for independent expenditures, and on the new form the Commission intends to create for electioneering communications, Form 9. On Form 5, that certification reads, in relevant parts: ''(I)f the independent expenditures are reported herein were made by a corporation, I certify that the corporation is a (QNC) under the Commission's regulations.'' This statement would remain true regardless of the reason for QNC status: either compliance with the Commission's standards in § 114.10(c) of the regulations, or pursuant to judicial decision, as contemplated by new paragraph (e)(1)(i)(B) of § 114.10. Because paragraph (e)(1)(i)(B) is referenced by the paragraph that addresses certification for QNCs making electioneering communications, paragraph (e)(1)(ii)(B), this holds equally for electioneering communications.

[11] Of course, corporations are free to file for QNC status before making electioneering communications if they are concerned about ''speaking at their peril.''

2. Disclaimers

Section 11 CFR 114.10(g) is revised to require qualified nonprofit corporations to comply with the requirements of 11 CFR 110.11 regarding non-authorization notices (''disclaimers'') when making electioneering communications. The final rule mirrors the proposed rule. BCRA amended 2 U.S.C. 441d to require disclaimers for electioneering communications. No comments were received regarding this provision.

3. Segregated Bank Account

Identical in substance to the proposed rule, § 114.10(h) states that qualified nonprofit corporations may establish a segregated bank account for the purpose of depositing funds to be used to pay for electioneering communications, as identified in 11 CFR part 104. The one revision is a change to correct the citation to where the rules address the segregated bank account. This proposal met with general approval by the commenters.

Proposed § 114.10(i) would track the language in 2 U.S.C. 441b(c)(5), which states that nothing in 2 U.S.C. 441b(c) shall be construed to authorize an organization exempt from taxation under 26 U.S.C. 501(a) to carry out any activity that is prohibited under the Internal Revenue Code. No comments were received regarding this paragraph; this paragraph appears in the final rules.

4. ''*De Minimis*'' Standard

The Commission also sought comment on whether a provision should be added to the rules incorporating a *de minimis* standard for QNCs, in light of court decisions such as *Minnesota Citizens Concerned for Life, Inc.* v. *FEC,* 936 F. Supp. 633 (D. Minn. 1996), *aff'd*, 113 F.3d 129 (8th Cir. 1997) (''*MCCL*''). *MCCL* allowed QNCs to engage in a certain amount of business activity, accept a *de minimis* amount of funds from corporations and labor organizations, and still qualify for QNC status. In making this ruling, the court of appeals relied on its previous ruling in *Day* v. *Holahan,* 34 F.3d 1356 (8th

Cir. 1994), in which the court addressed a Minnesota statute that had been based on the Supreme Court's *MCFL* ruling, and which was similar to the Commission's rules at 11 CFR 114.10. In *Day,* the court noted that the key issue was ''the amount of for-profit corporate funding a nonprofit receives, rather than the establishment of a policy not to accept significant amounts. . . . (T)he facts before us in this case present no risk of 'the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas.' The state, far from having shown that MCCL is amassing great wealth as a result of corporate donations, implicitly concedes that MCCL has not received any significant contributions from for-profit corporations.'' *Day,* 34 F.3d at 1364 (citation omitted).

Several commenters opposed a *de minimis* exception. One of these commenters cited the Supreme Court's language in *MCFL* regarding the policy of the organization against accepting contributions from corporations or labor organizations. The second commenter argued that the Commission does not have the authority to write a *de minimis* standard, suggesting it could only do so if BCRA is unconstitutional, and further asserting that only the courts may pass on the constitutionality of legislation passed by Congress. This commenter further argued that there has been no court case that has addressed whether a *de minimis* standard is required for electioneering communications. Further, this commenter stated that *MCFL* did not contemplate such an exception. BCRA's principal sponsors also argued that no section 501(c)(4) organization that accepts even a *de minimis* amount of corporate or labor organization funds can meet the definition of a QNC. They argue that this position is consistent with *MCFL*, and nothing in the legislative history of BCRA suggests a contrary intent.

Other commenters supported a *de minimis* exception. One commenter argued that the Commission should apply the *MCCL* standards. This commenter maintained that *MCCL* expands the reach of *MCFL*, but is constitutionally consistent with it. The commenter further argued that, without such an allowance, organizations that accept a small amount of corporate or labor organization funding would face uncertainty about their status as QNCs and their ability to make electioneering communications.

Another commenter also supported allowing corporations that accept ''a modest or incidental or *de minimis* amount'' of corporate or labor organization funds to qualify for QNC status, stating that many organizations that accept such funds remain overwhelmingly supported by individual members and contributors who subscribe to the views and advocacy of the organization. Other commenters argued that the failure to adopt such a provision would result in a failure to cure the unconstitutionality of the electioneering communications provisions. Another commenter argued that the consensus view of the courts of appeals that have considered the question is that there should be a *de minimis* standard. This commenter further argued that the Commission should adopt the standard articulated in *North Carolina Right to Life* v. *Bartlett,* 168 F.3d 705 (4th Cir. 1999) (where the court determined that the acceptance of up to eight percent of overall revenues did not preclude North Carolina Right to Life from qualifying for a state *MCFL* exemption because the corporate funds were ''but a fraction of its overall revenue'' and were not ''of the traditional form'').

The final rules maintain the prohibition against QNCs accepting any funds from corporations or labor organizations and do not allow them to accept a *de minimis* amount. The Commission has previously considered the issue of whether to allow QNCs to accept a *de minimis* amount of corporate or labor organization funding. *See Explanation and Justification for Regulations on Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures,* 60 FR 35,292 (July 6, 1995). At that time, the Commission noted that ''(t)he *MCFL* Court was concerned that business corporations and labor organizations could improperly influence qualified nonprofit corporations and use them as conduits to engage in political spending,'' and that ''the Court saw *MCFL*'s policy of not accepting business corporation or labor organization donations as the way to address these concerns.'' 60 FR at 35,301. Further, the Commission cited the Supreme Court's decision in *Austin* v. *Michigan Chamber of Commerce,* 494 U.S. 652 (1990), to support a complete ban on the acceptance of corporate or labor organization funds, noting the Court's concerns that ''the danger of 'unfair deployment of wealth for political purposes' exists whenever a business corporation or labor organization is able to funnel donations through a qualified nonprofit corporation.'' 60 FR at 35,301. Accordingly, the Commission determined that qualified nonprofit corporations should not be allowed to accept any funds from corporations or labor organizations.

The Commission recognizes that certain courts of appeals have recognized a *de minimis* exception permitting the acceptance by QNCs of corporate and labor organization funds. These circuit courts, however, have not defined the exception in the same terms, and therefore, two circuits would not necessarily apply the *de minimis* exception to the same set of circumstances. *Compare MCCL*, 936 F. Supp 633 (D. Minn. 1996) (*MCFL*-corporation status allowed where organization has not received ''any significant contributions from for-profit corporations'') *with NCRL*, 168 F.3d 705 (4th Cir. 1999) (*MCFL*-corporation status allowed where up to eight percent of the organization unspecified overall revenues came from corporations, where such corporate payments were ''not of the traditional form''). Although the Commission does not believe it is appropriate to establish a *de minimis* exception at this time, the Commission retains the discretion to revisit this issue in a subsequent rulemaking proceeding or otherwise. *See* 62 FR 65,040 (Dec. 10, 1997) (pending *MCFL* Petition for Rulemaking). Court rulings regarding the effect of *de minimis* corporate funding on QNC certifications for specific organizations are discussed, above, and are addressed in the final rules at 11 CFR 114.10(e)(1)(i)(B).

C. 11 CFR 114.14 Further Restrictions on the Use of Corporate and Labor Organization Funds for Electioneering Communications

In the NPRM, the Commission proposed a new rule, 11 CFR 114.14, to implement the provisions in 2 U.S.C. 441b(b)(2), (c)(1) and (c)(3) prohibiting corporations and labor organizations from directly or indirectly disbursing any amount from general treasury funds for any of the costs of an electioneering communication. Proposed 11 CFR 114.14(a) would have contained the prohibition that applies to corporations and labor organizations generally. The rule is meant to eliminate any instance of a corporation or labor organization providing funds out of their general treasury funds to pay for an electioneering communication, including through a non-Federal account. This met with general approval from the commenters and remains in the final rule as paragraph (a)(1). As noted in the NPRM, the Commission does not view BCRA as in any way prohibiting or restricting payments for electioneering

communications from otherwise lawful funds raised and spent by the Federal account of a separate segregated fund.

1. Contributor Liability by Corporations and Labor Organizations

The NPRM also sought comments on the standards to be employed to determine liability of the corporation or labor organization providing the funds. One commenter stated that the standard should be whether the corporation or labor organization intends that the person to whom it supplies the funds will use them for an electioneering communication, or whether it knows or should know that the funds will be used for an electioneering communication. Another commenter suggested that, if the funds are provided for another purpose, that should, absent evidence to the contrary, lead to the conclusion that this regulation has not been violated. Further, if the funds are provided subject to a prohibition against their use to pay for electioneering communications, that should, absent evidence to the contrary, lead to the same conclusion. Another commenter suggests that a corporation or labor organization should be liable if it ''specifically directs'' or ''suggests'' that the funds be used for electioneering communications, or if it knows or should know that the funds will be used for electioneering communications. The sponsors of BCRA also suggested this latter standard.

Paragraph (a)(2) sets forth the standards to be applied in determining whether the knowledge requirement exists by providing three alternative ways, any one of which would establish that a corporation or labor organization has knowingly given, disbursed, donated, or otherwise provided, funds used to pay for an electioneering communication.

The first knowledge standard is that of actual knowledge. The second standard requires awareness on the part of the corporation or labor organization of certain facts that would lead a reasonable person to conclude that there is a substantial probability funds will be used to pay for an electioneering communication. This second standard is in effect a ''reason to know'' standard, and is different from a ''should have known'' standard. Restatement (Second) of Agency, sec. 9, cmts. d and e (1958). The third standard addresses situations in which the corporation or labor organization is or becomes aware of facts that should have led any reasonable person to inquire about the intent of the person receiving the funds for their use, however, the corporation or labor organization failed to so inquire. This third alternative is in effect a willful blindness standard covering situations in which a known fact may not equal a substantial probability of illegality but at least should prompt an inquiry.

The final rules at new 11 CFR 114.14(b), like the proposed rule, prohibit any person who accepts corporate or labor organization funds from using those funds to pay for an electioneering communication, or to provide those funds to any other person who would subsequently use those funds to pay for all or part of the costs of an electioneering communication. The rule is intended to effectuate BCRA's treatment of an electioneering communication as being made by a corporation or labor organization if such an entity indirectly disburses any amount for the cost of the communication from their general treasury funds. 2 U.S.C. 441b(c)(3)(A). No commenter addressed this rule.

Proposed paragraph (c) of 11 CFR 114.14 would have provided certain limited exceptions to allow corporations or labor organizations to provide funds that might subsequently be used for electioneering communications. These exceptions are salary, royalties, or other income earned from *bona fide* employment or other contractual arrangements, including pension or other retirement income; interest earnings, stock or other dividends, or proceeds from the sale of the person's stocks or other investments; or receipt of payment representing fair market value for goods or services rendered to a corporation or labor organization. No commenter suggested any other instances of corporate or labor organization general treasury funds that might properly be used to pay for electioneering communications other than those listed at paragraphs (c)(1) through (3), and the proposed exceptions received general support from the commenters. These exceptions are being included in the final rules.

2. Accounting of Funds To Ensure That No Funds Received From Corporations or Labor Organizations Are Used for Electioneering Communications

Section 114.14(d)(1), like the proposed rules, requires persons who receive funds from a corporation or a labor organization that do not meet the exceptions of paragraph (c) to demonstrate through a reasonable accounting method that no such funds were used to pay for any portion of an electioneering communication. The Commission sought comment on whether a specific accounting method should be required, such as first-in-first-out, last-in-first-out, or any other method. Several commenters did not propose specific methods, but urged the Commission to require ''a more specific and stringent accounting method,'' or ''a higher standard of accounting than 'reasonable' methods.'' The principal sponsors of BCRA stated that the Commission ''should insist on a high level of certainty in any accounting method used to make this demonstration.''

Further, commenting on the special account available to QNCs at 11 CFR 114.10(h), several commenters suggested that this option be available to all persons who make electioneering communications. One commenter stated that it interpreted paragraph (h) to permit non-QNC entities to set up such an account. Likewise, the sponsors of BCRA noted that QNCs are not the only entities that might want to set up such accounts.

While the Commission did not intend to exclude non-QNCs from establishing segregated bank accounts similar to those described at paragraph (h), the proposed rules were not explicit that non-QNCs may do so. Moreover, as § 114.10 applies only to QNCs, some non-QNCs may not realize that such an account would be available to them.

Accordingly, the Commission has added a provision to 11 CFR 114.14(d) that specifically allows any person who wishes to make electioneering communications to establish a separate bank account from which it pays for electioneering communications. 11 CFR 114.14(d)(2). This account must only contain funds contributed directly to it by individuals who are United States citizens or nationals or lawfully admitted for permanent residence. If persons use only funds from such an account to pay for an electioneering communication, then they will have demonstrated against any charge to the contrary that they did not use funds from a corporation or labor organization to pay for the communication, and their disclosure of their contributors will be limited to the names and addresses of those persons who donated or otherwise provided funds to the account. However, if a person uses any other funds from outside of this account to pay for the electioneering communication, then it will have to disclose the names and addresses of all persons who contributed to the entity, as required by 11 CFR 104.171(c)(8), and will have to provide a more detailed accounting to demonstrate that the funds used did not come from a corporation or labor organization. The ability to establish this segregated bank account is also intended to address, in

part, the concerns of those commenters who objected to disclosing their entire donor base.

III. Reporting Requirements

In the NPRM, the Commission stated that one of the other BCRA-related rulemaking projects is reporting. 67 FR 51,131. This reporting rulemaking is intended to consolidate all of the proposed amendments to 11 CFR part 104 included in the various BCRA-related NPRMs into one NPRM. Because public disclosure is one of the most important aspects of the FECA, the Commission concluded that a consolidated rulemaking on reporting would allow the public, especially those required to file reports and statements under the FECA and BCRA, to review, understand, and comment on the new and revised reporting requirements as the result of BCRA in a comprehensive manner.

Consequently, the final rules on electioneering communications do not include the changes to 11 CFR 100.19, 104.19, and 105.2 that were part of the proposed rules. Rather, a brief discussion of the major issues and comments relating to the reporting of electioneering communications is included in this Explanation and Justification. *See* below. The Consolidated Reporting NPRM will include revised proposed rules for electioneering communications reporting that will take into consideration the comments that the Commission received in response to the Electioneering Communications NPRM.

A. Disclosure Date

BCRA requires persons who make electioneering communications to file disclosure statements with the FEC within 24 hours of the disclosure date. 2 U.S.C. 434(f)(1). In the previously published NPRM, proposed § 104.19(a)(1)(i) and (ii) would define ''disclosure date'' as the date on which ''a person has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000.'' NPRM, 67 FR at 51,145. The NPRM, however, sought comment on whether the disclosure date should be the date on which the electioneering communications are publicly distributed. Thus, under this scenario, an organization could make disbursements or enter into a contract to make disbursements that exceed $10,000 but would not be required to disclose the disbursements or contract until the electioneering communication is aired, broadcast or otherwise disseminated by television, radio, cable, or satellite.

All nine commenters who addressed this issue disagreed with the proposed rule and advocated adopting a final rule that would define ''disclosure date'' as the date of the airing of the electioneering communication. They argued that there is no electioneering communication, and therefore no reporting requirement, until the communication is actually aired or otherwise publicly distributed. One witness at the hearing did acknowledge that in some cases it may be difficult to ascertain when an electioneering communication airs for purposes of triggering the 24-hour reporting period because some contracts may not specify a time that the communication will be aired or because in some instances the broadcaster may fail to air the communication during the block of time specified in the contract. This issue will be further explored in the consolidated reporting NPRM.

B. Direction or Control

The previously published NPRM included two proposed alternatives, identified as Alternative 4–A and Alternative 4–B, to implement the BCRA requirement to disclose ''any person sharing or exercising direction or control over the activities'' of the person making the disbursement for electioneering communications. *See* 2 U.S.C. 434(f)(2)(A); 67 FR 51,146 (Aug. 7, 2002). Many of the commenters expressed the belief that both alternatives are vague and could encompass a large number of people, especially if the communications are made by membership organizations. Some of the commenters were also concerned that disclosing this information may reveal sensitive or confidential information and the decision-making process of organizations, especially non-profit organizations, thereby placing them at a competitive disadvantage. For these reasons, these commenters argued that the Commission should require limited, if any, disclosure of persons who share or exercise direction or control over the person who makes disbursements for electioneering communications or the activities involved in making electioneering communications.

In contrast, several commenters, including the Congressional sponsors of BCRA, disagreed with both alternatives, arguing that neither would disclose sufficiently the information required by BCRA. *See id.* They argued that the purpose of this disclosure requirement in 2 U.S.C. 434(f)(2)(A) is to reveal not only those who have direction or control over the electioneering communications but also those who have direction or control over the organization that makes the electioneering communications.

This issue will be further explored in the consolidated reporting NPRM.

C. Identification of Candidates and Elections

Under 2 U.S.C. 434(f)(2)(D), candidates clearly identified in the electioneering communications, and the elections to which the electioneering communications pertain, must be disclosed in 24-hour statements filed with the Commission. The previously published NPRM provided two alternatives to proposed 11 CFR 104.19(b)(5), identified as Alternative 5–A and Alternative 5–B, that would implement this statutory provision. 67 FR 51,146. Both alternatives would require disclosure of the election and each clearly identified candidate that would be referred to in the electioneering communication, but contain different language. Commenters preferred the language of Alternative 5–B because it would be easier to read and would be more consistent with 2 U.S.C. 434(f)(2)(D). This will be further explored in the consolidated reporting NPRM to follow.

D. Disclosure of Contributors and Donors

BCRA requires persons who make electioneering communications and who establish segregated bank accounts for electioneering communications to disclose the names and addresses of contributors who contribute an aggregate of $1,000 or more to that segregated bank account. 2 U.S.C. 434(f)(2)(E).[12] If the organization that makes electioneering communications does not use a segregated bank account, then BCRA requires it to disclose the names and addresses of all contributors who contribute an aggregate of $1,000 or more to that organization from the beginning of the preceding year through the disclosure date. 2 U.S.C. 434(f)(2)(F). In reading these two sections of BCRA together with 2 U.S.C. 441b(c)(3)(B), the Commission stated in the NPRM that these disclosure requirements for segregated bank accounts appear to apply only to qualified nonprofit corporations organized under 26 U.S.C. 501(c)(4). *See* 67 FR 51,143. Therefore,

[12] Please note that this discussion uses the terms ''contributors'' and ''contribute.'' However, in certain circumstances, it may be more appropriate to refer to ''donors'' and ''donations.'' This distinction will be addressed in more detail in the consolidated reporting NPRM to follow.

previously proposed 11 CFR 104.19(b)(6) would have required only QNCs to disclose their contributors for purposes of electioneering communications.

The NPRM explained that proposed section 104.19(b)(7) would clearly state that all persons who are permitted to make electioneering communications under BCRA, including QNCs that do not use segregated bank accounts, would be required to disclose their contributors who contribute an aggregate of over $1,000 during the given time period. 67 FR 51,143. Nevertheless, some commenters interpreted proposed § 104.19(b)(7) to apply only to QNCs and objected to limiting the disclosure requirements to only QNCs. They argued that BCRA does not limit the requirements of 2 U.S.C. 434(f)(2)(E) and (F) to just QNCs. Consequently, they recommended that all persons who may make electioneering communications should be required to disclose their contributors under proposed § 104.19(b)(7), and that the option for segregated bank accounts in proposed § 104.19(b)(6) should be extended to all persons who may make electioneering communications. This topic will also be addressed in the consolidated reporting NPRM to be published shortly.

One commenter argued that the members of the organizations it represented could be subject to negative consequences if their names are disclosed in connection with an electioneering communication. As a preliminary matter, the Commission notes that any group may opt to use a separate bank account under 11 CFR 114.14(d)(2), which would provide limited disclosure. The FECA provides for an advisory opinion process concerning the application of any of the statutes within the Commission's jurisdiction or any regulations promulgated by the Commission, and such a group could also seek an advisory opinion from the Commission to determine if the group would be entitled to an exemption from disclosure that would be analogous to the exemption provided to the Socialist Workers Party in Advisory Opinions 1990–13 and 1996–46 (both of which allowed the Socialist Workers Party to withhold the identities of its contributors and persons to whom it had disbursed funds because of a reasonable probability that the compelled disclosure of the party's contributors' names would subject them to threats, harassment, or reprisals from either government officials or private parties). BCRA's legislative history recognizes the need for limited exceptions in these circumstances. *See* 148 Cong. Rec. S2136 (daily ed. Mar. 20, 2002) (remarks of Sen. Snowe).

E. NPRM on Consolidated Reporting

As stated above, the Consolidated Reporting NPRM will include revised proposed rules for reporting electioneering communications. The Commission appreciates the comments that it received and anticipates that they will prove useful in revising the proposed rules. The Commission encourages the commenters, as well as others who did not comment on the initial proposed rules, to review the revised proposed rule that will be part of the Consolidated Reporting NPRM and to submit comments at the appropriate time.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rules do not have a significant economic impact on a substantial number of small entities. The bases of this certification are several. First, the only burden the final rules impose is on persons who make electioneering communications, and that burden is a minimal one, requiring persons who make such communications to provide the names and addresses of those who made donations to that person, when the costs of the electioneering communication exceed $10,000. If that person is a corporation that qualifies as a QNC, then it must also certify that it meets that status. The number of small entities affected by the final rules is not substantial.

The Commission has adopted several rules that seek to reduce any burden that might accrue to persons who must file reports. First, the Commission has interpreted the reporting requirement such that no reporting is required until after an electioneering communication is publicly distributed. In many cases, this will only require that person to file one report with the Commission. Also, the Commission has allowed all persons paying for electioneering communications to establish segregated bank accounts, and to report the names and addresses of only those persons who contributed to those accounts. Further, the Commission has interpreted the statute to not require that a certification of QNC status be filed until the person is also required to file a disclosure report. These are significant steps the Commission has taken to reduce the burden on those who would make electioneering communications. The overall burden on the small entities affected by the final rules will not amount to $100 million on an annual basis.

Furthermore, because the Commission has interpreted BCRA to mean that political committees do not, by definition, make disbursements for electioneering communications, neither BCRA nor the final rules require any additional reports by any type of Federal political committee. Moreover, the requirements of these final rules are no more than what is strictly necessary to comply with the new statute enacted by Congress.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, subchapter A of chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for 11 CFR part 100 is revised to read as follows:

Authority: 2 U.S.C. 431, 434, 438(a)(8).

2. New § 100.29 is added to read as follows:

§ 100.29 Electioneering communication (2 U.S.C. 434(f)(3)).

(a) *Electioneering communication* means any broadcast, cable, or satellite communication that:

(1) Refers to a clearly identified candidate for Federal office;

(2) Is publicly distributed within 60 days before a general election for the office sought by the candidate; or within 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate, and the candidate referenced is seeking the nomination of that political party; and

(3) Is targeted to the relevant electorate, in the case of a candidate for Senate or the House of Representatives.

(b) For purposes of this section—

(1) *Broadcast, cable, or satellite communication* means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system.

(2) *Refers to a clearly identified candidate* means that the candidate's name, nickname, photograph, or drawing appears, or the identity of the

candidate is otherwise apparent through an unambiguous reference such as ''the President,'' ''your Congressman,'' or ''the incumbent,'' or through an unambiguous reference to his or her status as a candidate such as ''the Democratic presidential nominee'' or ''the Republican candidate for Senate in the State of Georgia.''

(3)(i) *Publicly distributed* means aired, broadcast, cablecast or otherwise disseminated for a fee through the facilities of a television station, radio station, cable television system, or satellite system.

(ii) In the case of a candidate for nomination for President or Vice President, *publicly distributed* means the requirements of paragraph (b)(3)(i) of this section are met and the communication:

(A) Can be received by 50,000 or more persons in a State where a primary election, as defined in 11 CFR 9032.7, is being held within 30 days; or

(B) Can be received by 50,000 or more persons anywhere in the United States within the period between 30 days before the first day of the national nominating convention and the conclusion of the convention.

(4) *A special election* or a *runoff election* is a primary election if held to nominate a candidate. A *special election* or a *runoff election* is a general election if held to elect a candidate.

(5) *Targeted to the relevant electorate* means the communication can be received by 50,000 or more persons—(i) In the district the candidate seeks to represent, in the case of a candidate for Representative in or Delegate or Resident Commissioner to, the Congress; or

(ii) In the State the candidate seeks to represent, in the case of a candidate for Senator.

(c) *Electioneering communication* does not include any communication that:

(1) Is publicly disseminated through a means of communication other than a broadcast, cable, or satellite television or radio station. For example, electioneering communication does not include communications appearing in print media, including a newspaper or magazine, handbill, brochure, bumper sticker, yard sign, poster, billboard, and other written materials, including mailings; communications over the Internet, including electronic mail; or telephone communications;

(2) Appears in a news story, commentary, or editorial distributed through the facilities of any broadcast, cable, or satellite television or radio station, unless such facilities are owned or controlled by any political party, political committee, or candidate. A news story distributed through a broadcast, cable, or satellite television or radio station owned or controlled by any political party, political committee, or candidate is nevertheless exempt if the news story meets the requirements described in 11 CFR 100.132(a) and (b);

(3) Constitutes an expenditure or independent expenditure provided that the expenditure or independent expenditure is required to be reported under the Act or Commission regulations;

(4) Constitutes a candidate debate or forum conducted pursuant to 11 CFR 110.13, or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

(5) Is not described in 2 U.S.C. 431(20)(A)(iii) and is paid for by a candidate for State or local office in connection with an election to State or local office; or

(6) Is paid for by any organization operating under section 501(c)(3) of the Internal Revenue Code of 1986. Nothing in this section shall be deemed to supersede the requirements of the Internal Revenue Code for securing or maintaining 501(c)(3) status.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

3. The authority citation for part 114 is revised to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434, 437d(a)(8), 438(a)(8), 441b.

4. In § 114.2, paragraph (b) is revised to read as follows:

§ 114.2 Prohibitions on contributions and expenditures.

* * * * *

(b)(1) Any corporation whatever or any labor organization is prohibited from making a contribution as defined in 11 CFR 100.7(a). Any corporation whatever or any labor organization is prohibited from making a contribution as defined in 11 CFR 114.1(a) in connection with any Federal election.

(2) Except as provided at 11 CFR 114.10, corporations and labor organizations are prohibited from:

(i) Making expenditures as defined in 11 CFR 100.8(a);

(ii) Making expenditures with respect to a Federal election (as defined in 11 CFR 114.1(a)), for communications to those outside the restricted class that expressly advocate the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party; or

(iii) Making payments for an electioneering communication to those outside the restricted class. However, this paragraph (b)(2)(iii) shall not apply to State party committees and State candidate committees that incorporate under 26 U.S.C. 527(e)(1), provided that:

(A) The committee is not a political committee as defined in 11 CFR 100.5;

(B) The committee incorporated for liability purposes only;

(C) The committee does not use any funds donated by corporations or labor organizations to make electioneering communications; and

(D) The committee complies with the reporting requirements for electioneering communications at 11 CFR part 104.

* * * * *

5. In § 114.10, the section heading and paragraphs (a), (d), (e) and (g) are revised and paragraphs (h) and (i) are added to read as follows:

§ 114.10 Nonprofit corporations exempt from the prohibitions on making independent expenditures and electioneering communications.

(a) *Scope.* This section describes those nonprofit corporations that qualify for an exemption in 11 CFR 114.2. It sets out the procedures for demonstrating qualified nonprofit corporation status, for reporting independent expenditures and electioneering communications, and for disclosing the potential use of donations for political purposes.

* * * * *

(d) *Permitted corporate independent expenditures and electioneering communications.* (1) A qualified nonprofit corporation may make independent expenditures, as defined in 11 CFR 100.16, without violating the prohibitions against corporate expenditures contained in 11 CFR part 114.

(2) A qualified nonprofit corporation may make electioneering communications, as defined in 11 CFR 100.29, without violating the prohibitions against corporate expenditures contained in 11 CFR part 114.

(3) Except as provided in paragraphs (d)(1) and (d)(2) of this section, qualified nonprofit corporations remain subject to the requirements and limitations of 11 CFR part 114, including those provisions prohibiting corporate contributions, whether monetary or in-kind.

(e) *Qualified nonprofit corporations; reporting requirements.*—(1) *Procedures for demonstrating qualified nonprofit corporation status.* (i) If a corporation makes independent expenditures under paragraph (d)(1) of this section that aggregate in excess of $250 in a calendar year, the corporation shall certify, in

accordance with paragraph (e)(1)(i)(B) of this section, that it is eligible for an exemption from the prohibitions against corporate expenditures contained in 11 CFR part 114.

(A) This certification is due no later than the due date of the first independent expenditure report required under paragraph (e)(2)(i) of this section.

(B) This certification may be made either as part of filing FEC Form 5 (independent expenditure form) or, if the corporation is not required to file electronically under 11 CFR 104.18, by submitting a letter in lieu of the form. The letter shall contain the name and address of the corporation and the signature and printed name of the individual filing the qualifying statement. The letter shall also certify that the corporation has the characteristics set forth in paragraphs (c)(1) through (c)(5) of this section. A corporation that does not have all of the characteristics set forth in paragraphs (c)(1) through (c)(5) of this section, but has been deemed entitled to qualified nonprofit corporation status by a court of competent jurisdiction in a case in which the same corporation was a party, may certify that application of the court's ruling to the corporation's activities in a subsequent year entitles the corporation to qualified nonprofit corporation status. Such certification shall be included in the letter submitted in lieu of the FEC form.

(ii) If a corporation makes electioneering communications under paragraph (d)(2) of this section that aggregate in excess of $10,000 in a calendar year, the corporation shall certify, in accordance with paragraph (e)(1)(ii)(B) of this section, that it is eligible for an exemption from the prohibitions against corporate expenditures contained in 11 CFR part 114.

(A) This certification is due no later than the due date of the first electioneering communication statement required under paragraph (e)(2)(ii) of this section.

(B) This certification must be made as part of filing FEC Form 9 (electioneering communication form).

(2) *Reporting independent expenditures and electioneering communications.* (i) Qualified nonprofit corporations that make independent expenditures aggregating in excess of $250 in a calendar year shall file reports as required by 11 CFR part 104.

(ii) Qualified nonprofit corporations that make electioneering communications aggregating in excess of $10,000 in a calendar year shall file statements as required by 11 CFR 104.14.

* * * * *

(g) *Non-authorization notice.* Qualified nonprofit corporations making independent expenditures or electioneering communications under this section shall comply with the requirements of 11 CFR 110.11.

(h) *Segregated bank account.* A qualified nonprofit corporation may, but is not required to, establish a segregated bank account into which it deposits only funds donated or otherwise provided by individuals, as described in 11 CFR part 104, from which it makes disbursements for electioneering communications.

(i) *Activities prohibited by the Internal Revenue Code.* Nothing in this section shall be construed to authorize any organization exempt from taxation under 26 U.S.C. 501(a), including any qualified nonprofit corporation, to carry out any activity that it is prohibited from undertaking by the Internal Revenue Code, 26 U.S.C. 501, *et seq.*

6. Section 114.14 is added to read as follows:

§ 114.14 Further restrictions on the use of corporate and labor organization funds for electioneering communications.

(a)(1) Corporations and labor organizations shall not give, disburse, donate or otherwise provide funds, the purpose of which is to pay for an electioneering communication, to any other person.

(2) A corporation or labor organization shall be deemed to have given, disbursed, donated, or otherwise provided funds under paragraph (a)(1) of this section if the corporation or labor organization knows, has reason to know, or willfully blinds itself to the fact, that the person to whom the funds are given, disbursed, donated, or otherwise provided, intended to use them to pay for an electioneering communication.

(b) Persons who accept funds given, disbursed, donated or otherwise provided by a corporation or labor organization shall not:

(1) Use those funds to pay for any electioneering communication; or

(2) Provide any portion of those funds to any person, for the purpose of defraying any of the costs of an electioneering communication.

(c) The prohibitions at paragraphs (a) and (b) of this section shall not apply to funds disbursed by a corporation or labor organization, or received by a person, that constitute—

(1) Salary, royalties, or other income earned from bona fide employment or other contractual arrangements, including pension or other retirement income;

(2) Interest earnings, stock or other dividends, or proceeds from the sale of the person's stocks or other investments; or

(3) Receipt of payments representing fair market value for goods provided or services rendered to a corporation or labor organization.

(d)(1) Persons who receive funds from a corporation or a labor organization that do not meet the exceptions of paragraph (c) of this section must be able to demonstrate through a reasonable accounting method that no such funds were used to pay any portion of an electioneering communication.

(2) Any person who wishes to pay for electioneering communications may, but is not required to, establish a segregated bank account into which it deposits only funds donated or otherwise provided by individuals, as described in 11 CFR part 104. Use of funds exclusively from such an account to pay for an electioneering communications shall satisfy paragraph (d)(1) of this section. Persons who use funds exclusively from such a segregated bank account to pay for an electioneering communication shall be required to only report the names and addresses of those individuals who donated or otherwise provided an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year.

Dated: October 11, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–26482 Filed 10–22–02; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2002–21]

FCC Database on Electioneering Communications

AGENCY: Federal Election Commission.

ACTION: Interim final rules with requests for comments.

SUMMARY: The Federal Election Commission is promulgating interim final rules regarding electioneering communications, which are certain television and radio communications that refer to a clearly identified Federal candidate and that are targeted to the relevant electorate within 60 days before a general election or within 30 days

before a primary election for Federal office. These interim final rules implement a portion of the Bipartisan Campaign Reform Act of 2002 (''BCRA''), which adds to the Federal Election Campaign Act new provisions regarding ''electioneering communications.'' BCRA defines electioneering communications to mean certain communications that can be received by 50,000 or more persons in the State or district that a candidate seeks to represent. The interim final rules: Identify the Web site of the Federal Communications Commission (''FCC'') as the appropriate place to acquire information as to whether a communication will be capable of being received by 50,000 persons; allow those who make communications to rely on information on the FCC's Web site to determine whether their communications will be capable of being received by 50,000 or more persons in a given area; set out the formulae to be used to determine whether a communication can be received by 50,000 or more persons; and specify three ways that a person can demonstrate that a communication did not reach 50,000 persons in a particular Congressional district or State, if the FCC database is silent on the matter. Further information is provided in the Supplementary Information that follows.

DATES: These rules are effective on November 22, 2002. Comments must be received on or before January 21, 2003.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *FCCdatabase@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and the postal service address of the commenter will not be considered. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, or Mr. Anthony T. Buckley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81 (Mar. 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* Among these amendments are provisions in Title 2 of BCRA that address electioneering communications. The Commission published a Notice of Proposed Rulemaking (''NPRM'') on which these interim final rules are based in the **Federal Register** on August 7, 2002. 67 FR 51,131 (Aug. 7, 2002). Written comments were due by August 21, 2002 for those who wished to testify or by August 29, 2002 for all other commenters. The names of commenters and their comments are available at *http://www.fec.gov/register.htm* under ''Electioneering Communications.'' The Commission held a public hearing on the NPRM on August 28 and 29, 2002, at which it heard testimony from 12 witnesses. Transcripts of the hearing are available at *http://www.fec.gov/register.htm* under ''Electioneering Communications.''[1]

The Electioneering Communications NPRM had several components, including the definition of ''electioneering communication''; the prohibitions on corporations and labor organizations from making disbursements for electioneering communications, with limited exceptions; the reporting requirements; and the database that will be developed and maintained by the Federal Communications Commission (''FCC'') to determine whether a communication reaches 50,000 persons in the relevant Congressional district or State.

Throughout this rulemaking, the Commission and the FCC have recognized that the creation of the FCC database will be a difficult and complicated undertaking, given the statutory deadline for promulgation of rules implementing BCRA.[2] For the Commission, the difficulties reside not in the development of the database, but in determining the various ways that communications can be distributed and the options for measuring how many persons can receive them. Therefore, the Commission is separating the final rules addressing the FCC database from the final rules on Electioneering Communications so that it may continue to receive and consider comments and information on the FCC database.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The interim final rules on the FCC database on electioneering communications were transmitted to Congress on October 11, 2002.

Explanation and Justification

Introduction

BCRA at 2 U.S.C. 434(f)(3) defines a new term, ''electioneering communications.'' This term includes broadcast, cable, or satellite communications: (1) That refer to a clearly identified Federal candidate; (2) that are transmitted within certain time periods before a primary or general election; and (3) that are ''targeted to the relevant electorate,'' that is, the relevant Congressional district or State. A communication is ''targeted to the relevant electorate'' if it can be received by 50,000 or more persons in the Congressional district or State.[3]

Pursuant to section 201(b) of BCRA,[4] the FCC ''shall compile and maintain any information (that this Commission] may require to carry out [the electioneering communications disclosure requirements of BCRA,) and shall make such information available to the public on the (FCC's) Web site.'' These requirements are necessary to promote compliance with the disclosure and funding requirements in the new law regarding electioneering communications. Those who wish to make communications that meet the content, timing, and medium requirements of the electioneering communication definition must be able to easily determine whether the radio or television stations, cable systems, or satellite systems on which they wish to publicly distribute their communications will reach 50,000 or more persons in the State (U.S. Senate

[1] Oral testimony at the Commission's public hearing and written comments are both considered ''comments'' in this document.

[2] Section 402(c)(1) of BCRA establishes a general deadline of 270 days for the Commission to promulgate regulations to carry out BCRA. The President of the United States signed BCRA into law on March 27, 2002, so the 270-day deadline is December 22, 2002. The interim final rules do not apply to any runoff elections required by the results of the November 5, 2002 general election. 2 U.S.C. 431 note.

[3] *See* the Electioneering Communications Final Rules, which are promulgated in conjunction with these interim final rules, for the implementation of the definition of ''electioneering communication.''

[4] This section of BCRA has not been codified.

candidates or presidential primary candidates) or Congressional district (U.S. House of Representatives candidates) in which the candidate mentioned in the communication is running.

11 CFR 100.29(b)(6)—Information Available on the FCC Web Site

In the NPRM, the Commission described some of the search capabilities that will be necessary and some features that would be helpful on the FCC's Web site, as well as some contemplated for the Commission's own Web site. The Commission also posed a number of questions related to the techniques for determining whether a communication will reach 50,000 or more persons in a Congressional district or State. The NPRM invited comments on what additional information, Web site features, or search options should be made available. Finally, the NPRM stated that the final rule would list the types of information that the FCC determines it will provide on its Web site.

The Media Bureau of the Federal Communications Commission provided comments on these issues, as did ten other commenters. The FCC acknowledges that BCRA requires it to create, maintain and make available to the public on its Web site a database of information necessary to determine if a communication can be received by 50,000 or more persons in any Congressional district or State. The FCC emphasized that ''this undertaking could be extraordinarily complex and will require the expenditure of substantial resources in terms of time, money, and personnel.'' The FCC cautioned that, at a minimum, this database will involve the integration of information regarding the population and the geography of Congressional districts and State boundaries, and that it could also require the FCC to examine ''more detailed information relating to the specific programming services transmitted or carried by each broadcast station, cable system, and satellite system in the country.''

The FCC also stated that the ''creation and maintenance of a database that complies with * * * BCRA will be, no matter what the details, a large and difficult undertaking.'' The FCC provided numerical data that underscore the magnitude of its task, noting that, as of June 30, 2002, there are 8450 FM radio stations, 4811 AM radio stations, and 1712 full-power analog television stations operating in the United States, and that as of August 27, 2002, there are 516 digital television stations, 10,500 cable systems, and several satellite providers. Because of the nature of this task, the FCC asked this Commission to craft rules that will simplify the task to the extent possible. The FCC sought flexibility and discretion to implement the database based upon its expertise and available data, so that it will be able to provide the public with the information as quickly and accurately as possible.

One commenter argued that the proposal in the NPRM regarding what information should be available on the FCC Web site was not sufficient. This commenter suggested that the Commission also require the FCC ''to compile and maintain a database, available on the World Wide Web, of certain information that has to be collected anyway under section 504 of the BCRA.'' Section 504 of BCRA, amends the Communications Act of 1934 to require broadcast licensees to maintain certain records regarding requests to purchase broadcast time for the purpose of communicating a message of a political nature. *See* 47 U.S.C. 315(e).

Eight commenters either stated specifically that they supported the database concept as described in the NPRM, or by their comments, appeared to support it. One commenter urged the Commission to defer to the FCC's determination of the specifics of how the database should operate.

In order to provide the FCC with the most flexibility possible, the Commission has decided not to include in the final rule any additional requirements as to the types of information to be made available on the FCC's Web site. Instead, the interim final rule lists only what is required by BCRA: the FCC's Web site will provide information that will permit those who wish to make communications to determine easily whether the radio or television stations, cable systems, or satellite systems through which they wish to publicly distribute their communications will reach 50,000 or more persons in a particular State or Congressional district, and, therefore, whether they are required to file statements of electioneering communications with the Federal Election Commission. Due to the stated challenge the FCC is facing in creating this Web site database, and because section 504 of BCRA includes information unrelated to electioneering communications, the Commission does not believe it is appropriate to require the FCC to include such information in its database.

The Commission also received comments on the statement in the proposed rule at § 100.29(b)(5) that reliance on the FCC information will be a complete defense to a charge that a communication was capable of being received by 50,000 or more persons, and that as a result, the communication met the definition of an ''electioneering communication.'' All of the commenters who addressed this topic agreed that reliance on the information provided on the FCC Web site should be sufficient, and many of them believed it should be a complete defense to any liability arising under BCRA. One commenter argued that the Commission should permit challenges to the information provided on the FCC Web site. Another commenter argued that, if the database cannot state whether a communication transmitted over a particular outlet reaches 50,000 or more persons, then it should be presumed to not reach 50,000 or more persons. Another commenter argued that the Commission should announce that it will not entertain complaints of violations until the technological issues are resolved and the targeting information is available as proposed.

Under the interim final rules at 11 CFR 100.29(b)(6)(i), if the FCC database indicates that a communication cannot be received by 50,000 or more persons in a particular Congressional district or State, then such information shall be a complete defense against any charge that such communication constitutes an electioneering communication with respect to that particular district or State, as long as such information is posted on the FCC's Web site on or before the date the communication is publicly distributed.

The proposed rule in the NPRM would have stated that a defense involving the information on the FCC Web site would be available if the person making the communication relied on the information prior to the public distribution of the communication. The interim final rule removes the reliance requirement. The information on the FCC Web site is intended to state objective facts regarding the reach of broadcast systems and networks, and cable and satellite systems. These facts are true regardless of whether the person making the communication knew of them or intended to make an electioneering communication.

However, the Commission is concerned that the FCC database may not be able to provide information for every possible system or network, or may not be operational in time for any special elections in 2003 when such information might be necessary. In those situations, paragraphs (b)(6)(ii)(A) through (C) set out three ways a person

can establish a defense to a charge that a communication reached 50,000 or more persons in a particular district or State.

The first method is if the person reasonably relied on written documentation obtained from the entity publicly distributing the communication, stating that the communication cannot be received by 50,000 or more persons in the specified Congressional district (for U.S. House of Representatives candidates) or State (for U.S. Senate candidates or presidential primary candidates).

The second method is if the communication is not publicly distributed on a broadcast station, radio station or cable system located, in whole or in part, in any Metropolitan Area (MA). For many years, the Commission has used the Office of Management and Budget's (OMB) definition of MA in other portions of the Commission's regulations governing national convention host committee financing. *See* 11 CFR 9008.52(c)(2) (''For purposes of this section, any business (including any branch of a national or regional chain, a franchise, or a licensed dealer) or labor organization or other organization with offices or facilities located within the Metropolitan Area (MA) of the convention city shall be considered local.'') *See also* Explanation and Justification, 59 FR 33,610 (June 29, 1994). Because MAs contain at least 50,000 inhabitants under OMB's definition, a communication aired or transmitted by an entity outside of any such areas in the specified district or State will not be presumed to reach 50,000 persons.

The third method is if the person making the communication reasonably believes that the communication cannot be received by 50,000 or more persons in the relevant Congressional district or State. Such belief must be reasonably based on information in possession of the maker of the communication prior to or at the time the communication is made. For example, if a person engaged a media buyer to secure broadcast time, and that media buyer reasonably informed that person that the communication would not reach 50,000 persons in the relevant Congressional district or State, then that would result in a reasonable belief as to the reach of the communication.

To assure persons that the information on the FCC Web site is reliable, the Commission encourages the FCC to establish a date by which all information on the Web site will be considered correct and unchangeable for a coming election cycle, and to post that date on its Web site.

11 CFR 100.29(b)(7)—Determining Whether a Communication Can Be Received by 50,000 or More Persons

In the NPRM, the Commission also sought comments on how the term ''persons'' should be interpreted for purposes of determining the required potential audience for electioneering communications. *See* 2 U.S.C. 434(f)(3)(C). The term ''person'' is defined in 2 U.S.C. 431(11) and in current Commission regulations at 11 CFR 100.10 to mean an individual, partnership, association, corporation, labor organization and any other organization or group of persons. The NPRM suggested that persons other than individuals should be excluded because partnerships and other legal entities are, by definition, not part of the ''relevant electorate.'' Therefore, limiting ''persons'' to individuals or natural persons was proposed.

All nine commenters who addressed this issue favored construing ''persons'' to mean natural persons or individuals. Several commenters thought the term should be further limited to include only persons who are, as described by the commenters, either voting-age citizens, registered voters, eligible voters, or those entitled to vote.

In reviewing what this provision is intended to accomplish, the Commission has determined that attempting to define ''person'' by itself is not the best approach. Rather, the Commission has determined that the more appropriate course is to define the term ''can be received by 50,000 or more persons,'' because this phrase is a more accurate reflection of the concept Congress sought to address in BCRA. This approach enables the Commission, with the assistance of the FCC, to employ varying factors to determine whether a communication has the necessary audience for it to be considered an electioneering communication. Due to the nature of the technologies involved, precision is not always feasible in measuring how many persons in a particular Congressional district or State can receive a television or radio communication. Nor is it required by BCRA, which only employs a more or less than 50,000 persons standard.

In adopting this approach, the Commission is, in effect, assessing the number of individuals without attempting to determine how many of them may be registered voters or eligible voters. The Commission is concerned that to attempt to further define the universe of individuals is not required by BCRA and could seriously and unnecessarily complicate the effort to provide information in a timely manner.

The Commission has identified several methodologies that are included in the interim final rules in 11 CFR 100.29(b)(7)(i)(A) through (H) to determine whether a communication meets BCRA's audience standard in a particular Congressional district or State. While these methodologies cannot achieve complete precision, the Commission believes they could aid in reliably and objectively determining whether a communication can be received by 50,000 or more persons in a Congressional district or State, as required by BCRA.

The Commission has ascertained that there are a number of different situations that will involve various calculations and configurations to make this determination. Some communications are broadcast by television stations, radio stations, or networks. These broadcast signals may also be redistributed by cable or satellite systems. Other communications appear on a single cable system, which may involve more than one cable franchise. Still other communications appear on cable networks (CNN, FOX News, USA, for example) that are publicly distributed via cable and satellite. Because Congressional districts are the most problematic, the discussion of the methodologies herein will address them specifically. Points made in this discussion can be extrapolated to apply statewide for Senate and presidential primary elections.

For over-the-air television broadcasters, broadcast contours appear to be the best way to gauge viewership. Thus, if a Congressional district lies entirely within a Grade B broadcast contour, the potential viewership of that station would be the population of that district.

A broadcast contour is the geographic line within which the broadcast signal is at a particular strength. For example, the line demarcating the Grade B contour represents the area where fifty percent of the population can receive the signal, and fifty percent cannot. The Commission understands that the FCC is capable of comparing the geographic sweep of broadcast contours, state boundaries and Congressional districts. Contours are a construction, not a geographic certainty; use of contours will both under- and over-count an audience. Nevertheless, based on the technology, contours are the most reliable, readily available measure of audiences that ''can receive'' a broadcast signal and, according to the FCC, are regularly relied upon in that agency and in the telecommunications industry.

Using population figures is consistent with the Commission's previously stated proposal, and was supported by a number of commenters, who agreed that ''persons'' should mean natural persons. Subscribers of cable or satellite television within the broadcast contour are not counted in the interim final rules at 11 CFR 100.29(b)(7)(i)(E), as that would result in the double-counting of certain persons. If a communication is simultaneously broadcast on a network, where multiple stations broadcasting the same material each reach a portion of the Congressional district, the populations within those portions must be combined to determine whether a communication reaches 50,000 or more persons. This method is found in the interim final rules at 11 CFR 100.29(b)(7)(i)(F)(*1*).

For a broadcast station with Grade B broadcast contours that do not cover an entire Congressional district, one way to determine the relevant viewership is to first ascertain the population within that portion of the district within the broadcast contour. With respect to the remaining portion of the district, a calculation must be made of the viewership of cable and satellite television that retransmit the broadcast station, and that result is added to the first number to determine whether the 50,000-person threshold is met. This method is found in the interim final rules at 11 CFR 100.29(b)(7)(i)(F)(*2*).

When determining viewership of a cable system or satellite system, the number of subscribers to each system provides a baseline. However, it is unlikely that the number of subscribers exactly equals viewership—inevitably, in many households where one person is the subscriber, there will be several people who are viewers. Accordingly, the interim rules in 11 CFR 100.29(b)(7)(ii) use a multiplier to account for this fact. One multiplier that could be used is the current average U.S. household size, which at present is 2.62 persons. *See* Jason Fields and Lynne M. Casper, *America's Families and Living Arrangements: March 2000,* Current Population Reports, P20–537, U.S. Census Bureau, Washington, DC, 2001. All cable and satellite systems carrying the broadcast channel and operating within the district or State must be considered.

Thus, in the hypothetical described above, if the Congressional district is served by a cable system, and it is determined that 10,000 of the cable system's subscribers reside outside of the broadcast contour but within the Congressional district, then 26,200 (2.62 × 10,000) persons are added to the population within the contour to determine if the communication can be received by 50,000 or more persons.

With respect to communications publicly distributed solely on cable or satellite systems, the same sort of calculations described above must be made under the interim final rules at 11 CFR 100.29(b)(7)(i)(G) and (H). With respect to cable television networks, the Commission notes that not all cable systems carry all cable networks. Nevertheless, for the sake of simplicity, the interim final rules assume that every cable and satellite system carries every cable network, and calculations are based on this assumption. This creates a rebuttable presumption as to the reach of a particular cable network, which may be overcome by demonstrating that the cable system in question did not carry that network at the time a communication was transmitted. This rebuttable presumption is set forth in the interim final rules at 11 CFR 100.29(b)(7)(iii).

With respect to communications publicly distributed via AM or FM radio stations, each of these media have their own terminology for the reach of over-the-air signals, which are reflected in the interim final rules at 11 CFR 100.29(b)(7)(i)(A) through (D). The analysis involved with these communications is similar to that for over-the-air only television broadcast stations. Information regarding the term used for FM stations, ''primary service contour,'' can be found on the FCC's Web site at: *http://www.fcc.gov/mb/audio/fmclasses.html.* With respect to AM stations, the FCC's rules at 47 CFR part 73 describe the various classes of radio stations and the types of service areas (primary and/or secondary) that are applicable to them. The Commission's rules at 11 CFR 100.29(b)(7)(i)(C) and (D) use the phrase ''outward service area'' to address the fact that some stations may have a reach further than a primary service area.

Several commenters addressed whether the regulations should require aggregation of recipients of the same communication from multiple outlets and, if so, whether the regulations should aggregate substantially similar communications for this purpose. Theoretically, one communication could be publicly distributed via several small outlets, each of which reaches fewer than 50,000 persons in the relevant area, but in the aggregate reach 50,000 or more persons in the relevant area. The commenters agreed that the size of radio and television audiences might eliminate this concern as a practical matter. The commenters generally favored a potential audience measure that considers the viewers or listeners of each station separately and does not aggregate those figures, except in one instance. For example, the commenters argued that if the identical television advertisement is separately broadcast on three broadcast stations, each of which reaches slightly fewer than 50,000 distinct individuals in the relevant area, no electioneering communication should result. (This example assumes the broadcast stations are not also distributed on a cable or satellite system serving the relevant area.)

Similarly, some of the commenters argued that if a cable system has 45,000 viewers in the relevant area and if it distributes an ad on several of the channels under its control—a news channel, a sports channel, and a lifestyle channel, for example—no electioneering communication could result as none of these distributions would be available to 50,000 or more persons in the relevant area. The only instance in which audience aggregation was supported by the commenters was if a television communication is simultaneously distributed by a network programming provider on multiple broadcast stations, then the combined potential audiences of all the broadcast stations along with any individuals who can receive the stations on a cable or satellite system should be analyzed to determine if 50,000 or more individuals in the relevant area can receive the communication. If so, then an electioneering communication would result, assuming the timing and content requirements are also met. The interim final rules take this approach.

These interim final rules represent an initial effort by the Commission to provide clear guidance to the Federal Communications Commission and to those who would make electioneering communications, as to how to determine whether a communication can be received by 50,000 or more persons. The Commission seeks comments on whether this approach is appropriate. Additionally, the Commission seeks comments on whether it should defer to the Federal Communications Communication to determine whether a communication can be received by 50,000 or more persons within a Congressional district or State. The Commission also seeks comments on whether the various formulae it has adopted for making these calculations are reasonable. The Commission is especially interested in comments addressing any alternative means of accomplishing the same task.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that these interim final rules do not have a significant economic impact on a substantial number of small entities. The basis of this certification is that these rules do not require any small entity to take any action or incur any cost.

List of Subjects in 11 CFR Part 100

Elections.

For the reasons set out in the preamble, subchapter A of chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

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

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. Section 100.29 is amended by adding paragraphs (b)(6) and (b)(7) to read as follows:

§ 100.29 Electioneering communication (2 U.S.C. 437(f)).

* * * * *

(b) * * *

(6) (i) Information on the number of persons in a Congressional district or State that can receive a communication publicly distributed by a television station, radio station, a cable television system, or satellite system, shall be available on the Federal Communications Commission's Web site, *http://www.fcc.gov.* A link to that site is available on the Federal Election Commission's Web site, *http://www.fec.gov.* If the Federal Communications Commission's Web site indicates that a communication cannot be received by 50,000 or more persons in the specified Congressional district or State, then such information shall be a complete defense against any charge that such communication constitutes an electioneering communication, so long as such information is posted on the Federal Communications Commission's Web site on or before the date the communication is publicly distributed.

(ii) If the Federal Communications Commission's Web site does not indicate whether a communication can be received by 50,000 or more persons in the specified Congressional district or State, it shall be a complete defense against any charge that a communication reached 50,000 or more persons when the maker of a communication:

(A) Reasonably relies on written documentation obtained from the broadcast station, radio station, cable system, or satellite system that states that the communication cannot be received by 50,000 or more persons in the specified Congressional district (for U.S. House of Representatives candidates) or State (for U.S. Senate candidates or presidential primary candidates);

(B) Does not publicly distribute the communication on a broadcast station, radio station, or cable system, located in any Metropolitan Area in the specified Congressional district (for U.S. House of Representatives candidates) or State (for U.S. Senate candidates or presidential primary candidates); or

(C) Reasonably believes that the communication cannot be received by 50,000 or more persons in the specified Congressional district (for U.S. House of Representatives candidates) or State (for U.S. Senate candidates or presidential primary candidates).

(7) (i) *Can be received by 50,000 or more persons* means—

(A) In the case of a communication transmitted by an FM radio broadcast station or network, where the Congressional district or State lies entirely within the station's or network's protected or primary service contour, that the population of the Congressional district or State is 50,000 or more; or

(B) In the case of a communication transmitted by an FM radio broadcast station or network, where a portion of the Congressional district or State lies outside of the protected or primary service contour, that the population of the part of the Congressional district or State lying within the station's or network's protected or primary service contour is 50,000 or more; or

(C) In the case of a communication transmitted by an AM radio broadcast station or network, where the Congressional district or State lies entirely within the station's or network's most outward service area, that the population of the Congressional district or State is 50,000 or more; or

(D) In the case of a communication transmitted by an AM radio broadcast station or network, where a portion of the Congressional district or State lies outside of the station's or network's most outward service area, that the population of the part of the Congressional district or State lying within the station's or network's most outward service area is 50,000 or more; or

(E) In the case of a communication appearing on a television broadcast station or network, where the Congressional district or State lies entirely within the station's or network's Grade B broadcast contour, that the population of the Congressional district or State is 50,000 or more; or

(F) In the case of a communication appearing on a television broadcast station or network, where a portion of the Congressional district or State lies outside of the Grade B broadcast contour—

(*1*) That the population of the part of the Congressional district or State lying within the station's or network's Grade B broadcast contour is 50,000 or more; or

(*2*) That the population of the part of the Congressional district or State lying within the station's or network's broadcast contour, when combined with the viewership of that television station or network by cable and satellite subscribers within the Congressional district or State lying outside the broadcast contour, is 50,000 or more; or

(G) In the case of a communication appearing exclusively on a cable or satellite television system, but not on a broadcast station or network, that the viewership of the cable system or satellite system lying within a Congressional district or State is 50,000 or more; or

(H) In the case of a communication appearing on a cable television network, that the total cable and satellite viewership within a Congressional district or State is 50,000 or more.

(ii) Cable or satellite television viewership is determined by multiplying the number of subscribers within a Congressional district or State, or a part thereof, as appropriate, by the current national average household size, as determined by the Bureau of the Census.

(iii) A determination that a communication can be received by 50,000 or more persons based on the application of the formula at paragraph (b)(7)(i)(G) or (H) of this section shall create a rebuttable presumption that may be overcome by demonstrating that—

(A) One or more cable or satellite systems did not carry the network on which the communication was publicly distributed at the time the communication was publicly distributed; and

(B) Applying the formula to the remaining cable and satellite systems results in a determination that the cable network or systems upon which the communication was publicly distributed could not be received by 50,000 persons or more.

* * * * *

Dated: October 11, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–26483 Filed 10–22–02; 8:45 am]

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Federal Register

Wednesday,
October 23, 2002

Part III

Environmental Protection Agency

40 CFR Parts 136, 141, and 143
Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Methods Update; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136, 141, and 143

[FRL–7379–6]

RIN 2040–AD59

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Methods Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revises wastewater and drinking water regulations to include updated versions of test procedures (*i.e.*, analytical methods) for the determination of chemical, radiological, and microbiological pollutants and contaminants in wastewater and drinking water. The updated versions of analytical methods have been published by one or more of the following organizations: ASTM International (ASTM; formerly the American Society for Testing and Materials), United States Geological Survey (USGS), United States Department of Energy (DOE), American Public Health Association (APHA), American Water Works Association (AWWA), and Water Environment Federation (WEF). Previously approved versions of the methods remain approved.

DATES: This final rule is effective on November 22, 2002. The incorporation by reference of the publications listed in today's rule is approved by the Director of the Federal Register as of November 22, 2002. For judicial review purposes, this final rule is promulgated as of 1 p.m. (Eastern time) on November 6, 2002 as provided at 40 CFR 23.2 and 23.7.

ADDRESSES: The record for this rulemaking has been established under docket number W–99–21. Copies of the public comments received, EPA responses, and all other supporting documents (including references included in this document) are available for review at the U.S. Environmental Protection Agency, Water Docket, on Monday through Friday, excluding Federal holidays, between 9 a.m. and 3:30 p.m. Eastern Time. Please contact the Water Docket for an appointment. From August 12, 2002 through August 26, 2002, the Water Docket will be closed. Beginning on August 27, 2002, the Water Docket will be located at EPA West, 1301 Constitution Avenue, NW., Room B135, Washington, DC 202–566–2426.

FOR FURTHER INFORMATION CONTACT: For information regarding wastewater methods contact Khouane Ditthavong, Engineering and Analysis Division (4303T), USEPA Office of Science and Technology, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–566–1068 (e-mail: *Ditthavong.Khouane@epa.gov).* For information regarding the drinking water methods, contact Herbert J. Brass, Technical Support Center (MS 140), USEPA, Office of Ground Water and Drinking, 26 West Martin Luther King Drive, Cincinnati, OH 45268 (e-mail: *Brass.Herb@epa.gov*).

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

A. Clean Water Act

EPA Regions, as well as States, Territories, and Tribes, are authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act. In doing so, the NPDES permitting authorities, including authorized States, Territories, and Tribes, make a number of discretionary choices associated with permit writing, including the selection of pollutants to be measured and, in many cases, limited, in permits. If EPA has ''approved'' (*i.e.*, promulgated through rulemaking) standardized testing procedures for a given pollutant, the NPDES permit must specify that analysis of that pollutant be conducted in accordance with one of the approved testing procedures or an approved alternate test procedure. Permitting authorities may, at their discretion, require the use of any method approved at 40 CFR part 136 in the permits they issue. Therefore, NPDES permits may incorporate the testing procedures in today's rulemaking so dischargers with NPDES permits could be affected by the standardization of testing procedures in this rulemaking. In addition, States, Territories, or authorized Tribes responsible for providing certification of Federal licenses under Clean Water Act section 401, could be regulated by today's rulemaking because these organizations are directed to use the standardized testing procedures. Categories and entities that may ultimately be regulated include:

Category	Examples of potentially regulated entities
State, Territorial, and Tribal Governments	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401.

B. Safe Drinking Water Act

Public water systems are the regulated entities required to conduct analyses to measure for contaminants in water samples. However, EPA Regions, as well as States, and Tribal governments with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act, sometimes conduct analyses to measure for contaminants in water samples. If EPA has established a maximum contaminant level (''MCL'') for a given drinking water contaminant, the Agency also approves (*i.e.*, promulgates through rulemaking) standardized testing procedures for analysis of the contaminant. Once EPA standardizes such test procedures, analysis using a standard (or approved alternate test procedures) is required. Public water systems required to test water samples must use one of the approved standardized test procedures. Categories and entities that may ultimately be regulated include:

Category	Examples of potentially regulated entities	NAICS [a]
State, Local, and Tribal Governments	State, Local, and Tribal Governments that analyze water samples on behalf of public water systems required to conduct such analysis; State, Local, and Tribal Governments that operate public water systems required to conduct analytic monitoring.	924110
Industry	Private operators of public water systems required to conduct analytic monitoring	221310

Category	Examples of potentially regulated entities	NAICS [a]
Municipalities	Municipal operators of public water systems required to conduct analytic monitoring	924110

[a] National American Industrial Classification System.

These tables are not intended to be exhaustive, but rather provide a guide for readers regarding entities likely to be regulated by this action. The tables list the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the tables could also be regulated. To determine whether your facility or organization is regulated by this action, you should carefully examine the applicability language at 40 CFR 136.1 (NPDES permits and CWA) and 40 CFR 141.2 (definition of public water system). If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Information on Internet Access

This **Federal Register** document has been placed on the Internet at the following location: *http://www.epa.gov/fedrgstr.*

Availability and Sources for Methods

Copies of final methods published by ASTM are available for a nominal cost through ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. Copies of final methods published by USGS are available for a nominal cost through the United States Geological Survey, U.S. Geological Survey Information Services, Box 25286, Federal Center, Denver, CO 80225–0425. Copies of final methods published by DOE are available for a nominal cost through the Environmental Measurements Laboratory, U.S. Department of Energy, 376 Hudson Street, New York, NY 10014–3621. Copies of *Standard Methods* are available for a nominal cost from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005.

I. Legal Authorities

A. Clean Water Act

This regulation is promulgated under the authority of sections 301, 304(h), 307, and 501(a) of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314(h), 1317, 1361(a) (the ''Act''). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402 of the Act. Section 304(h) of the Act requires the EPA Administrator to ''promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act.'' Section 501(a) of the Act authorizes the Administrator to ''prescribe such regulations as are necessary to carry out his functions under this Act.'' EPA publishes CWA analytical method regulations at 40 CFR Part 136. The Administrator also has made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR part 122, §§ 122.21, 122.41, 122.44, and 123.25), and to implementation of the pretreatment standards issued under section 307 of the Act (40 CFR part 403, §§ 403.10 and 403.12).

B. Safe Drinking Water Act

The Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA to promulgate national primary drinking water regulations (NPDWRs) that specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (SDWA section 1412 (42 U.S.C. 300g–1)). NPDWRs apply to public water systems pursuant to SDWA section 1401(1)(A) (42 U.S.C. 300f(1)(A)). According to SDWA section 1401(1)(D), NPDWRs include ''criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures * * *'' (42 U.S.C. 300f(1)(D)). In addition, SDWA section 1445(a) authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons are acting in compliance with the requirements of the SDWA (42 U.S.C. 300j–4). EPA's promulgation of analytical methods is authorized under these sections of the SDWA as well as the general rulemaking authority in SDWA section 1450(a), (42 U.S.C. 300j–9(a)).

II. Regulatory Background and History

EPA has promulgated analytical methods for all currently regulated wastewater and drinking water pollutants and contaminants. For most contaminants, EPA has promulgated regulations approving the use of more than one standardized analytical method, and regulated entities may use any one of these approved methods for determining compliance with an MCL, an NPDES permit or another monitoring requirement. After any regulation is published, EPA may amend the regulations to approve additional methods or modifications to existing approved methods, or withdraw approved methods that become obsolete.

On January 16, 2001, EPA published a direct final rule that was to approve many updated methods published by non-EPA organizations for use in wastewater and drinking water compliance monitoring (66 FR 3466–3497). On the same day, EPA published a companion proposal that proposed approval of all methods in the direct final rule methods (66 FR 3526–3527). The proposal was to serve as the basis for a final rule if the direct final was withdrawn due to adverse comments. Because adverse comments were received from one commenter, EPA withdrew the direct final rule on May 15, 2001 (66 FR 26795) and deferred final action in order to respond to those comments. Today's rulemaking constitutes EPA's final action on the proposed rule.

III. Summary of Final Rule

A. This rule amends the regulations at 40 CFR part 136 to:

(1) Allow the use of 19 updated methods published by the ASTM International (ASTM; formerly the American Society for Testing and Materials) in the 1999 *Annual Book of ASTM Standards*, Vols. 11.01 and 11.02.

(2) Allow the use of 189 updated methods published by the Standard Methods Committee in *Standard Methods for the Examination of Water and Wastewater*, 19th edition, 1995, and 20th edition, 1998.

(3) Allow the use of 22 methods published by the United States Geological Survey (USGS) in open file reports and method compendiums.

(4) Correct minor editorial errors and update method source references.

B. This rule amends the regulations at 40 CFR Part 141 to:

(1) Allow the use of 12 updated methods published in the 1999 *Annual Book of ASTM Standards*, Vols. 11.01 and 11.02.

(2) Allow the use of 62 updated methods published by the Standard

Methods Committee in *Standard Methods for the Examination of Water and Wastewater*, 20th edition, 1998.

(3) Allow the use of six updated methods published by the Department of Energy (DOE) in the document ''EML Procedures Manual,'' 28th Edition, Volume 1, 1997, for determinations of radionuclide contaminants.

(4) Correct minor editorial errors and update method source references.

C. This rule amends the regulations at 40 CFR Part 143 to:

(1) Recommend an updated version of a method (D 4327–97) published in the 1999 *Annual Book of ASTM Standards*, Vol. 11.01.

(2) Recommend updated versions of 12 methods published by the Standard Methods Committee in *Standard Methods for the Examination of Water and Wastewater*, 20th edition, 1998.

(3) Correct update method source references.

IV. Changes From the January 16, 2001 Rule Proposal

A. Editorial Corrections

Standard Methods 6220 B, 6230 B, and 6200 C were correctly specified in the rule text of the January, 16, 2001, direct final rule, but they were incorrectly referenced in Table 3 (64 FR 3470) of the preamble to that rule. Corrections to the preamble errors are noted as follows:

STANDARD METHODS NUMBER CHANGES (CORRECTED)

18th edition	19th edition	20th edition
6220 B 6230 B	6220 B 6230 B	6200 C 6200 C

Edits to 40 CFR Part 136

Two errors in the rule section of the January 2001 direct final rule at 40 CFR part 136.3 are corrected in today's rule as follows:

(1) A portion of a citation originally intended as a placeholder in footnote 45 to Table IB was inadvertently included. This citation is corrected to reference the correct USGS document number. ''98–xxx'' is changed to ''00–170.''

(2) Footnote 44 to Table 1B is renumbered, and a new footnote 44 is added to conform with a final rule that was published on December 30, 1999 (64 FR 73414). The December 1999 rule renumbered footnote 44 to footnote 51, and amended footnote 44 to specify information about a cyanide method that was the subject of the December 1999 rule. The direct final rule inadvertently overlooked these 1999 amendments.

Edits to 40 CFR Part 141

A commenter noted an error and EPA noted an omission in the references to methods at 40 CFR part 141.21 for determination of E coli. in drinking water. The error and omission are addressed, in today's rule, by revising 40 CFR 141.21 as follows:

(1) Footnote 1 to the table in paragraph (f)(3), paragraphs (f)(6)(i), (f)(6)(ii) and (f)(8) are revised to clarify instructions for the determining E coli. A commenter noted that the E coli. methods in the 19th and 20th editions of *Standard Methods* describe or reference procedures differently than the 18th edition version of these methods. These differences are editorial, not substantive, and all three versions of these methods provide equivalent results. Today's correction adds clarifying language to make the equivalency of the 18th, 19th and 20th edition versions of these *E coli.* methods more apparent.

(2) Sentence 6 of paragraph (f)(5) is revised to add a citation to the 20th edition of *Standard Methods* that was inadvertently omitted in the January 2001 direct final rule. The Agency's intent in the January 16, 2001 direct final rulemaking was and is to allow use of more recent editions of *Standard Methods,* such as the 20th edition.

B. Additional Technical Edits to 40 CFR Part 136.3

A commenter noted several editorial errors in the current 40 CFR part 136.3 tables. EPA is correcting these errors in today's rule. Correction of these errors is not a substantive change to EPA regulations. These are simple editorial corrections that improve the clarity and accuracy of the regulations.

Edits to Table 1C

(1) A typographical error in the listing of the method for parameter 3 (acrolein) is corrected. Method ''604'' is changed to ''624.''

(2) An incorrect reference to Method 610 for parameter 4, acrylonitrile, is removed. Method 610 is not applicable to determinations of acrylonitrile.

(3) An incorrect reference to Method 6410B for parameter 22, carbon tetrachloride is removed. Method 6410B is not applicable to determinations of carbon tetrachloride.

(4) A misspelling of the analyte listing for parameter 27 is corrected, ''chloraform'' is changed to ''chloroform.'' Also, a missing number in the note specified in the ''Other'' column was inadvertently omitted, ''Note, p. 130.'' is changed to ''Note 3, p. 130.''

(5) A missing reference to footnote 5 is added to parameter 82, N-Nitrosodimethylamine, and removed for parameters 83 and 103, N-Nitrosodi-n-propylamine, and 2,3,7,8-tetrachlorodibenzo-*p*-dioxin, respectively. Footnote 5 expands the analytical scope of Method 625 to include additional parameters. However, the annotation of these parameters in Table IC omitted parameter 82, and should not have included parameters 83 and 103.

(6) A typographical error in the analyte listing for parameter 87 is corrected, 2,2′-oxybis(1-chloropropane) is changed to 2,2′-oxybis(1-chloropropane). In addition, an alternative analyte name, bis(2-chloroisopropyl) ether, is added for parameter 87. These changes conform the CFR listing of parameter 87 with the dual, equivalent name designation of this parameter in the methods (EPA Methods 611, 625 and 1625B) approved for compliance determinations of parameter 87.

(7) A typographical error in the reference to the compliance method for parameter 105, tetrachloroethene, is corrected. Method ''6410 B [18th, 19th]'' is changed to ''6210 B [18th, 19th].'' Method 6410 B is not applicable to determinations of tetrachloroethene.

(8) An incorrect reference to Method ''1625[5a]'' for parameter 103 (2,3,7,8-tetrachlorodibenzo-*p*-dioxin) is removed along with the superfluous footnote 5a to table 1C. Method 1625 is not applicable to determinations of this parameter.

Edits to Table 1D

A typographical error in the analyte listing for parameter 11 is corrected. ''δ-BHC'' is changed to ''γ-BHC.''

Edits to Tables 1B and 1C

To correctly specify the approved revision of listed EPA methods, a revision letter is added to the method

listings for EPA methods in Table 1C. References to EPA methods ''1613,'' ''1624'' and ''1625'' are changed to ''1613B,'' ''1624B'' and ''1625B,'' respectively. In Table IB, EPA Method ''1631'' is changed to ''1631C.''

V. Response to Comments

EPA proposed the method updates in today's rule on January 16, 2001 (66 FR 3526). The public comment period closed on March 19, 2001. EPA received comments from one commenter. A discussion of the significant comments follows. A complete copy of the comments and EPA's responses are included in the Docket for today's final rule.

A. Approving Multiple Editions of Standard Methods

The commenter stated that approval of multiple editions of *Standard Methods* is a new requirement and an added burden to the regulatory authorities that must keep track of all approved methods. EPA disagrees that tracking multiple editions of *Standard Methods* is a new requirement or unduly burdensome. The Agency currently cites more than one edition of the same method, *e.g.* footnote 4 to the table of inorganic methods at 40 CFR 141.23 allows use of either the 18th or 19th edition versions of all the Standard Methods listed in the table. For this reason, the Agency always cites an approved method by both method number and date (or edition) of publication to avoid confusion about which versions are approved, and to allow incorporation of the method by reference in the CFR in lieu of publication of the entire method in the CFR. This citation policy means that existing State databases would be designed to accommodate the edition as well as the number of an approved method so that multiple versions of an approved method can be tracked.

EPA recognizes that there are tradeoffs between the current approach of allowing use of several versions of a test method, and the suggested revision (received in a comment) to allow only the most recent version of that method. Allowing use of only the 20th edition of *Standard Methods* may have more consequences than just the purchase of the 20th edition book. A laboratory may routinely use only a few methods that are published in *Standard Methods,* and these may be methods that have been reprinted in the 20th edition with no editorial or technical changes. Under the suggested revision to allow use of only the 20th edition of *Standard Methods,* a laboratory may be required to update method citations in existing quality assurance manuals and laboratory standard operating procedures as well as provide analysts with a copy of the 20th edition version of the method even when the methods have not changed from previous editions.

Furthermore, withdrawal of previous editions of *Standard Methods* was not proposed for public comment in the January 2001 rule, and the suggestion to allow use of only the 20th edition of *Standard Methods* is outside the scope of today's regulatory amendments. Public comment on previous proposals to withdraw older versions of methods, indicated that most laboratories prefer the flexibility to use these versions if the methods have not changed significantly in new editions of the manuals. Thus, EPA continues to allow use of older editions of *Standard Methods.*

B. Technical Differences Between Methods

The commenter suggested that some methods in the 18th edition of *Standard Methods* are obsolete because of technical and editorial updates in newer editions. EPA disagrees that the methods in the 18th edition of *Standard Methods* approved in today's rule are obsolete.

The methods approved by today's rule are technically equivalent to previously approved versions. Only methods using time-tested technologies are approved by today's rule. For the purposes of compliance monitoring, however, none of these methods are obsolete and all methods provide the necessary technical information. Therefore, EPA believes the use of previously approved editions of *Standard Methods* continues to be appropriate.

C. Withdrawing Methods That Use Older Technology

The commenter suggested colorimetric methods for trace metals analysis, with the exception of hexavalent chromium, be dropped from the list of approved methods at 40 CFR part 136, Table IB, arguing that these methods are obsolete. The commenter stated that many of these methods list interferences not encountered by atomic absorption, atomic emission, or mass spectrometry techniques. The commenter also stated that many of these methods also increase the amount of hazardous waste generated in the laboratory and that the detection limits attained by the colorimetric methods may not be low enough to meet permit requirements. EPA disagrees for several reasons.

Colorimetric metals methods have been in use a long time, and explain how to handle the analytical difficulties noted by the commenter. Although many of the colorimetric methods have the potential to generate more laboratory wastes than some newer methods, these methods produce acceptable compliance monitoring information, and the commenter did not provide any data to demonstrate otherwise. Colorimetric methods often provide a low-cost alternative to high energy analysis methods that have high labor and equipment costs. Finally, withdrawal of these methods was not proposed for public comment and is outside the scope of today's amendments.

D. Digestion Preceding Sample Analysis

The commenter noted that 40 CFR part 136.3, Table IB, parameter 31, referring to total Kjeldahl nitrogen (TKN), specifies ''digestion and distillation followed by'' one of several new techniques. The commenter asked if ''digestion and distillation followed by'' means that digestion and distillation are required prior to analysis of a sample for NPDES compliance monitoring. EPA requires the use of separate digestion and distillation procedures prior to TKN analysis by certain methods, as specified in Table IB. ''Digestion and distillation followed by,'' in the context of Table IB, requires the use of one of the listed digestion and distillation procedures for the Titration, Nesslerization and Electrode test methods. Today's rule reformats Table IB with appropriate indentation to reflect this requirement more clearly.

Other TKN methods explicitly require alternate sample preparation procedures, such as the semiautomated block digestion (*e.g.*, EPA Method 351.2). For these methods, TKN analysis does not require the use the digestion and distillation procedures discussed in the preceding paragraph, because the alternate sample preparation procedures will provide the desired results.

E. Metals Methods in 20th Edition of Standard Methods

The commenter inquired about the status of the graphite furnace and flame atomic absorption methods for metals analyses (GFAA and FLAA, respectively) that were revised in the 20th edition of *Standard Methods,* but not proposed for approval in the January 16, 2001 rule. The commenter recommended that EPA either approve or not approve all versions (18th, 19th and 20th edition) and not split approval of these methods by edition number. EPA did not propose, and today's rule does not approve, the 20th Edition versions of Methods 3111B, 3111D,

3112 B, 3113 B and 3114 B, which include the GFAA and FLAA methods noted by the commenter. These versions of the five methods are not acceptable because the method performance requirements specified in the 20th edition are not equivalent or better than in the 18th and 19th edition versions of these methods. The 20th edition of *Standard Methods* introduces less stringent quality control (QC) acceptance criteria (in Section 3020 of each method) than in the older versions. Specifically, the 18th and 19th edition versions specify that a recovery of a check standard outside the range of 95% to 105% suggests a potential problem, and a recovery outside the range of 90% to 110% indicates that the system is out of control. The 20th edition weakened and increased these limits to 90% to 100% and 80% to 120%, respectively. The editors of *Standard Methods* did not provide a basis for weakening the QC requirements in these methods, and they did not suggest applying these less stringent criteria to previous editions of the methods.

VI. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

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

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment (5 U.S.C. 601(3)–(5).) In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA) Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities under the SDWA, EPA considered small entities to be public water systems serving fewer than 10,000 persons. This is the cut-off level specified by Congress in the 1996 Amendments to the SDWA for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested comment, consulted with the SBA, and expressed its intention to use the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

For purposes of assessing the impacts of today's rule on small entities under the CWA, we defined: (1) Small businesses according to SBA size standards; (2) small governmental jurisdictions as governments of a city, county, town, school district or special district with a population of less than 50,000; and (3) small organizations as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Today's rule approves additional updated versions of ASTM Methods, *Standard Methods,* United States Geological Survey (USGS) methods, and United States Department of Energy (DOE) methods for compliance with wastewater monitoring and drinking water standards and monitoring requirements but does not require the use of these specific versions. Previous versions of these ASTM, *Standard Methods,* USGS, and DOE methods are not being withdrawn. State, territorial, Tribal, and local governments and public and privately owned public water systems and laboratories performing analyses on behalf of these systems may continue to use the previous versions after the promulgation of today's rule. The final rule merely provides additional options. Any of the testing procedures currently listed at 40 CFR parts 136, 141, or 143 can be used if monitoring is otherwise required for this pollutant under the CWA or SDWA. This rule also makes minor technical corrections and clarifications to the regulations.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must

have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of sections 202, 203, and 205 of the UMRA.

This rule provides additional analytical methods with which to conduct analyses for contaminants in wastewater and drinking water, and thus provides operational flexibility to laboratory analysts. Since the rule does not withdraw earlier versions of methods, EPA anticipates no increase in expenditure or burden.

D. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action merely provides additional options on the selection of testing procedures when monitoring is otherwise required under the CWA or SDWA. Any of the testing procedures approved at 40 CFR parts 136, 141, or 143 can be used if such monitoring is required for a pollutant or contaminant. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

E. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995, (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards. In this rulemaking EPA is approving updated versions of previously approved voluntary consensus standards published by ASTM and Standard Methods for many wastewater and drinking water contaminants.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is neither ''economically significant'' as defined under Executive Order 12866, nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

G. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule provides governmental and other public and private entities conducting analysis in wastewater and drinking water the option to use additional, updated analytical methods to monitor pollutants under the CWA or SDWA. Such regulated entities may choose any of these additional methods or continue to use the methods listed under 40 CFR parts 136, 141, and 143. Thus, Executive Order 13132 does not apply to this rule.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and the Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

Today's rule provides Tribes conducting analysis in wastewater and drinking water the option to use additional updated analytical methods to monitor pollutants under the CWA or SDWA. Tribes may choose any of these additional methods or continue to use the methods listed under 40 CFR parts 136, 141, and 143. Thus, Executive Order 13175 does not apply to this rule.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on November 22, 2002.

J. Executive Order 13211: Energy Effects

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

K. Plain Language Directive

Executive Order 12866 requires each agency to write its rules in plain language. Readable regulations help the public find requirements quickly and understand them easily. They increase compliance, strengthen enforcement, and decrease mistakes, frustration, phone calls, appeals, and distrust of government. EPA made every effort to write this preamble to the final rule in as clear, concise, and unambiguous manner as possible. Today's final rule is mostly in a table format consistent with the format of the CFR sections we are amending.

List of Subjects

40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 143

Environmental protection, Chemicals, Indians-lands, Water supply.

Dated: September 12, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977.)

2. Section 136.3 is amended:

a. In paragraph (a) by revising the introductory text and Tables IA, IB, IC, ID, and IE.

b. In paragraph (b) by revising references (6) and (10), and adding references (44) through (51).

§ 136.3 Identification of test procedures.

(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, and IF. The full text of the referenced test procedures are incorporated by reference into Tables IA, IB, IC, ID, IE, and IF. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. Information regarding obtaining these documents can be obtained from the EPA Office of Water Statistics and Analytical Support Branch at 202–566–1000. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B135, Washington, DC (Telephone: 202-566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These test procedures are incorporated as they exist on the day of approval and a notice of anys change in these test procedures will be published in the **Federal Register**. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, IE, and IF, or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances (paragraph (b) or (c) of this section or 40 CFR 401.13) other test procedures may be more advantageous when such other test procedures have been previously approved by the Regional Administrator of the Region in which the discharge will occur, and providing the Director of the State in which such discharge will occur does not object to the use of such alternate test procedure.

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS

Parameter and units	Method [1]	EPA	*Standard Methods* 18th, 19th, 20th ed.	ASTM	USGS
Bacteria:					
1. Coiform (fecal), number per 100 mL.	Most Probable Number (MPN), 5 tube	p. 132 [3]	9221C E [4]		
	3 dilution, or Membrane filter (MF) [2] single step.	p. 124 [3]	9222D [4]	.....	B–0050–85 [5]
2. Coliform (fecal) in presence of choline, number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 132 [3]	9221C E [4]		
	MF, single step [6]	p. 124 [3]	9221D [4]		
3. Coliform (total), number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 114 [3]	9221B [4]		
	MF [2] single step or two step	p. 108 [3]	9222B [4]	.....	B–0025–85 [5]

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS—Continued

Parameter and units	Method [1]	EPA	*Standard Methods* 18th, 19th, 20th ed.	ASTM	USGS
4. Coliform (total), in presence of clorine, number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 114 [3]	9221B [4]		
	MF [2] with enrichment	p. 111 [3]	9222 (B+B.5c) [4]		
5. Fecal streptococci, number per 100 mL.	MPN, 5 tube, 3 dilution	p. 139 [3]	9230B [4]		
	MF [2] or	p. 136 [3]	9230C [4]		B–0055–85 [5]
	Plate count	p. 143 [3]			
Aquatic Toxicity:					
6. Toxicity, acute, fresh water organisms, LC50, percent effluent.	Daphnia, Ceriodaphnia, Fathead Minnow, Rainbow Trout, Brook Trout, or Bannerfish Shiner mortality.	Sec. 9 [7]			
7. Toxicity, acute, estuarine and marine organisms, LC50, percent effluent.	Mysid, Sheepshead Minnow, or Menidia spp. mortality.	Sec. 9 [7]			
8. Toxicity, chromic, fresh water organisms, NOEC or IC25, percent effluent.	Fathead minnow larval survival and growth.	1000.0 [8]			
	Fathead minnow embryo-larval survival and teratogenicity.	1001.0 [8]			
	Ceriodaphnia survival and reproduction.	1002.0 [8]			
	Selenastrum growth	1003.0 [8]			
9. Toxicity, chronic estuarine and marine organisms, NOEC or IC25, percent effluent.	Sheepshead minnow larval survival and growth.	1004.0 [9]			
	Sheepshead minnow embryo-larval survival and teratogenicity.	1005.0 [9]			
	Menidia beryllina larval and growth	1006.0 [9]			
	Mysidopsis bahia, growth, and fecundity.	1007.0 [9]			
	Arbacia punctulata fertilization	1008.0 [9]			
	Champia parvula reproduction	1009.0 [9]			

Notes to Table IA:

[1] The method must be specified when results are reported.

[2] A 0.45 µm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.

[3] USEPA. 1978. Microbiological Methods for Monitoring the Environment, Water, and Wastes. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. EPA/600/8–78/017.

[4] APHA. 1998, 1995, 1992. Standard Methods for the Examination of Water and Wastewater. American Public Health Association. 20th, 19th, and 18th Editions. Amer. Publ. Hlth. Assoc., Washington, DC.

[5] USGS. 1989. U.S. Geological Survey Techniques of Water-Resource Investigations, Book 5, Laboratory Analysis, Chapter A4, Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples, U.S. Geological Survey, U.S. Department of the Interior, Reston, Virginia.

[6] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

[7] USEPA. 1993. Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms. Fourth Edition. Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. August 1993, EPA/600/4–90/027F.

[8] USEPA. 1994. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. Third Edition. Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency USEPA. 1994, Cincinnati, Ohio. (July 1994, EPA/600/4–91/002).

[9] Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Second Edition. Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio (July 1994, EPA/600/4–91/003). These methods do not apply to marine waters of the Pacific Ocean.

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
1. Acidity, as $CaCO_3$, mg/L:					
Electrometric endpoint or phenolphthalein endpoint.	305.1	2310 B(4a) [18th, 19th, 20th].	D1067–92	I–1020–85	
				I–2030–85	
2. Alkalinity, as $CaCO_3$, mg/L:					
Electrometric of Colorimetric titration to pH 4.5, manual or automatic.	310.1	2320 B [18th, 19th, 20th].	D1067–92	I–1030–85	973.43 [3]
	310.2			I–2030–85	

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
3. Aluminium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36] ..	202.1	3111 D [18th, 19th]		I–3051–85	
AA furnace	202.2	3113 B [18th, 19th].			
Inductively Coupled Plasma/Atomic Emission Spectrometry (ICP/AES) [36].	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
Direct Current Plasma (DCP) [36].			D4190–94		Note 34.
Colorimetric (Eriochrome cyanine R).		3500–Al B [20th] and 3500–Al D [18th, 19th].			
4. Ammonia (as N), mg/L:					
Manual, distillation (at pH 9.5) [6] followed by.	350.2	4500–NH_3 B [18th, 19th, 20th].			973.49 [3]
Nesslerization	350.2	4500–NH_3 C [18th] ..	D1426–98(A)	I–3520–85	973.49 [3]
Titration	350.2	4500–NH_3 C [19th, 20th] and 4500–NH_3 E [18th].			
Electrode	350.3	4500–NH_3 D or E [19th, 20th] and 4500–NH_3 F or G [18th].	D1426–98(B).		
Automated phenate, or	350.1	4500–NH_3 G [19th, 20th] and 4500–NH_3 H [18th].		I–4523–85	
Automated electrode					Note 7.
5. Antimony–Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36] ..	204.1	3111 B [18th, 19th]			
AA furnace	204.2	3113 B [18th, 19th]			
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].			
6. Arsenic–Total[4] mg/L:					
Digestion [4] followed by	206.5				
AA gaseous hydride	206.3	3114 B 4.d [18th, 19th].	D2972–97(B)	I–3062–85	
AA furnace	206.2	3113 B [18th, 19th]	D2972–97(C)	I–4063–98 [49]	
ICP/AES [36] or	200.7 [5]	3120 B [18th, 19th, 20th].			
Colorimetric (SDDC)	206.4	3500–As B [20th] and 3500–As C [18th, 19th].	D2972–97(A)	I–3060–85	
7. Barium–Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [14] ..	208.1	3111 D [18th, 19th]		I–3084–85	
AA furnace	208.2	3113 B [18th, 19th]	D4382–95		
ICP/AES [14]	200.7 [5]	3120 B [18th, 19th, 20th].			
DCP [14]					Note 34.
8. Beryllium–Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	210.1	3111 D [18th, 19th]	D3645–93(88)(A)	I–3095–85	
AA furnace	210.2	3113 B [18th, 19th]	D3645–93(88)(B)		
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP, or			D4190–94		Note 34.
Colorimetric (aluminon		3500–Be D [18th, 19th].			
9. Biochemical oxygen demand (BOD_5), mg/L:					
Dissolved Oxygen Depletion.	405.1	5210 B [18th, 19th, 20th].		I–1578–78 [8]	973.44,[3] p. 17 [9]
10. Boron [37]–Total, mg/L:					
Colorimetric (curcumin)	212.3	4500–B B [18th, 19th, 20th].		I–3112–85	
ICP/AES, or	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
DCP			D4190–94		Note 34.
11. Bromide, mg/L:					
Titrimetric	320.1		D1246–95(C)	I–1125–85	p. S44 [10]
12. Cadmium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	213.1	3111 B or C [18th, 19th].	D3557–95 (A or B)	I–3135–85 or I–3136–85.	974.27,[3] p. 37 [9]
AA furnace	213.2	3113 B [18th, 19th]	D3557–95(D)	I–4138–89 [51]	
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–1472–85 or I–4471–97 [50]	
DCP [36]			D4190–94		Note 34.
Voltametry [11], or			D3557–95(C).		
Colorimetric (Dithizone)		3500–Cd D [18th, 19th].			
13. Calcium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	215.1	3111 B [18th, 19th]	D511–93(B)	I–3152–85	
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP, or					Note 34.
Titrimetric (EDTA)	215.2	3500–Ca B [20th] and 3500–Ca D [18th, 19th].	D511–93(A).		
14. Carbonaceous biochemical oxygen demand (CBOD 3), mg/L [12]:					
Dissolved Oxygen Depletion with nitrification inhibitor.		5210 B [18th, 19th, 20th].			
15. Chemical oxygen demand (COD), mg/L; Titrimetric	410.1	5220 C [18th, 19th, 20th].	D1252–95(A)	I–3560–85	973.46,[3] p. 17 [9]
or	410.2 410.3.			I–3562–85	
Spectrophotometric, manual or automatic.	410.4.	5220 D [18th, 19th, 20th].	D1252–95(B)	I–3561–85	Notes 13, 14.
16. Chloride, mg/L:					
Titrimetric (silver nitrate) or.		4500–Cl^- B [18th, 19th, 20th].	D512–89(B)	I–1183–85	
(Mercuric nitrate)	325.3	4500–Cl^- C [18th, 19th, 20th].	D512–89(A)	I–1184–85	973.51 [3]
Colorimetric, manual or				I–1187–85	
Automated (Ferricyanide).	325.1 or 325.2	4500–Cl^- E [18th, 19th, 20th].		I–2187–85	
17. Chlorine—Total residual, mg/L; Titrimetric:					
Amperometric direct	330.1	4500–Cl D [18th, 19th, 20th].	D1253–86(92).		
Iodometric direct	330.3	4500–Cl B [18th, 19th, 20th].			
Back titration ether endpoint [15] or.	330.2	4500–Cl C [18th, 19th, 20th].			
DPD–FAS	330.4	4500–Cl F [18th, 19th, 20th].			
Spectrophotometric, DPD.	330.5	4500–Cl G [18th, 19th, 20th].			
Or Electrode					Note 16.
18. Chromium VI dissolved, mg/L; 0.45 micron filtration followed by:					
AA chelation-extraction or.	218.4	3111 C [18th, 19th]		I–1232–85	
Colorimetric (Diphenylcarbazide).		3500–Cr B [20th] and 3500–Cr D [18th, 19th].	D1687–92(A)	I–1230–85	
19. Chromium-Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	218.1	3111 B [18th, 19th]	D1687–92(B)	I–3236–85	974.27 [3]
AA chelation-extraction	218.3	3111 C [18th, 19th].			

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
AA furnace	218.2	3113 B [18th, 19th]	D1687–92(C)	I–3233–93 [46].	
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].			
DCP [36] or			D4190–94		Note 34.
Colorimetric (Diphenylcarbazide).		3500–Cr B [20th] and 3500–Cr D [18th, 19th].			
20. Cobalt—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	219.1	3111 B or C [18th, 19th].	D3558–94(A or B)	I–3239–85	p. 37 [9]
AA furnace	219.2	3113 B [18th, 19th]	D3558–94(C)	I–4243–89 [51].	
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50].	
DCP			D4190–94		Note 34.
21. Color platinum cobalt units or dominant wavelength, hue, luminance purity:					
Colorimetric (ADMI), or.					
(Platinum cobalt), or	110.1	2120 E [18th, 19th, 20th].			Note 18.
Spectrophotometric	110.2	2120 B [18th, 19th, 20th].		I–1250–85	
	110.3	2120 C [18th, 19th, 20th].			
22. Copper—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	220.1	3111 B or C [18th, 19th].	D1688–95(A or B)	I–3270–85 or I–3271–85.	974.27 [3] p. 37 [9]
AA furnace	220.2	3113 B [18th, 19th]	D1688–95(C)	I–4274–89 [51]	
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I—4471—97 [50]	
DCP [36] or			D4190–94		Note 34.
Colorimetric (Neocuproine) or.		3500–Cu B [20th] and 3500–Cu D [18th, 19th].			
(Bicinchoninate)		3500–Cu C [20th] and 3500–As B [18th, 19th].			Note 19.
23. Cyanide—Total, mg/L:					
Manual distillation with $MgCl_2$ followed by..		4500–CN C [18th, 19th, 20th].	D2036–98(A)		
Titrimetric, or		4500–CN D [18th, 19th, 20th].			p. 22 [9]
Spectrophotometric, manual or.	335.2 [31]	4500–CN E [18th, 19th, 20th].	D2036–98(A)	I–3300–85	
Automated [20]	335.3 [31]			I–4302–85	
24. Available Cyanide, mg/L:					
Manual distillation with $MgCl_2$ followed by titrimetric or Spectrophotometric.	335.1	4500–CN G [18th, 19th, 20th].	D2036–98(B)		
Flow injection and ligand exchange, followed by amperometry.					OIA–1677 [44]
25. Fluoride—Total, mg/L:					
Manual distillation [6] followed by.		4500–F B [18th, 19th, 20th].			
Electrode, manual or	340.2	4500–F C [18th, 19th, 20th].	D1179–93(B)		
Automated				I–4327–85	
Colorimetric (SPADNS)	340.1	4500–F D [18th, 19th, 20th].	D1179–93(A)		
Or Automated complexone.	340.3	4500–F E [18th, 19th, 20th].			
26. Gold—Total,[4] mg/L; Digestion [4] followed by:					

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
AA direct aspiration	231.1	3111 B [18th, 19th]			
AA furnace, or	231.2				
DCP					Note 34.
27. Hardness—Total, as $CaCO_3$, mg/L:					
Automated colorimetric,	130.1				
Titrimetric (EDTA), or Ca plus Mg as their carbonates, by inductively coupled plasma or AA direct aspiration (See Parameters 13 and 33).	130.2	2340 B or C [18th, 19th, 20th].	D1126–86(92)	I–1338–85	973.52B [3]
28. Hydrogen ion (pH), pH units:					
Electrometric measurement, or.	150.1	4500–H^+ B [18th, 19th, 20th].	D1293–84 (90)(A or B).	I–1586–85	973.41 [3]
Automated electrode				I–2587–85	Note 21.
29. Iridium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration or	235.1	3111 B [18th, 19th]			
AA furnace	235.2				
30. Iron—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	236.1	3111 B or C [18th, 19th].	D1068–96(A or B)	I–3381–85	974.27 [3]
AA furnace	236.2	3113 B [18th, 19th]	D1068–96(C)		
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP [36] or			D4190–94		Note 34.
Colorimetric (Phenanthroline).		3500–Fe B [20th] and 3500–Fe D [18th, 19th].	D1068–96(D)		Note 22.
31. Kjeldahl Nitrogen—Total, (as N), mg/L:					
Digestion and distillation followed by.	351.3	4500–N_{org} B or C and 4500–NH_3 B [18th, 19th, 20th].	D3590–89(A)		
Titration	351.3		D3590–89(A)		973.48 [3]
Nesslerization	351.3	4500–NH_3 C [18th]	D3590–89(A)		
Electrode	351.3	4500–NH_3 C [19th, 20th] and 4500–NH_3 E [18th].			
Automated phenate colorimetric.	351.1			I–4551–78[8]	
Semi-automated block digestor colorimetric.	351.2		D3590–89(B)	I–4515–91 [45].	
Manual or block digestor potentiometric.	351.4		D3590–89(A)		
Block digester, followed by Auto distillation and Titration, or.					Note 39.
Nesslerization, or					Note 40.
Flow injection gas diffusion					Note 41.
32. Lead—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	239.1	3111 B or C [18th, 19th].	D3559–96(A or B)	I–3399–85	974.27 [3]
AA furnace	239.2	3113 B [18th, 19th]	D3559–96(D)	I–4403–89 [51]	
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP [36]			D4190–94		Note 34.
Voltametry [11] or			D3559–96(C)		
Colorimetric (Dithizone)		3500–Pb B [20th] and 3500–Pb D [18th, 19th].			
33. Magnesium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	242.1	3111 B [18th, 19th]	D511–93(B)	I–3447–85	974.27 [3]

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP or					Note 34.
Gravimetric		3500–Mg D [18th, 19th].			
34. Manganese-Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	243.1	3111 B [18th, 19th]	D858–95(A or B)	I–3454–85	974.27 [3]
AA furnace	243.2	3113 B [18th, 19th]	D858–95(C)		
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP [36], or			D4190–94		Note 34
Colorimetric (Persulfate), or.		3500–Mn B [20th] and 3500–Mn D [18th, 19th].			920.203 [3]
(Periodate)					Note 23.
35. Mercury—Total [4], mg/L:					
Cold vapor, manual or	245.1	3112 B [18th, 19th]	D3223–91	I–3462–85	977.22 [3]
Automated	245.2				
Oxidation, purge and trap, and cold vapor atomic fluorescence spectrometry (ng/L).	1631C [43]				
36. Molybdenum—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	246.1	3111 D [18th, 19th]		I–3490–85	
AA furnace	246.2	3113 B [18th, 19th]		I–3492–96 [47]	
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP					Note 34.
37. Nickel—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	249.1	3111 B or C [18th, 19th].	D1886–90(A or B)	I–3499–85.	
AA furnace	249.2	3113 B [18th, 19th]	D1886–90(C)	I–4503–89 [51].	
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50].	
DCP [36], or			D4190–94		Note 34.
Colorimetric (heptoxime).		3500–Ni D [17th].			
38. Nitrate (as N), mg/L:					
Colorimetric (Brucine sulfate), or Nitrate-nitrite N minus Nitrite N (See parameters 39 and 40).	352.1				973.50,[3] 419D,[17] p. 28 [9]
39. Nitrate-nitrite (as N), mg/L:					
Cadmium reduction, Manual or.	353.3	4500–NO_3^- E [18th, 19th, 20th].	D3867–99(B).		
Automated, or	353.2	4500–NO_3^- F [18th, 19th, 20th].	D3867–99(A)	I–4545–85.	
Automated hydrazine	353.1	4500–NO_3^- H [18th, 19th, 20th].			
40. Nitrite (as N), mg/L; Spectrophotometric:					
Manual or	354.1	4500–NO_2^- B [18th, 19th, 20th].			Note 25.
Automated (Diazotization).				I–4540–85.	
41. Oil and grease—Total recoverable, mg/L:					
Gravimetric (extraction)	413.1	5520B [18th, 19th, 20th] [38].			

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
Oil and grease and non-polar material, mg/L: Hexane extractable material (HEM): n-Hexane extraction and gravimetry.	1664A [42]	5520B [18th, 19th, 20th] [38].			
Silica gel treated HEM (SGT–HEM): Silica gel treatment and gravimetry.	1664A [42].				
42. Organic carbon—Total (TOC), mg/L:					
Combustion or oxidation.	415.1	5310 B, C, or D [18th, 19th, 20th].	D2579–93 (A or B)		973.47,[3] p. 14 [24]
43. Organic nitrogen (as N), mg/L:					
Total Kjeldahl N (Parameter 31) minus ammonia N (Parameter 4).					
44. Orthophosphate (as P), mg/L; Ascorbic acid method:					
Automated, or	365.1	4500–P F [18th, 19th, 20th].		I–4601–85	973.56 [3]
Manual single reagent	365.2	4500–P E [18th, 19th, 20th].	D515–88(A)		973.55 [3]
Manual two reagent	365.3.				
45. Osmium—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration, or	252.1	3111 D [18th, 19th].			
AA furnace	252.2.				
46. Oxygen, dissolved, mg/L:					
Winkler (Azide modification), or.	360.2	4500–O C [18th, 19th, 20th].	D888–92(A)	I–1575–78 [8]	973.45B [3]
Electrode	360.1	4500–O G [18th, 19th, 20th].	D888–92(B)	I–1576–78 [8].	
47. Palladium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration, or	253.1	3111 B [18th, 19th]			p. S27 [10]
AA furnace	253.2				p. S28 [10]
DCP					Note 34.
48. Phenols, mg/L:					
Manual distillation [26]	420.1				Note 27.
Followed by:.					
Colorimetric (4AAP) manual, or.	420.1				Note 27.
Automated [19]	420.2.				
49. Phosphorus (elemental), mg/L:					
Gas-liquid chromatography.					Note 28.
50. Phosphorus—Total, mg/L:					
Persulfate digestion followed by.	365.2	4500–P B, 5 [18th, 19th, 20th].			973.55 [3]
Manual or	365.2 or 365.3	4500–P E [18th, 19th, 20th].	D515–88(A)		
Automated ascorbic acid reduction.	365.1	4500–P F [18th, 19th, 20th].		I–4600–85	973.56 [3]
Semi-automated block digestor.	365.4		D515–88(B)	I–4610–91 [48].	
51. Platinum—Total,[4] mg/L: Digestion [4] followed by:					
AA direct aspiration	255.1	3111 B [18th, 19th].			
AA furnace	255.2.				

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
DCP					Note 34
52. Potassium—Total,[4] mg/L: Digestion [4] followed by:					
AA direct aspiration	258.1	3111 B [18th, 19th]		I–3630–85	973.53 [3]
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].			
Flame photometric, or		3500–K B [20th] and 3500–K D [18th, 19th].			
Colorimetric					317 B [17]
53. Residue—Total, mg/L:					
Gravimetric, 103–105°	160.3	2540 B [18th, 19th, 20th].		I–3750–85.	
54. Residue—filterable, mg/L:					
Gravimetric, 180°	160.1	2540 C [18th, 19th, 20th].		I–1750–85.	
55. Residue—nonfilterable (TSS), mg/L:					
Gravimetric, 103–105° post washing of residue.	160.2	2540 D [18th, 19th, 20th].		I–3765–85.	
56. Residue—settleable, mg/L:					
Volumetric, (Imhoff cone), or gravimetric.	160.5	2540 F [18th, 19th, 20th].			
57. Residue—Volatile, mg/L:					
Gravimetric, 550°	160.4			I–3753–85.	
58. Rhodium-Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration, or	265.1	3111 B [18th, 19th].			
AA furnace	265.2.				
59. Ruthenium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration, or	267.1	3111 B [18th, 19th].			
AA furnace	267.2.				
60. Selenium—Total,[4] mg/L; Digestion [4] followed by:					
AA furnace	270.2	3113 B [18th, 19th]	D3859–98(B)	I–4668–98 [49].	
ICP/AES,[36] or	200.7 [5]	3120 B [18th, 19th, 20th].			
AA gaseous hydride		3114 B [18th, 19th]	D3859–98(A)	I–3667–85.	
61. Silica [37]—Dissolved, mg/L; 0.45 micron filtration followed by:					
Colorimetric, Manual or	370.1	4500–SiO_2 C [20th] and 4500–Si D [18th, 19th].	D859–94	I–1700–85.	
Automated (Molybdosilicate), or.				I–2700–85.	
ICP	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50].	
62. Silver—Total,[4] mg/L: Digestion [4 29] followed by:					
AA direct aspiration	272.1	3111 B or C [18th, 19th].		I–3720–85	974.27,[3] p. 37 [9]
AA furnace	272.2	3113 B [18th, 19th]		I–4724–89 [51]	
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP					Note 34.
63. Sodium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	273.1	3111 B [18th, 19th]		I–3735–85	973.54 [3]
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP, or					Note 34.
Flame photometric		3500 Na B [20th] and 3500 Na D [18th, 19th].			

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
64. Specific conductance, micromhos/cm at 25 °C:					
Wheatstone bridge	120.1	2510 B [18th, 19th, 20th].	D1125–95(A)	I–2781–85	973.40 [3]
65. Sulfate (as SO_4), mg/L:					
Automated colorimetric (barium chloranilate).	375.1.				
Gravimetric	375.3	4500–SO_4^{-2}C or D [18th, 19th, 20th].			925.54 [3]
Turbidimetric	375.4		D516–90		426C [30]
66. Sulfide (as S), mg/L:					
Titrimetric (iodine), or	376.1	4500–S^{-2}F [19th, 20th] or 4500–S^{-2}E [18th].		I–3840–85.	
Colorimetric (methylene blue).	376.2	4500–S^{-2}D [18th, 19th, 20th].			
67. Sulfite (as SO_3), mg/L:					
Titrimetric (iodine-iodate).	377.1	4500–SO_3^{-2}B [18th, 19th, 20th].			
68. Surfactants, mg/L:					
Colorimetric (methylene blue).	425.1	5540 C [18th, 19th, 20th].	D2330–88.		
69. Temperature, °C:					
Thermometric	170.1	2550 B [18th, 19th, 20th].			Note 32.
70. Thallium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	279.1	3111 B [18th, 19th].			
AA furnace	279.2.				
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].			
71. Tin—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	282.1	3111 B [18th, 19th]		I–3850–78 [8].	
AA furnace, or	282.2	3113 B [18th, 19th].			
ICP/AES	200.7 [5].				
72. Titanium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	283.1	3111 D [18th, 19th].			
AA furnace	283.2.				
DCP					Note 34.
73. Turbidity, NTU:					
Nephelometric	180.1	2130 B [18th, 19th, 20th].	D1889–94(A)	I–3860–85.	
74. Vanadium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	286.1	3111 D [18th, 19th].			
AA furnace	286.2		D3373–93.		
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50].	
DCP, or			D4190–94		Note 34.
Colorimetric (Gallic Acid).		3500–V B [20th] and 3500–V D [18th, 19th].			
75. Zinc—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	289.1	3111 B or C [18th, 19th].	D1691–95(A or B)	I–3900–85	974.27,[3] p. 37 [9]
AA furnace	289.2.				
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50].	
DCP,[36] or			D4190–94		Note 34.
Colorimetric (Dithizone) or.		3500–Zn E [18th, 19th].			
(Zincon)		3500–Zn B [20th] and 3500–Zn F [18th, 19th].			Note 33.

Table 1B Notes:

[1] ''Methods for Chemical Analysis of Water and Wastes,'' Environmental Protection Agency, Environmental Monitoring Systems Laboratory—Cincinnati (EMSL–CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., *et al.* ''Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments, ''U.S. Department of the Interior, Techniques of Water-Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] ''Official Methods of Analysis of the Association of Official Analytical Chemists,'' methods manual, 15th ed. (1990).

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in ''Methods for Chemical Analysis of Water and Wastes, 1979 and 1983''. One (Section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (Section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all samples types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials may also benefit by this vigorous digestion, however, vigorous digestion with concentrated nitric acid will convert antimony and tin to insoluble oxides and render them unavailable for analysis. Use of ICP/AES as well as determinations for certain elements such as antimony, arsenic, the noble metals, mercury, selenium, silver, tin, and titanium require a modified sample digestion procedure and in all cases the method write-up should be consulted for specific instructions and/or cautions.

Note to Table 1B Note 4: If the digestion procedure for direct aspiration AA included in one of the other approved references is different than the above, the EPA procedure must be used. Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion of the filtrate for dissolved metals (or digestion of the original sample solution for total metals) may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses, provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20)

b. is visibly transparent with a turbidity measurement of 1 NTU or less

c. is colorless with no perceptible odor, and

d. is of one liquid phase and free of particulate or suspended matter following acidification.

[5] The full text of Method 200.7, ''Inductively Coupled Plasma Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes,'' is given at Appendix C of this Part 136.

[6] Manual distillation is not required if comparability data on representative effluent samples are on company file to show that this preliminary distillation step is not necessary: however, manual distillation will be required to resolve any controversies.

[7] Ammonia, Automated Electrode Method, Industrial Method Number 379–75 WE, dated February 19, 1976, Bran & Luebbe (Technicon) Auto Analyzer II, Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[8] The approved method is that cited in ''Methods for Determination of Inorganic Substances in Water and Fluvial Sediments'', USGS TWRI, Book 5, Chapter A1 (1979).

[9] American National Standard on Photographic Processing Effluents, Apr. 2, 1975. Available from ANSI, 25 West 43rd Street, New York, NY 10036.

[10] ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency'', Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[11] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[12] Carbonaceous biochemical oxygen demand ($CBOD_5$) must not be confused with the traditional BOD_5 test method which measures ''total BOD''. The addition of the nitrification inhibitor is not a procedural option, but must be included to report the $CBOD_5$ parameter. A discharger whose permit requires reporting the traditional BOD_5 may not use a nitrification inhibitor in the procedure for reporting the results. Only when a discharger's permit specifically states $CBOD_5$ is required can the permittee report data using a nitrification inhibitor.

[13] OIC Chemical Oxygen Demand Method, Oceanography International Corporation, 1978, 512 West Loop, PO Box 2980, College Station, TX 77840.

[14] Chemical Oxygen Demand, Method 8000, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, PO Box 389, Loveland, CO 80537.

[15] The back titration method will be used to resolve controversy.

[16] Orion Research Instruction Manual, Residual Chlorine Electrode Model 97–70, 1977, Orion Research Incorporated, 840 Memorial Drive, Cambridge, MA 02138. The calibration graph for the Orion residual chlorine method must be derived using a reagent blank and three standard solutions, containing 0.2, 1.0, and 5.0 mL 0.00281 N potassium iodate/100 mL solution, respectively.

[17] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition, 1976.

[18] National Council of the Paper Industry for Air and Stream Improvement, Inc. Technical Bulletin 253, December 1971.

[19] Copper, Biocinchoinate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, PO Box 389, Loveland, CO 80537.

[20] After the manual distillation is completed, the autoanalyzer manifolds in EPA Methods 335.3 (cyanide) or 420.2 (phenols) are simplified by connecting the re-sample line directly to the sampler. When using the manifold setup shown in Method 335.3, the buffer 6.2 should be replaced with the buffer 7.6 found in Method 335.2.

[21] Hydrogen ion (pH) Automated Electrode Method, Industrial Method Number 378–75WA, October 1976, Bran & Luebbe (Technicon) Autoanalyzer II. Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[22] Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, PO Box 389, Loveland, CO 80537.

[23] Manganese, Periodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2–113 and 2–117, Hach Chemical Company, Loveland, CO 80537.

[24] Wershaw, R.L., *et al*, ''Methods for Analysis of Organic Substances in Water,'' Techniques of Water-Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A3, (1972 Revised 1987) p. 14.

[25] Nitrogen, Nitrite, Method 8507, Hach Chemical Company, PO Box 389, Loveland, CO 80537.

[26] Just prior to distillation, adjust the sulfuric-acid-preserved sample to pH 4 with 1 + 9 NaOH.

[27] The approved method is cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition. The colorimetric reaction is conducted at a pH of 10.0±0.2. The approved methods are given on pp 576–81 of the 14th Edition: Method 510A for distillation, Method 510B for the manual colorimetric procedure, or Method 510C for the manual spectrometric procedure.

[28] R.F. Addison and R.G. Ackman, ''Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography,'' Journal of Chromatography, Vol. 47, No. 3, pp. 421–426, 1970.

[29] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

[30] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 15th Edition.

[31] EPA Methods 335.2 and 335.3 require the NaOH absorber solution final concentration to be adjusted to 0.25 N before colorimetric determination of total cyanide.

[32] Stevens, H.H., Ficke, J.F., and Smoot, G.F., ''Water Temperature—Influential Factors, Field Measurement and Data Presentation,'' Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1, 1975.

[33] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2–231 and 2–333, Hach Chemical Company, Loveland, CO 80537.

[34] ''Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029,'' 1986—Revised 1991, Thermo Jarrell Ash Corporation, 27 Forge Parkway, Franklin, MA 02038.

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, ''Precision and Recovery Statements for Methods for Measuring Metals''.

[36] ''Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals'', CEM Corporation, PO Box 200, Matthews, NC 28106–0200, April 16, 1992. Available from the CEM Corporation.

[37] When determining boron and silica, only plastic, PTFE, or quartz laboratory ware may be used from start until completion of analysis.

[38] Only use Trichlorotrifluorethane (1,1,2-trichloro-1,2,2-trifluoroethane; CFC–113) extraction solvent when determining Total Recoverable Oil and Grease (analogous to EPA Method 413.1). Only use *n*-hexane extraction solvent when determining Hexane Extractable Material (analogous to EPA Method 1664A). Use of other extraction solvents is strictly prohibited.

[39] Nitrogen, Total Kjeldahl, Method PAI–DK01 (Block Digestion, Steam Distillation, Titrimetric Detection), revised 12/22/94, OI Analytical/ALPKEM, PO Box 9010, College Station, TX 77842.

[40] Nitrogen, Total Kjeldahl, Method PAI–DK02 (Block Digestion, Steam Distillation, Colorimetric Detection), revised 12/22/94, OI Analytical/ALPKEM, PO Box 9010, College Station, TX 77842.

[41] Nitrogen, Total Kjeldahl, Method PAI–DK03 (Block Digestion, Automated FIA Gas Diffusion), revised 12/22/94, OI Analytical/ALPKEM, PO Box 9010, College Station, TX 77842.

[42] Method 1664, Revision A ''n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT–HEM; Non-polar Material) by Extraction and Gravimetry'' EPA–821–R–98–002, February 1999. Available at NTIS, PB–121949, U.S. Department of Commerce, 5285 Port Royal, Springfield, Virginia 22161.

[43] USEPA. 2001. Method 1631, Revision C, ''Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry.'' March 2001. Office of Water, U.S. Environmental Protection Agency (EPA–821–R–01–024). The application of clean techniques described in EPA's draft Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels (EPA–821–R–96–011) are recommended to preclude contamination at low-level, trace metal determinations.

[44] Available Cyanide, Method OIA–1677 (Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry), ALPKEM, A Division of OI Analytical, PO Box 9010, College Station, TX 77842–9010.

[45] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Ammonia Plus Organic Nitrogen by a Kjeldahl Digestion Method'', Open File Report (OFR) 00–170.

[46] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Chromium in Water by Graphite Furnace Atomic Absorption Spectrophotometry'', Open File Report (OFR) 93–449.

[47] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Molybdenum by Graphite Furnace Atomic Absorption Spectrophotometry'', Open File Report (OFR) 97–198.

[48] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Total Phosphorus by Kjeldahl Digestion Method and an Automated Colorimetric Finish That Includes Dialysis'' Open File Report (OFR) 92–146.

[49] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Arsenic and Selenium in Water and Sediment by Graphite Furnace-Atomic Absorption Spectrometry'' Open File Report (OFR) 98–639.

[50] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Elements in Whole-water Digests Using Inductively Coupled Plasma-Optical Emission Spectrometry and Inductively Coupled Plasma-Mass Spectrometry'', Open File Report (OFR) 98–165.

[51] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediment'', Open File Report (OFR) 93–125.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter [1]	EPA method number [2, 7]			Other approved methods		
	GC	GC/MS	HPLC	*Standard Methods* [Edition(s)]	ASTM	Other
1. Acenaphthene	610	625, 1625B	610	6440 B [18th, 19th, 20th].	D4657–92	Note 9, p.27.
2. Acenaphthylene	610	625, 1625B	610	6440 B, 6410 B [18th, 19th, 20th].	D4657–92	Note 9, p.27.
3. Acrolein	603	624[4], 1624B				
4. Acrylonitrile	603	624[4], 1624B				
5. Anthracene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
6. Benzene	602	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th].		
7. Benzidine		625[5], 1625B	605			Note 3, p.1.
8. Benzo(a)anthracene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
9. Benzo(a)pyrene	610,	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
10. Benzo(b)fluoranthene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
11. Benzo(g, h, i)perylene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
12. Benzo(k)fluoranthene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
13. Benzyl chloride						Note 3, p 130: Note 6, p. S102.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2, 7]			Other approved methods		
	GC	GC/MS	HPLC	*Standard Methods* [Edition(s)]	ASTM	Other
14. Benzyl butyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
15. Bis(2-chloroethoxy) methane	611	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
16. Bis(2-chloroethyl) ether	611	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
17. Bis(2-ethylhexyl) phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
18. Bromodichloromethane	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].		
19. Bromoform	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].		
20. Bromomethane	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].		
21. 4-Bromophenylphenyl ether	611	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
22. Carbon tetrachloride	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th].		Note 3, p. 130.
23. 4-Chloro-3-methylphenol	604	625,1625B		6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27.
24. Chlorobenzene	601, 602	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th],.		Note 3, p. 130.
25. Chloroethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
26. 2-Chloroethylvinyl ether	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
27. Chloroform:	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		Note 3, p 130.
28. Chloromethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th] 6200C [20th] and 6230 B [18th, 19th].		
29. 2-Chloronaphthalene	612	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2, 7]			Other approved methods		
	GC	GC/MS	HPLC	*Standard Methods* [Edition(s)]	ASTM	Other
30. 2-Chlorophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27.
31. 4-Chlorophenylphenyl ether	611	625, 1625B		6410 B, [18th, 19th, 20th].		Note 9, p. 27.
32. Chrysene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
33. Dibenzo(a,h)anthracene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
34. Dibromochloromethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th] 6200 C [20th] and 6230 B [18th, 19th].		
35. 1,2-Dichlorobenzene	601, 602, 612	624, 625, 1625B.		6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th], 6410 B [18th, 19th, 20th].		Note 9, p 27.
36. 1,3-Dichlorobenzene	601, 602, 612	624, 625, 1625B.		6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th], 6410 B [18th, 19th, 20th].		Note 9, p. 27.
37. 1,4-Dichlorobenzene	601, 602, 612	624, 625, 1625B.		6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th], 6410 B [18th, 19th, 20th].		Note 9, p. 27.
38. 3,3-Dichlorobenzidine		625, 1625B	605	6410 B [18th, 19th, 20th].		
39. Dichlorodifluoromethane	601			6200 C [20th] and 6230 B [18th, 19th].		
40. 1,1-Dichloroethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
41. 1,2-Dichloroethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
42. 1,1-Dichloroethene	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2, 7]			Other approved methods		
	GC	GC/MS	HPLC	*Standard Methods* [Edition(s)]	ASTM	Other
43. trans-1,2-Dichloroethene	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
44. 2,4-Dichlorophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27.
45. 1,2-Dichloropropane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
46. cis-1,3-Dichloropropene	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
47. trans-1,3-Dichloropropene	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
48. Diethyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
49. 2,4-Dimethylphenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27.
50. Dimethyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
51. Di-n-butyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
52. Di-n-octyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
53. 2,3-Dinitrophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].		
54. 2,4-Dinitrotoluene	609	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
55. 2,6-Dinitrotoluene	609	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
56. Epichlorohydrin						Note 3, p. 130; Note 6, p. S102.
57. Ethylbenzene	602	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th].		
58. Fluoranthene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
59. Fluorene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
60. 1,2,3,4,6,7,8-Heptachlorodibenzofuran.		1613B				
61. 1,2,3,4,7,8,9-Heptachlorodibenzofuran.		1613B				
62. 1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin.		1613B				
63. Hexachlorobenzene	612	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2, 7]			Other approved methods		
	GC	GC/MS	HPLC	*Standard Methods* [Edition(s)]	ASTM	Other
64. Hexachlorobutadiene	612	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
65. Hexachlorocyclopentadiene	612	[5]625, 1625B		6410 [18th, 19th, 20th].		Note 9, p. 27.
66. 1,2,3,4,7,8-Hexachlorodibenzofuran.		1613B.				
67. 1,2,3,6,7,8-Hexachlorodibenzofuran.		1613B.				
68. 1,2,3,7,8,9-Hexachlorodibenzofuran.		1613B.				
69. 2,3,4,6,7,8-Hexachlorodibenzofuran.		1613B.				
70. 1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin.		1613B.				
71. 1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin.		1613B.				
72. 1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin.		1613B.				
73. Hexachloroethane	616	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
74. Ideno(1,2,3-cd) pyrene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
75. Isophorone	609	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
76. Methylene chloride	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th].		Note 3, p. 130.
77. 2-Methyl-4,6-dinitrophenol	604	625, 1625B		6420 B, 6410 B [18th, 19th, 20th].		Note 9, p. 27.
78. Naphthalene	610	625, 1625B	610	6440 B, 6410 B [18th, 19th, 20th].		Note 9, p. 27.
79. Nitrobenzene	609	625, 1625B		6410 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
80. 2-Nitrophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27
81. 4-Nitrophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27
82. N-Nitrosodimethylamine	607	625[5], 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27
83. N-Nitrosodi-n-propylamine	607	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27
84. N-Nitrosodiphenylamine	607	625[5], 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27
85. Octachlorodibenzofuran		1613B.				
86. Octachlorodibenzo-p-dioxin		1613B.				
87. 2,2'-Oxybis(2-chloropropane) [also known as bis(2-chloroisopropyl) ether].	611	625, 1625B		6410 B [18th, 19th, 20th].		
88. PCB–1016	608	625		6410 B [18th, 19th, 20th].		Note 3, p. 43
89. PCB–1221	608	625		6410 B [18th, 19th, 20th].		Note 3, p. 43
90. PCB–1232	608	625		6410 B [18th, 19th, 20th].		Note 3, p. 43
91. PCB–1242	608	625		6410 B [18th, 19th, 20th].		Note 3, p. 43
92. PCB–1248	608	625.				
93. PCB–1254	608	625		6410 B [18th, 19th, 20th].		Note 3, p. 43
94. PCB–1260	608	625		6410 B, 6630 B [18th, 19th, 20th].		Note 3, p. 43
95. 1,2,3,7,8-Pentachlorodibenzofuran.		1613B.				

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2, 7]			Other approved methods		
	GC	GC/MS	HPLC	*Standard Methods* [Edition(s)]	ASTM	Other
96. 2,3,4,7,8-Pentachlorodibenzofuran.	.....	1613B.				
97. 1,2,3,7,8,-Pentachlorodibenzo-p-dioxin.	.....	1613B.				
98. Pentachlorophenol	604	625, 1625B ..	.....	6410 B, 6630 B [18th, 19th, 20th].	.....	Note 3, p. 140; Note 9, p. 27
99. Phenanthrene	610	625, 1625B ..	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27
100. Phenol	604	625, 1625B ..	.....	6420 B, 6410 B [18th, 19th, 20th].	.....	Note 9, p. 27
101. Pyrene	610	625, 1625B ..	610	6440 B, 6410 B D4675–92 [18th, 19th, 20th].	D4675–92	Note 9, p. 27
102. 2,3,7,8-Tetrachlorodibenzofuran.	.....	1613B.				
103. 2,3,7,8-Tetrachlorodibenzo-p-dioxin.	.....	613, 1613B.				
104. 1,1,2,2-Tetrachloroethane	601	624, 1624B ..	.....	6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	.....	Note 3, p. 130
105. Tetrachloroethene	601	624, 1624B ..	.....	6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	.....	Note 3, p. 130
106. Toluene	602	624, 1624B ..	.....	6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th].	.....	
107. 1,2,4-Trichlorobenzene	612	625, 1625B ..	.....	6410 B [18th, 19th, 20th].	.....	Note 3, p. 130; Note 9, p. 27.
108. 1,1,1-Trichloroethane	601	624, 1624B ..	.....	6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	.....	
109. 1,1,2-Trichloroethane	601	624, 1624B ..	.....	6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	.....	Note 3, p. 130
110. Trichloroethene	601	624, 1624B ..	.....	6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	.....	
111. Trichlorofluoromethane	601	624	.....	6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	.....	
112. 2,4,6-Trichlorophenol	604	625, 1625B ..	.....	6420 B, 6410 B [18th, 19th, 20th].	.....	Note 9, p. 27.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2, 7]			Other approved methods		
	GC	GC/MS	HPLC	*Standard Methods* [Edition(s)]	ASTM	Other
113. Vinyl chloride	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		

Table IC notes:

[1] All parameters are expressed in micrograms per liter (μg/L) except for Method 1613B in which the parameters are expressed in picograms per liter (pg/L).

[2] The full text of Methods 601–613, 624, 625, 1624B, and 1625B, are given at Appendix A, ''Test Procedures for Analysis of Organic Pollutants,'' of this Part 136. The full text of Method 1613B is incorporated by reference into this Part 136 and is available from the National Technical Information Services as stock number PB95–104774. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, ''Definition and Procedure for the Determination of the Method Detection Limit,'' of this Part 136.

[3] ''Methods for Benzidine: Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater,'' U.S. Environmental Protection Agency, September, 1978.

[4] Method 624 may be extended to screen samples for Acrolein and Acrylonitrile. However, when they are known to be present, the preferred method for these two compounds is Method 603 or Method 1624B.

[5] Method 625 may be extended to include benzidine, hexachlorocyclopentadiene, N-nitrosodimethylamine, and N-nitrosodiphenylamine. However, when they are known to be present, Methods 605, 607, and 612, orMethod 1625B, are preferred methods for these compounds.

[6] ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency,'' Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[7] Each Analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–603, 624, 625, 1624B, and 1625B (See Appendix A of this Part 136) in accordance with procedures each in Section 8.2 of each of these Methods. Additionally, each laboratory, on an on-going basis must spike and analyze 10% (5% for Methods 624 and 625 and 100% for methods 1624B and 1625B) of all samples to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these Methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance.

NOTE: These warning limits are promulgated as an ''interim final action with a request for comments.''

[8] ''Organochlorine Pesticides and PCBs in Wastewater Using Empore TM Disk'' 3M Corporation Revised 10/28/94.

[9] USGS Method 0–3116–87 from ''Methods of Analysis by U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments'' U.S. Geological Survey, Open File Report 93–125.

TABLE 1D.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]

Parameter	Method	EPA [2, 7]	*Standard Methods* 18th, 19th, 20th Ed.	ASTM	Other
1. Aldrin	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B		
2. Ametryn	GC				Note 3, p. 83; Note 6, p S68.
3. Aminocarb	TLC				Note 3, p. 94; Note 6, p. S16.
4. Atraton	GC				Note 3, p. 83; Note 6, p. S68.
5. Atrazine	GC				Note 3, p. 83; Note 6, p. S68; Note 9.
6. Azinphos methyl	GC				Note 3, p. 25; Note 6, p. S51.
7. Barban	TLC				Note 3, p. 104; Note 6, p. S64.
8. α-BHC	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 8.
	GC/MS	625 [5]	6410 B.		
9. β-BHC	GC	608	6630 C	D3086–90	Note 8.
	GC/MS	625 [5]	6410 B.		
10. δ-BHC	GC	608	6630 C	D3086–90	Note 8.
	GC/MS	625 [5]	6410 B.		
11. γ-BHC (Lindane)	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B.		
12. Captan	GC		6630 B	D3086–90	Note 3, p. 7.
13. Carbaryl	TLC				Note 3, p. 94, Note 6, p. S60.
14. Carbophenothion	GC				Note 4, p. 27; Note 6, p. S73.
15. Chlordane	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B.		
16. Chloropropham	TLC				Note 3, p. 104; Note 6, p. S64.
17. 2,4-D	GC		6640 B		Note 3, p. 115; Note 4, p. 40.
18. 4,4′-DDD	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B.		

TABLE 1D.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter	Method	EPA [2, 7]	*Standard Methods* 18th, 19th, 20th Ed.	ASTM	Other
19. 4,4′-DDE	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B.		
20. 4,4′-DDT	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B.		
21. Demeton-O	GC				Note 3, p. 25; Note 6, p. S51.
22. Demeton-S	GC				Note 3, p. 25; Note 6, p. S51.
23. Diazinon	GC				Note 3, p. 25; Note 4, p. 27; Note 6, p. S51.
24. Dicamba	GC				Note 3, p. 115.
25. Dichlofenthion	GC				Note 4, p. 27; Note 6, p. S73.
26. Dichloran	GC		6630 B & C		Note 3, p. 7.
27. Dicofol	GC			D3086–90.	
28. Dieldrin	GC	608	6630 B & C		Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B.		
29. Dioxathion	GC				Note 4, p. 27; Note 6, p. S73.
30. Disulfoton	GC				Note 3, p. 25; Note 6 p. S51.
31. Diuron	TLC				Note 3, p. 104; Note 6, p. S64.
32. Endosulfan I	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625 [5]	6410 B.		
33. Endosulfan II	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 8.
	GC/MS	625 [5]	6410 B.		
34. Endosulfan Sulfate	GC	608	6630 C		Note 8.
	GC/MS	625	6410 B.		
35. Endrin	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625 [5]	6410 B.		
36. Endrin aldehyde	GC	608			Note 8.
	GC/MS	625.			
37. Ethion	GC				Note 4, p. 27; Note 6, p. S73.
38. Fenuron	TLC				Note 3, p. 104; Note 6, p. S64.
39. Fenuron-TCA	TLC				Note 3, p. 104; Note 6, p. S64.
40. Heptachlor	GC	608	6630 B & C	3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B.		
41. Heptachlor epoxide	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 6, p. S73; Note 8.
	GC/MS	625	6410 B.		
42. Isodrin	GC				Note 4, p. 27; Note 6, p. S73.
43. Linuron	GC				Note 3, p. 104; Note 6, p. S64.
44. Malathion	GC		6630 C		Note 3, p. 25; Note 4, p. 27; Note 6, p. S51
45. Methiocarb	TLC				Note 3, p. 94; Note 6, p. S60.
46. Methoxychlor	GC		6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
47. Mexacarbate	TLC				Note 3, p. 94; Note 6, p. S60.
48. Mirex	GC		6630 B & C		Note 3, p. 7; Note 4, p. 27.
49. Monuron	TLC				Note 3, p. 104; Note 6, p. S64.
50. Monuron	TLC				Note 3, p. 104; Note 6, p. S64.
51. Nuburon	TLC				Note 3, p. 104; Note 6, p. S64.
52. Parathion methyl	GC		6630 C		Note 3, p. 25; Note 4, p. 27.
53. Parathion ethyl	GC		6630 C		Note 3, p. 25; Note 4, p. 27.
54. PCNB	GC		6630 B & C		Note 3, p. 7.
55. Perthane	GC			D3086–90	Note 4, p. 27.
56. Prometron	GC				Note 3, p. 83; Note 6, p. S68; Note 9.
57. Prometryn	GC				Note 3, p. 83; Note 6, p. S68; Note 9.
58. Propazine	GC				Note 3, p. 83; Note 6, p. S68; Note 9.
59. Propham	TLC				Note 3, p. 104; Note 6, p. S64.
60. Propoxur	TLC				Note 3, p. 94; Note 6, p. S60.
61. Secbumeton	TLC				Note 3, p. 83; Note 6, p. S68.
62. Siduron	TLC				Note 3, p. 104; Note 6, p. S64.
63. Simazine	GC				Note 3, p. 83; Note 6, p. S68; Note 9.

TABLE 1D.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter	Method	EPA [2, 7]	*Standard Methods* 18th, 19th, 20th Ed.	ASTM	Other
64. Strobane	GC		6630 B & C		Note 3, p. 7.
65. Swep	TLC				Note 3, p. 104; Note 6, p. S64.
66. 2,4,5-T	GC		6640 B		Note 3, p. 115; Note 4, p. 40.
67. 2,4,5-TP (Silvex)	GC		6640 B		Note 3, p. 115; Note 4, p. 40.
68. Terbuthylazine	GC				Note 3, p. 83; Note 6, p. S68.
69. Toxaphene	GC	608	6630 B & C	D3086—90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410B.		
70. Trifluralin	GC		6630 B		Note 3, p. 7; Note 9.

Table ID notes:

[1] Pesticides are listed in this table by common name for the convenience of the reader. Additional pesticides may be found under Table 1C, where entries are listed by chemical name.

[2] The full text of Methods 608 and 625 are given at Appendix A. ''Test Procedures for Analysis of Organic Pollutants,'' of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, ''Definition and Procedure for the Determination of the Method Detection Limit,'' of this Part 136.

[3] ''Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater,'' U.S. Environmental Protection Agency, September 1978. This EPA publication includes thin-layer chromatography (TLC) methods.

[4] ''Methods for Analysis of Organic Substances in Water and Fluvial Sediments,'' Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3 (1987).

[5] The method may be extended to include α-BHC, γ-BHC, endosulfan I, endosulfan II, and endrin. However, when they are known to exist, Method 608 is the preferred method.

[6] ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency.'' Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 608 and 625 (See Appendix A of this Part 136) in accordance with procedures given in Section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis, must spike and analyze 10% of all samples analyzed with Method 608 or 5% of all samples analyzed with Method 625 to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other Methods cited.

Note: These warning limits are promulgated as an ''Interim final action with a request for comments.''

[8] ''Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk'', 3M Corporation, Revised 10/28/94.

[9] USGS Method 0–3106–93 from ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Triazine and Other Nitrogen-containing Compounds by Gas Chromatography with Nitrogen Phosphorus Detectors'' U.S. Geological Survey Open File Report 94–37.

TABLE 1E.—LIST OF APPROVED RADIOLOGIC TEST PROCEDURES

Parameter and units	Method	Reference (method number or page)			
		EPA [1]	*Standard Methods* 18th, 19th, 20th Ed.	ASTM	USGS [2]
1. Alpha-Total, pCi per liter	Proportional or scintillation counter.	900	7110 B	D1943–90	pp. 75 and 78 [3]
2. Alpha-Counting error, pCi per liter.	Proportional or scintillation counter.	Appendix B	7110 B	D1943–90	p. 79
3. Beta-Total, pCi per liter	Proportional counter	900.0	7110 B	D1890–90	pp. 75 and 78 [3]
4. Beta-Counting error, pCi	Proportional counter	Appendix B	7110 B	D1890–90	p. 79
5. (a) Radium Total pCi per liter	Proportional counter	903.0	7500Ra B	D2460–90	
(b) Ra, pCi per liter	Scintillation counter	903.1	7500Ra C	D3454–91	p. 81

Table 1E notes:

[1] ''Prescribed Procedures for Measurement of Radioactivity in Drinking Water,'' EPA–600/4–80–032 (1980), U.S. Environmental Protection Agency, August 1980.

[2] Fishman, M.J. and Brown, Eugene, ''Selected Methods of the U.S. Geological Survey of Analysis of Wastewaters,'' U.S. Geological Survey, Open-File Report 76–177 (1976).

[3] The method found on p. 75 measures only the dissolved portion while the method on p. 78 measures only the suspended portion. Therefore, the two results must be added to obtain the ''total''.

* * * * *

(b) * * *

References, Sources, Costs, and Table Citations:

* * * * *

(6) American Public Health Association. 1992, 1995, and 1998. Standard Methods for the Examination of Water and Wastewater. 18th, 19th, and 20th Edition (respectively). Available from: Amer. Publ. Hlth. Assoc., 1015 15th Street, NW., Washington, DC 20005. Table IA, Note 4. Tables IB, IC, ID, IE.

* * * * *

(10) Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994, 1996, and 1999. Available from: ASTM International, 100 Barr Harbor Drive, P.O. Box C–700, West Conshohocken, PA 19428–2959. Tables IB, IC, ID, and IE.

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(44) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory Determination of

Ammonium Plus Organic Nitrogen by a Kjeldahl Digestion Method and an Automated Photometric Finish that Includes Digest Cleanup by Gas Diffusion'', Open File Report (OFR) 00–170. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 45.

(45) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Chromium in Water by Graphite Furnace Atomic Absorption Spectrophotometry'', Open File Report (OFR) 93–449. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 46.

(46) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Molybdenum in Water by Graphite Furnace Atomic Absorption Spectrophotometry'', Open File Report (OFR) 97–198. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 47.

(47) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Total Phosphorus by Kjeldahl Digestion Method and an Automated Colorimetric Finish That Includes Dialysis'' Open File Report (OFR) 92–146. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 48.

(48) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Arsenic and Selenium in Water and Sediment by Graphite Furnace—Atomic Absorption Spectrometry'' Open File Report (OFR) 98–639. Table IB, Note 49.

(49) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Elements in Whole-Water Digests Using Inductively Coupled Plasma-Optical Emission Spectrometry and Inductively Coupled Plasma-Mass Spectrometry'' , Open File Report (OFR) 98–165. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 50.

(50) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Triazine and Other Nitrogen-containing Compounds by Gas Chromatography with Nitrogen Phosphorus Detectors'' U.S.Geological Survey Open File Report 94–37. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table ID, Note 9.

(51) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments'', Open File Report (OFR) 93–125. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 51; Table IC, Note 9.

* * * * *

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.21 is amended:

a. By revising footnote 1 to the table in paragraph (f)(3).

b. By revising the 6th sentence in paragraph (f)(5).

c. By revising paragraphs (f)(6)(i) and (f)(6)(ii).

d. By removing the third sentence in paragraph (f)(8), and by removing the second sentence and adding two sentences in its place.

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(3) * * *

[1] Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005. The cited methods published in any of these three editions may be used.

(5) * * * The preparation of EC medium is described in Method 9221E (paragraph 1a) in Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), and 20th edition (1998); the cited method in any one of these three editions may be used. * * *

(6) * * *

(i) EC medium supplemented with 50 µg/mL of 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration), as described in Method 9222G in Standard Methods for the Examination of Water and Wastewater, 19th edition (1995) and 20th edition (1998). Either edition may be used. Alternatively, the 18th edition (1992) may be used if at least 10 mL of EC medium, as described in paragraph (f)(5) of this section, is supplemented with 50 µg/mL of MUG before autoclaving. The inner inverted fermentation tube may be omitted. If the 18th edition is used, apply the procedure in paragraph (f)(5) of this section for transferring a total coliform-positive culture to EC medium supplemented with MUG, incubate the tube at 44.5 ± 0.2°C for 24 ± 2 hours, and then observe fluorescence with an ultraviolet light (366 nm) in the dark. If fluorescence is visible, E. coli are present.

(ii) Nutrient agar supplemented with 100 µg/mL of 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration), as described in Method 9222G in Standard Methods for the Examination of Water and Wastewater, 19th edition (1995) and 20th edition (1998). Either edition may be used for determining if a total coliform-positive sample, as determined by a membrane filter technique, contains E. coli. Alternatively, the 18th edition (1992) may be used if the membrane filter containing a total coliform-positive colony(ies) is transferred to nutrient agar, as described in Method 9221B (paragraph 3) of Standard Methods (18th edition), supplemented with 100 µg/mL of MUG. If the 18th edition is used, incubate the agar plate at 35°C for 4 hours and then observe the colony(ies) under ultraviolet light (366 nm) in the dark for fluorescence. If fluorescence is visible, E. coli are present.

* * * * *

(8) * * * Copies of the analytical methods cited in Standard Methods for the Examination of Water and Wastewater (18th, 19th, and 20th editions) may be obtained from the American Public Health Association *et al.*; 1015 Fifteenth Street, NW., Washington, DC 20005–2605. Copies of the MMO–MUG Test, as set forth in the article ''National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and Escherichia coli from Drinking Water: Comparison with the Standard Multiple Tube Fermentation Method'' (Edberg *et al.*) may be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, CO 80235. * * *

* * * * *

3. Section 141.23 is amended by revising the table and the footnotes in paragraph (k)(1) to read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(k) * * *

(l) * * *

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	Other
1. Alkalinity:					
Titrimetric		D1067—92B	2320 B	2320 B	
Electrometric titration					I–1030–85 [5]
2. Antimony:					
Inductively Coupled Plasma (ICP)—Mass Spectrometry.	200.8 [2].				
Hydride-Atomic Absorption.		D3697–92			
Atomic Absorption; Platform.	200.9 [2]				
Atomic Absorption; Furnace.			3113 B		
3. Arsenic: [14]					
Inductively Coupled Plasma [15].	200.7 [2]		3120 B	3120 B	
ICP-Mass Spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				
Atomic Absorption; Furnace.		D2972–97C	3113 B		
Hydride Atomic Absorption.		D2972–97B	3114 B		
4. Asbestos:					
Transmission Electron Microscopy.	100.1 [9].				
Transmission Electron Microscopy.	100.2 [10].				
5. Barium:					
Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B	
ICP-Mass Spectrometry	200.8 [2].				
Atomic Absorption; Direct.			3111 D		
Atomic Absorption; Furnace.			3113 B		
6. Beryllium:					
Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B	
ICP-Mass Spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				
Atomic Absorption; Furnace.		D3645—97B	3113 B		
7. Cadmium:					
Inductively Coupled Plasma.	200.7 [2]				
ICP-Mass Spectrometry	200.8 [2]				
Atomic Absorption; Platform.	200.9 [2]				
Atomic Absorption; Furnace.			3113 B.		
8. Calcium:					
EDTA titrimetric		D511—93A	3500–Ca D	3500–Ca B.	
Atomic Absorption; Direct Aspiration.		D511—93B	3111 B.		
Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B.	
9. Chromium:					
Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B.	
ICP-Mass Spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				
Atomic Absorption; Furnace.			3113 B.		
10. Copper:					
Atomic Absorption; Furnace.		D1688–95C	3113 B.		
Atomic Absorption; Direct Aspiration.		D1688–95A	3111 B.		
Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B.	

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	Other
ICP-Mass spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				
11. Conductivity:					
Conductance		D1125–95A	2510 B	2510 B.	
12. Cyanide:					
Manual Distillation followed by.		D2036–98A	4500–CN^- C	4500–CN^- C.	
Spectrophotometric, Amenable.		D2036–98B	4500–CN^- G	4500–CN^- G.	
Spectrophotometric Manual.		D2036–98A	4500–CN^- E	4500–CN^- E	I–3300–85 [5]
Spectrophotometric Semi-automated.	335.4 [6].				
Selective Electrode			4500–CN^- F	4500–CN^- F.	
13. Fluoride:					
Ion Chromatography	300.0 [6]	D4327–97	4110 B	4110 B.	
Manual Distill.; Color. SPADNS.			4500–F^- B,D	4500–F^- B,D	
Manual Electrode		D1179–93B	4500–F^- C	4500–F^- C	
Automated Electrode					380–75WE [11]
Automated Alizarin			4500–F^- E	4500–F^- E	29–71W [11]
14. Lead:					
Atomic Absorption; Furnace.		D3559–96D	3113 B.		
ICP-Mass spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				
Differential Pulse Anodic Stripping Voltammetry.					Method 1001 [16]
15. Magnesium:					
Atomic Absorption		D511–93 B	3111 B.		
ICP	200.7 [2]		3120 B	3120 B.	
Complexation Titrimetric Methods.		D511–93 A	3500–Mg E	3500–Mg B.	
16. Mercury:					
Manual, Cold Vapor	245.1 [2]	D3223–97	3112 B.		
Automated, Cold Vapor	245.2 [1].				
ICP-Mass Spectrometry	200.8 [2].				
17. Nickel:					
Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B.	
ICP-Mass Spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				
Atomic Absorption; Direct.			3111 B.		
Atomic Absorption; Furnace.			3113 B.		
18. Nitrate:					
Ion Chromatography	300.0 [6]	D4327–97	4110 B	4110 B	B–1011 [8]
Automated Cadmium Reduction.	353.2 [6]	D3867–90A	4500–NO_3^- F	4500–NO_3^- F.	
Ion Selective Electrode			4500–NO_3^- D	4500–NO_3^- D	601 [7]
Manual Cadmium Reduction.		D3867–90B	4500–NO_3^- E	4500–NO_3^- E.	
19. Nitrite:					
Ion Chromatography	300.0 [6]	D4327–97	4110 B	4110 B	B–1011 [8]
Automated Cadmium Reduction.	353.2 [6]	D3867–90A	4500–NO_3^-	4500–NO_3^- F.	
Manual Cadmium Reduction.		D3867–90B	4500–NO_3^- E	4500–NO_3^- E	
Spectrophotometric			4500–NO_2^- B	4500_ NO_2^- B.	
20. Ortho-phosphate: [12]					
Colorimetric, Automated, Ascorbic Acid.	365.1 [6]		4500–P F	4500–P F.	
Colorimetric, ascorbic acid, single reagent.		D515–88A	4500–P E	4500–P E.	
Colorimetric Phosphomolybdate;.					I–1601–85 [5]
Automated-segmented Flow;.					I–2601–90 [5]

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	Other
Automated Discrete	.....	.....	.....	.....	I–2598–85 [5]
Ion Chromatography	300.0 [6]	D4327–97	4110 B	4110 B.	
21. pH:					
Electrometric	150.1 [1] 150.2 [1].	D1293–95	4500–H^+ B	4500–H^+ B.	
22. Selenium:					
Hydride-Atomic Absorption.	.....	D3859–98A	3114 B.		
ICP-Mass Spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				
Atomic Absorption; Furnace.	.....	D3859–98B	3113 B.		
23. Silica:					
Colorimetric, Molybdate Blue;.	.....	.....	.....	.....	I–1700–85 [5]
Automated-segmented Flow.	.....	.....	.....	.....	I–2700–85 [5]
Colorimetric	.....	D859–95.			
Molybdosilicate	.....	.....	4500–Si D	4500–SiO_2 C.	
Heteropoly Blue	.....	.....	4500–Si E	4500–SiO_2 D.	
Automated for Molybdate-reactive Silica.	.....	.....	4500–Si F	4500–SiO_2 E.	
Inductively Coupled Plasma.	200.7 [2]	.....	3120 B	3120 B.	
24. Sodium:					
Inductively Coupled Plasma.	200.7 [2].				
Atomic Absorption; Direct Aspiration.	.....	.....	3111 B.		
25. Temperature:					
Thermometric	.....	.....	2550	2550.	
26. Thallium:					
ICP-Mass Spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1–11 and 16 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA'sDrinking Water Docket, EPA West, 1301 Constitution Avenue, NW, Room B135, Washington, DC (Telephone: 202–566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[1] ''Methods for Chemical Analysis of Water and Wastes'', EPA/600/4–79/020, March 1983. Available at NTIS, PB84–128677.

[2] ''Methods for the Determination of Metals in Environmental Samples—Supplement I'', EPA/600/R–94/111, May 1994. Available at NTIS, PB95–125472.

[3] *Annual Book of ASTM Standards,* 1994, 1996, or 1999, Vols. 11.01 and 11.02, ASTM International; any year containing the cited version of the method may be used. The previous versions of D1688–95A, D1688–95C (copper), D3559–95D (lead), D1293–95 (pH), D1125–91A (conductivity) and D859–94 (silica) are also approved. These previous versions D1688–90A, C; D3559–90D, D1293–84, D1125–91A and D859–88, respectively are located in the *Annual Book of ASTM Standards*, 1994, Vol. 11.01. Copies may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005. The cited methods published in any of these three editions may be used, except that the versions of 3111 B, 3111 D, 3113 B and 3114 B in the 20th edition may not be used.

[5] Method I–2601–90, Methods for Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediment, Open File Report 93–125, 1993; For Methods I–1030–85; I–1601–85; I–1700–85; I–2598–85; I–2700–85; and I–3300–85 See Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A–1, 3rd ed., 1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[6] ''Methods for the Determination of Inorganic Substances in Environmental Samples'', EPA/600/R–93/100, August 1993. Available at NTIS, PB94–120821.

[7] The procedure shall be done in accordance with the Technical Bulletin 601 ''Standard Method of Test for Nitrate in Drinking Water'', July 1994, PN 221890–001, Analytical Technology, Inc. Copies may be obtained from ATI Orion, 529 Main Street, Boston, MA 02129.

[8] Method B–1011, ''Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography,'' August 1987. Copies may be obtained from Waters Corporation, Technical Services Division, 34 Maple Street, Milford, MA 01757.

[9] Method 100.1, ''Analytical Method For Determination of Asbestos Fibers in Water'', EPA/600/4–83/043, EPA, September 1983. Available at NTIS, PB83–260471.

[10] Method 100.2, ''Determination of Asbestos Structure Over 10μm In Length In Drinking Water'', EPA/600/R–94/134, June 1994. Available at NTIS, PB94–201902.

[11] Industrial Method No. 129–71W, ''Fluoride in Water and Wastewater'', December 1972, and Method No. 380–75WE, ''Fluoride in Water and Wastewater'', February 1976, Technicon Industrial Systems. Copies may be obtained from Bran & Luebbe, 1025 Busch Parkway, Buffalo Grove, IL 60089.

[12] Unfiltered, no digestion or hydrolysis.

[13] Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2X preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (i.e., no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120 B sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D unless multiple in-furnace depositions are made.

[14] If ultrasonic nebulization is used in the determination of arsenic by Methods 200.7, 200.8, or SM 3120 B, the arsenic must be in the pentavalent state to provide uniform signal response. For methods 200.7 and 3120 B, both samples and standards must be diluted in the same mixed acid matrix concentration of nitric and hydrochloric acid with the addition of 100 μL of 30% hydrogen peroxide per 100ml of solution. For direct analysis of arsenic with method 200.8 using ultrasonic nebulization, samples and standards must contain one mg/L of sodium hypochlorite.

[15] After January 23, 2006 analytical methods using the ICP–AES technology, may not be used because the detection limits for these methods are 0.008 mg/L or higher. This restriction means that the two ICP–AES methods (EPA Method 200.7 and SM 3120 B) approved for use for the MCL of 0.05 mg/L may not be used for compliance determinations for the revised MCL of 0.01 mg/L. However, prior to 2005 systems may have compliance samples analyzed with these less sensitive methods.

[16] The description for Method Number 1001 for lead is available from Palintest, LTD, 21 Kenton Lands Road, P.O. Box 18395, Erlanger, KY 41018. Or from the Hach Company, P.O. Box 389, Loveland, CO 80539.

* * * * *

4. Section 141.24 is amended by revising the 11th, 12th and last sentences in paragraph (e)(1), before the Table, to read as follows:

§ 141.24 Organic chemicals, sampling and analytical requirements.

* * * * *

(e) * * *

(1) * * * Method 6651 shall be followed in accordance with Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), or 20th edition (1998), American Public Health Association (APHA); any of these three editions may be used. Method 6610 shall be followed in accordance with Standard Methods for the Examination of Water and Wastewater, (18th Edition Supplement) (1994), or with the 19th edition (1995) or 20th edition (1998) of Standard Methods for the Examination of Water and Wastewater; any of these three editions may be used. * * * ASTM Method D 5317–93 is available in the *Annual Book of ASTM Standards* (1999), Vol. 11.02, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or in any edition published after 1993.

* * * * *

5. Section 141.25 is amended by revising the Table and footnotes in paragraph (a) to read as follows:

§ 141.25 Analytical methods for radioactivity.

(a) * * *

Contaminant	Methodology	Reference (method or page number)								
		EPA [1]	EPA [2]	EPA [3]	EPA [4]	SM [5]	ASTM [6]	USGS [7]	DOE [8]	Other
Naturally occurring:										
Gross alpha[11] and beta.	Evaporation ..	900.0 ...	p 1	00–01 ..	p 1	302, 7110 B	.....	R–1120–76.		
Gross alpha[11].	Co-precipitation.	.....	.....	00–02 ..	.....	7110 C				
Radium 226.	Radon emanation.	903.1 ...	p 16	Ra–04	p 19	305,7500–Ra C	D 3454–97	R–1141–76.	Ra–04	N.Y.[9]
	Radiochemical.	903.0 ...	p 13	Ra–03	.....	304,7500–Ra B	D 2460–97	R–1140–76.		
Radium 228.	Radiochemical.	904.0 ...	p 24	Ra–05	p 19	7500–Ra D	.....	R–1142–76.	.....	N.Y.[9], N.J.[10]
Uranium[12].	Radiochemical.	908.0 ...	.....	.....	.....	7500–U B				
	Fluorometric	908.1 ...	.....	.....	.....	7500–U C (17th Ed.).	D2907–97	R–1180–76, R–1181–76.	U–04	
	Alpha spectrometry.	.....	.....	00–07 ..	p 33	7500–U C (18th, 19th or 20th Ed.).	D 3972–97	R–1182–76.	U–02	
	Laser Phosphorimetry.	.....	.....	.....	.....	.....	D 5174–97			
Man-made:										
Radioactive cesium.	Radiochemical	901.0 ...	p 4	.....	.....	7500–CsB	D 2459–72	R–1111–76.		
	Gamma ray spectrometry.	901.1 ...	.....	.....	p 92	7120	D 3649–91	R– 1110–76.	4.5.2.3	
Radioactive iodine	Radiochemical	902.0 ...	p 6, p 9	.....	.....	7500–I B, 7500–I C, 7500–I D.	D 3649–91			
	Gamma ray spectrometry.	901.1 ...	.....	.....	p 92	7120	D 4785–93	.....	4.5.2.3	
Radioactive Strontium 89, 90.	Radiochemical	905.0 ...	p 29	Sr–04 ..	p 65	303, 7500–Sr B	.....	R–1160–76.	Sr–01, Sr–02	
Tritium	Liquid scintillation.	906.0 ...	p 34	H–02 ...	p 87	306, 7500–3H B	D 4107–91	R–1171–76.		
Gamma emitters.	Gamma ray ..	901.1 ...	.....	.....	p 92	7120	D 3649–91	R–1110–76.	Ga–01–R.	
	Spectrometry	902.0, 901.0.	.....	.....	.....	7500–Cs B, 7500–I B.	D 4785–93			

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B135, Washington, DC (Telephone: 202–566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[1] ''Prescribed Procedures for the Measurement of Radioactivity in Drinking Water'', EPA 600/4–80–032, August 1980. Available at the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 80–224744.

[2] ''Interim Radiochemical Methodology for Drinking Water'', EPA 600/4–75–008(revised), March 1976. Available NTIS, ibid. PB 253258.

[3] ''Radiochemistry Procedures Manual'', EPA 520/5–84–006, December, 1987. Available NTIS, ibid. PB 84–215581.

[4] ''Radiochemical Analytical Procedures for Analysis of Environmental Samples'', March 1979. Available at NTIS, ibid. EMSL LV 053917.

[5] ''Standard Methods for the Examination of Water and Wastewater'', 13th, 17th, 18th, 19th Editions, or 20th edition, 1971, 1989, 1992, 1995, 1998. Available at American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005 . Methods 302, 303, 304, 305 and 306 are only in the 13th edition. Methods 7110B, 7500–Ra B, 7500–Ra C, 7500–Ra D, 7500–U B, 7500–Cs B, 7500–I B, 7500–I C, 7500–I D, 7500–Sr B, 7500–3H B are in the 17th, 18th, 19th and 20th editions. Method 7110 C is in the 18th, 19th and 20th editions. Method 7500–U C Fluorometric Uranium is only in the 17th Edition, and 7500–U C Alpha spectrometry is only in the 18th, 19th and 20th editions. Method 7120 is only in the 19th and 20th editions. Methods 302, 303, 304, 305 and 306 are only in the 13th edition.

[6] *Annual Book of ASTM Standards,* Vol. 11.01 and 11.02, 1999; ASTM International any year containing the cited version of the method may be used. Copies may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[7] ''Methods for Determination of Radioactive Substances in Water and Fluvial Sediments'', Chapter A5 in Book 5 of Techniques of Water-Resources Investigations of the United States Geological Survey, 1977. Available at U.S. Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

[8] ''EML Procedures Manual'', 28th (1997) or 27th (1990) Editions, Volumes 1 and 2; either edition may be used. In the 27th Edition Method Ra–04 is listed as Ra–05 and Method Ga–01–R is listed as Sect. 4.5.2.3. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

[9] ''Determination of Ra–226 and Ra–228 (Ra–02)'', January 1980, Revised June 1982. Available at Radiological Sciences Institute for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

[10] ''Determination of Radium 228 in Drinking Water'', August 1980. Available at State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

[11] Natural uranium and thorium-230 are approved as gross alpha calibration standards for gross alpha with co-precipitation and evaporation methods; americium-241 is approved with co-precipitation methods.

[12] In uranium (U) is determined by mass, a 0.67 pCi/µg of uranium conversion factor must be used. This conversion factor is based on the 1:1 activity ration of U–234 and U–238 that is characteristic of naturally occurring uranium.

* * * * *

6. Section 141.74 is amended by revising the footnote 1 to the Table in paragraph (a)(1) and by revising the first three sentences of paragraph (a)(2) to read as follows:

§ 141.74 Analytical and monitoring requirements.

(a) * * *

(1) * * *

[1] Except where noted, all methods refer to Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), or 20th edition (1998), American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005. The cited methods published in any of these three editions may be used.

* * * * *

(2) Public water systems must measure residual disinfectant concentrations with one of the analytical methods in the following table. Except for the method for ozone residuals, the disinfectant residual methods are contained in the 18th, 19th, and 20th editions of Standard Methods for the Examination of Water and Wastewater, 1992, 1995, and 1998; the cited methods published in any of these three editions may be used. The ozone method, 4500–O_3 B, is contained in both the 18th and 19th editions of Standard Methods for the Examination of Water and Wastewater, 1992, 1995; either edition may be used. * * *

* * * * *

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

1. The authority citation for Part 143 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

2. Section 143.4 is amended by revising the Table and footnotes in paragraph (b) to read as follows:

§ 143.4 Monitoring.

* * * * *

(b) * * *

Contaminant	EPA	ASTM [3]	SM [4] 18th and 19th ed.	SM [4] 20th ed.	Other
1. Aluminum	200.7 [2]		3120 B	3120 B.	
	200.8 [2]		3113 B.		
	200.9 [2]		3111 D.		
2. Chloride	300.0 [1]	D4327–97	4110 B	4110 B.	
			4500–Cl^- D	4500—Cl^- D.	
		D512–89B	4500–Cl^- B	4500–Cl^- B.	
3. Color			2120 B	2120 B.	
4. Foaming Agents			5540 C	5540 C.	
5. Iron	200.7 [2]		3120 B	3120 B.	
	200.9 [2]		3111 B.		
			3113 B.		
6. Manganese	200.7 [2]		3120 B	3120 B.	
	200.8 [2]		3111 B.		
	200.9 [2]		3113 B.		
7. Odor			2150 B	2150 B.	
8. Silver	200.7 [2]		3120 B	3120 B	I–3720–85 [5]
	200.8 [2]		3111 B.		
	200.9 [2]		3113 B.		
9. Sulfate	300.0 [1]	D4327–97	4110 B	4110 B.	
	375.2 [1]		4500–SO_4^{2-} F	4500–SO_4^{2-} F.	
			4500–SO_4^{2-}C, D	4500–SO_4^{2-}C, D.	
		D516–90	4500–SO_4^{2-} E	4500–SO_4^{2-} E.	
10. Total Dissolved Solids			2540 C	2540 C.	
11. Zinc	200.7 [2]		3120 B	3120 B.	
	200.8 [2]		3111 B.		

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW, Room B135, Washington, DC (Telephone: 202–566–2426); or at the Office of Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC 20408.

[1] ''Methods for the Determination of Inorganic Substances in Environmental Samples'', EPA/600/R–93–100, August 1993. Available at NTIS, PB94–120821.

[2] ''Methods for the Determination of Metals in Environmental Samples—Supplement I'', EPA/600/R–94–111, May 1994. Available at NTIS, PB 95–125472.

[3] *Annual Book of ASTM Standards,* 1994, 1996, or 1999, Vols. 11.01 and 11.02, ASTM International; any year containing the cited version of the method may be used. Copies may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005. The cited methods published in any of these three editions may be used, except that the versions of 3111 B, 3111 D, and 3113 B in the 20th edition may not be used.

[5] Method I–3720–85, *Techniques of Water Resources Investigation of the U.S. Geological Survey,* Book 5, Chapter A–1, 3rd ed., 1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[FR Doc. 02–23727 Filed 10–22–02; 8:45 am]

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Federal Register

Wednesday,
October 23, 2002

Part IV

Environmental Protection Agency

40 CFR Part 131
Water Quality Standards for Alabama; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–7397–2]

RIN 2040–AD35

Water Quality Standards for Alabama

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to establish a designated use for a segment of Five Mile Creek in Alabama. If this proposal is promulgated as final, the Federal designated use will supersede the State's designated use that EPA disapproved in 1986 and 1991. EPA disapproved the State's designated use because it is inconsistent with the Clean Water Act and EPA's implementing regulations. Specifically, EPA is proposing a designated use for the protection of fish and wildlife.

DATES: EPA will accept public comments on this proposed rule until December 23, 2002. Comments postmarked after this date may not be considered. A public hearing will be held on December 12, 2002 from 2 to 5 P.M. and from 7 to 9 P.M. Both oral and written comments will be accepted at the hearing.

ADDRESSES: Send your comments by mail to: Docket Manager, Proposed Water Quality Standards for Alabama, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104, Attention Docket ID No. OW–2002–0023. Comments may also be submitted electronically, or through hand delivery/courier. Follow the detailed instructions as provided in Section I.C. of the **SUPPLEMENTARY INFORMATION** section. The public hearing will occur at the Sheraton Birmingham, 2101 Richard Arrington Jr. Boulevard North, Birmingham, Alabama, 35203.

FOR FURTHER INFORMATION CONTACT: Fritz Wagener, Water Quality Standards Coordinator, U.S. EPA Region 4, Water Management Division, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia, 30303–3104 (telephone: 404–562–9267) or James Keating, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania Avenue NW, Washington, DC, 20460 (telephone: 202–566–0383).

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. General Information

A. Potentially Affected Entities

Citizens concerned with water quality in Alabama may be interested in this rulemaking. Facilities discharging pollutants to certain waters of the United States in Alabama could be indirectly affected by this rulemaking since water quality standards are used in determining water quality-based National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that may indirectly be affected include:

Category	Examples of those potentially affected
Industry	Industries discharging pollutants to the segment of Five Mile Creek identified in § 131.34.
Municipalities	Publicly-owned treatment works discharging pollutants to the segment of Five Mile Creek identified in § 131.34.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES facilities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine the water body segment identified in § 131.34 of today's proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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 ID No. OW–2002–0023. 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 under *Proposed Water Quality Standards for Alabama* at Water Management Division, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104, phone # 404–562–9267. This Docket Facility is open from 9:00 AM to 3:30 PM, Monday through Friday, excluding legal holidays. A reasonable fee will be charged for copies.

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 identification 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 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 I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA 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 through the docket facility identified in I.B.1.

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.

For additional information about EPA's electronic public docket, visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

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 identification 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.'' While EPA is not required to consider these late comments, we will make every attempt to consider them.

1. Electronically. If you submit an electronic comment as prescribed below, 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. EDOCKETS. 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. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID OW–2002–0023. 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. Email. Comments may be sent by electronic mail (e-mail) to *wagener.fritz@epa.gov,* Attention Docket ID No. OW–2002–0023. 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 address identified in 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: Docket Manager, Proposed Water Quality Standards for Alabama, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104, Attention Docket ID No. OW–2002–0023.

3. By Hand Delivery or Courier. Deliver your comments to the address identified in I.C.2., attention Docket ID OW–2002–0023. Such deliveries are only accepted during the Docket's normal hours of operation as identified in I.B.1.

D. 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 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 your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. Statutory and Regulatory Background

Section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA or ''the Act'') directs States, Territories, and authorized Tribes (hereafter referred to as ''States''), with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for waters of the United States within the State. Section 303(c) provides that water quality standards shall include the designated use or uses to be made of the water, and criteria necessary to protect those uses. The designated uses to be considered by States in establishing water quality standards are specified in the Act: public water supplies, propagation of fish and wildlife, recreation, agricultural uses, industrial uses and navigation. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. The results of this triennial review must be submitted to EPA, and EPA must approve or disapprove any new or revised standards.

Section 303(c) of the CWA authorizes the EPA Administrator to promulgate water quality standards to supersede State standards that have been disapproved, or in any case where the Administrator determines that a new or revised standard is needed to meet the CWA's requirements. Today EPA is proposing Federal standards to supersede a portion of Alabama's standards that EPA has disapproved and the State has not revised.

EPA regulations implementing section 303(c) are published at 40 CFR part 131. Under these rules, the minimum elements that must be included in a State's water quality standards include: use designations for all water bodies in the State, water quality criteria sufficient to protect those use designations, and an antidegradation policy. *See* 40 CFR 131.6. States may also include policies generally affecting the standards' application and implementation in their standards. *See* 40 CFR 131.13. These policies are also subject to EPA review and approval.

Water quality standards establish the ''goals'' for a water body through the establishment of designated uses. Designated uses, in turn, determine what water quality criteria apply to specific water bodies. Section 101(a)(2) of the Act establishes as a national goal ''water quality which provides for the protection and propagation of fish, shellfish, and wildlife and * * * recreation in and on the water,'' wherever attainable. These national goals are commonly referred to as the ''fishable/swimmable'' goals of the Act. Section 303(c)(2)(A) requires water quality standards to ''protect the public health and welfare, enhance the quality of water, and serve the purposes of this Act.'' EPA's regulations at 40 CFR part 131 interpret and implement these provisions by requiring that water quality standards provide for fishable/swimmable uses unless those uses have been shown to be unattainable. This effectively creates a rebuttable presumption of attainability, *i.e.*, a default designation of fishable/swimmable beneficial uses should apply in the absence of sufficient information to the contrary. The mechanism in EPA's regulations used to overcome this presumption is a use attainability analysis (UAA).

Under 40 CFR 131.10(j), States are required to conduct a UAA whenever the State designates or has designated uses that do not include the uses specified in section 101(a)(2) of the CWA, or when the State wishes to remove a designated use that is specified in section 101(a)(2) of the CWA, or adopt subcategories of uses that require less stringent criteria. Uses are considered by EPA to be attainable, at a minimum, if the uses can be achieved (1) when effluent limitations under section 301(b)(1)(A) and (B) and section 306 are imposed on point source dischargers, and (2) when cost effective and reasonable best management practices are imposed on nonpoint source dischargers. 40 CFR 131.10 lists grounds upon which to base a finding that attaining the designated use is not feasible, as long as the designated use is not an existing use: (i) Naturally occurring pollutant concentrations prevent the attainment of the use; (ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; (iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; (iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use; (v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or (vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

A UAA is defined in 40 CFR 131.3(g) as a ''structured scientific assessment of the factors affecting the attainment of a use which may include physical, chemical, biological, and economic factors' (see §§ 131.3 and 131.10). In a UAA, the physical, chemical and biological factors affecting the attainment of a use are evaluated through a water body survey and assessment.

Guidance on water body survey and assessment techniques is contained in the Technical Support Manual, Volumes I–III: Water Body Surveys and Assessments for Conducting Use Attainability Analyses. Volume I provides information on water bodies in general, Volume II contains information on estuarine systems and Volume III contains information on lake systems (Volumes I–II, November 1983; Volume III, November 1984). Additional guidance is provided in the Water Quality Standards Handbook: Second Edition (EPA–823-B–94–005, August 1994). Guidance on economic factors affecting the attainment of a use is contained in the Interim Economic Guidance for Water Quality Standards: Workbook (EPA–823-B–95–002, March 1995). In developing today's proposal, EPA followed the same procedures set out for States in 40 CFR part 131, and EPA's implementing policies, procedures, and guidance.

EPA regulations effectively establish a ''rebuttable presumption'' that fishable/swimmable uses are attainable and therefore should apply to a water body unless it is affirmatively demonstrated that such uses are not attainable. EPA adopted this approach to help achieve the national goal articulated by Congress that, ''wherever attainable,'' water quality provide for the ''protection and propagation of fish, shellfish and wildlife'' and for ''recreation in and on the water.'' CWA section 101(a). While facilitating achievement of Congress' goals, the rebuttable presumption approach preserves States' paramount role in establishing water quality standards in weighing any available evidence regarding the attainable uses of a particular water body. The rebuttable presumption approach does not restrict

the discretion that States have to determine that fishable/swimmable uses are not, in fact, attainable in a particular case. Rather, if the water quality goals articulated by Congress are not to be met in a particular water body, the regulations simply require that such a determination be based upon a credible, ''structured scientific assessment'' of use attainability.

EPA believes that the ''use'' of a water body is the most fundamental articulation of its role in the aquatic and human environments, and all of the water quality protections established by the CWA follow from the water's designated use. If a use lower than fishable/swimmable is designated based on inadequate information or superficial analysis, water quality-based protections that might have enabled the water to achieve the goals articulated by Congress in section 101(a) may not be put in place. As a result, the true potential of the water body may not be realized, and a resource highly valued by Congress may be lost.

EPA seeks, through its oversight under section 303(c) of the CWA, to ensure that any State's decision to forego protection of a water body's potential to support fishable/swimmable uses results from a ''structured'' analysis of use attainment. Where, as in the case of this segment of Five Mile Creek in Alabama, the State provides no analysis to support a less than fishable/swimmable use designation, EPA disapproves the use designation. In some cases, as Alabama has done with regard to most of the use classifications originally disapproved by EPA (see section II.C., below), the State will revise its use classifications to protect fishable/swimmable uses.

In other cases, the State will conduct a more thorough analysis of use attainability to support a less than fishable/swimmable designated use. Indeed, Alabama has done so for several of the streams originally disapproved by EPA in 1986. However, where a State does neither, as in the case of a segment of Five Mile Creek, EPA will undertake Federal rulemaking to ensure the water quality goals of the CWA are effectively implemented.

In developing the attached proposed rule, EPA evaluated all available information, including physical, biological, and chemical parameters, to determine whether fishable/swimmable uses could be attained. As explained in detail below, EPA believes the available information regarding this water body segment does not rebut the presumption that fishable/swimmable uses are attainable. In fact, EPA believes that all of the currently available information affirmatively supports the conclusion that full fishable/swimmable uses are attainable.

EPA is working within the existing State framework and relying on the State's Fish and Wildlife (F&W) designated use for the protection of fishable/swimmable water. Similarly, EPA is deferring to the State water quality criteria necessary for meeting a F&W designated use. EPA's approach in this rulemaking does not undermine the State's primary role in designating uses for waters in Alabama. If the State reclassifies the segment of Five Mile Creek with a fishable/swimmable designated use prior to EPA's finalizing this rule, EPA would approve the State's action and not finalize this rule. Alternatively, if the State completes a sound analysis of use attainability, taking into account appropriate biological, chemical and physical factors, and concludes that the fishable/swimmable use is not attainable for this water body segment, EPA would approve the State's action if it meets all requirements of EPA's regulations at 40 CFR part 131, and not finalize this rule (or initiate rulemaking to rescind the rule if the State submits an adequate analysis after EPA takes final action). EPA encourages the State to continue evaluating the appropriate use designation for this segment of Five Mile Creek.

B. Current Alabama Water Quality Standards

Alabama's water quality regulations at 335–6–10 and 335–6–11 establish the following designated uses for assignment to water bodies in the State: Outstanding Alabama Water, Public Water Supply, Swimming and Other Whole Body Water-Contact Sports, Shellfish Harvesting, Fish and Wildlife (F&W), Limited Warmwater Fishery (LWF), Agricultural and Industrial Water Supply (A&I). Alabama has applied these use designations, singly or in some combination, to all surface waters of the State.

The current use designation adopted by the State for the segment of Five Mile Creek addressed in today's proposal is A&I. The best usage of waters designated for the A&I use includes ''agricultural irrigation, livestock watering, industrial cooling and process water supplies, and any other usage, except fishing, bathing, recreational activities, including water-contact sports, or as a source of water supply for drinking or food-processing purposes.'' The Alabama water quality regulations describe the A&I use as follows:

> The waters, except for natural impurities which may be present therein, will be suitable for agricultural irrigation, livestock watering, industrial cooling waters, and fish survival. The waters will be usable after special treatment, as may be needed under each particular circumstance, for industrial process water supplies.
>
> This category includes watercourses in which natural flow is intermittent and non-existent during droughts and which may, of necessity, receive treated wastes from existing municipalities and industries, both now and in the future. In such instances, recognition must be given to the lack of opportunity for mixture of the treated wastes with the receiving stream for purposes of compliance. It is also understood in considering waters for this classification that urban runoff or natural conditions may impact any waters so classified.

EPA's regulations at 40 CFR part 131 require that waters designated for a use less protective than a fishable/swimmable use, such as the A&I use, be supported by a use attainability analysis, because neither the best usage or conditions related to the best usage for these waters include the fishable/swimmable uses, nor do all the criteria necessary to protect those uses apply. For example, only ''fish survival'' is included as a condition of the best usage, and recreational activities are specifically excluded as uses for A&I waters. As such, the criteria adopted to support the A&I use do not provide protection for the propagation of aquatic life, nor protection from human pathogens during the swimming season.

As discussed in section II.C., EPA disapproved the designation of the A&I use for the segment of Five Mile Creek addressed in today's proposal. In developing today's proposal, EPA evaluated Alabama's existing water quality standards to determine which State use designations correspond to ''fishable/swimmable'' uses, and would therefore ensure protection of the CWA section 101(a)(2) goals. Rather than establish a new Federal use designation for this segment of Five Mile Creek, EPA believes it is preferable to apply a use designation that both meets the goals of the CWA and is consistent with longstanding State standards regulations. Because water quality standards for this segment, if ultimately promulgated, will be the basis for establishing NPDES permit limits by the State, the Agency believes that using an existing State use designation will facilitate implementation of the standards. This also facilitates withdrawal of Federal standards in the future, if Alabama takes appropriate action justifying such withdrawal.

EPA is proposing the State's F&W use set out at 335–6–10–.03 of the State's regulations for the segment of Five Mile Creek from Newfound Creek to Ketona.

The State's F&W use includes aquatic life uses and seasonal recreational uses that are consistent with the Clean Water Act section 101(a)(2) goals of fishable/swimmable. The best usage of waters designated for the State's F&W use include ''fishing, propagation of fish, aquatic life, and wildlife, and any other usage except for swimming and water-contact sports or as a source of water supply for drinking or food-processing purposes.'' The conditions related to best usage for F&W waters require that these waters ''will be suitable for fish, aquatic life and wildlife propagation.''

The State, in the listing of other usages of waters designated for the F&W use recognizes that waters designated for the F&W use ''may be used for incidental water contact and recreation during June through September, except that water contact is strongly discouraged in the vicinity of discharges or other conditions beyond the control of the Department or the Alabama Department of Public Health,'' and that these waters, ''under proper sanitary supervision by the controlling health authorities, will meet accepted standards of water quality for outdoor swimming places and will be considered satisfactory for swimming and other whole body water-contact sports.'' This aspect of the F&W use is protected by criteria for fecal coliform bacteria identical to the criteria adopted for the Swimming and Other Whole Body Water-Contact Sports use classification. The bacteria criteria apply June through September for the F&W use, whereas the bacteria criteria apply year round for the Swimming and Other Whole Body Water-Contact Sports use. EPA regulations at 40 CFR 131.10(f) provide States the option to ''adopt seasonal uses as an alternative to reclassifying a water body or segment thereof to uses requiring less stringent criteria'' as long as water quality criteria reflect the seasonal uses. As described below, the Alabama Environmental Management Commission determined that the F&W use was appropriate for this segment of Five Mile Creek in their recent reclassification efforts. EPA agrees that the F&W use, as applied to this segment of Five Mile Creek, reflects the CWA 101(a)(2) goal for ''recreation in and on the water'.

Provisions of the Fish and Wildlife water use classification also apply to the State's Limited Warmwater Fishery (LWF) use classification, with the following exceptions. The best usage of waters for the months from May through November include ''agricultural irrigation, livestock watering, industrial cooling and process water supplies, and any other usage, except fishing, bathing, recreational activities, including water-contact sports, or as a source of water supply for drinking or food-processing purposes.'' Also, the conditions related to best usage for the months from May through November require that the waters ''will be suitable for agricultural irrigation, livestock watering, and industrial cooling waters. The waters will be usable after special treatment, as may be needed under each particular circumstance, for industrial process water supplies.''

The standards for the LWF use also specify that, ''This category includes watercourses in which natural flow is intermittent, or under certain conditions non-existent, and which may receive treated wastes from existing municipalities and industries. In such instances, recognition is given to the lack of opportunity for mixture of the treated wastes with the receiving stream for purposes of compliance. It is also understood in considering waters for this classification that urban runoff or natural conditions may impact any waters so classified.''

Given that the LWF use incorporates several provisions associated with the A&I use for the months from May through November, 40 CFR part 131 requires that waters designated for the LWF use be supported by a use attainability analysis, because neither the best usage or conditions related to the best usage for these waters include all of the Clean Water Act section 101(a)(2) uses of fully fishable/swimmable.

If EPA promulgates final water quality standards as proposed, Alabama's existing water quality criteria adopted to protect the F&W use would apply to this segment of Five Mile Creek. These criteria are set out at 335–6–10–.05 (General Conditions Applicable to All Water Criteria), 335–6–10–.06 (Minimum Conditions Applicable to All State Waters), 335–6–10–.07 (Toxic Pollutant Criteria Applicable to State Waters), and 335–6–10–.09(4) (Specific Water Quality Criteria—Fish and Wildlife use).

Subsection 335–6–10–.05 establishes State policies applicable to all State waters regarding analytical procedures, collection of samples used to determine compliance with water quality criteria, mixing zones, criteria exceedances due to natural conditions, recreational use of State waters, and schedules of compliance with new water quality standards. Compliance with a modified effluent limit based on a new standard is required as soon as possible, ''but in all cases within three years of the adoption of the new standard.''

Subsection 335–6–10–.06 contains the ''free from'' toxicity provisions of Alabama's water quality standards applicable to all State waters. These provisions relate to general protection of State waters from adverse effects due to substances attributable to sewage, industrial wastes or other wastes from settling, floating, and toxicity.

Section 335–6–10–.07 includes a tabular listing of water quality criteria applicable to State waters pursuant to applicable designated uses. Included are: (1) Numeric criteria or criteria equations for protection of aquatic life from acute toxic effects for 24 parameters, (2) numeric criteria or criteria equations for protection of aquatic life from chronic toxic effects for 29 parameters (which apply to all State waters except those waters classified for Agricultural and Industrial Water Supply uses), (3) human health-based criteria equations, (4) Maximum Contaminant Levels for 100 parameters (applicable to waters classified for drinking water purposes), and (5) the minimum instream design flows to be used in application of water quality criteria.

This section also includes the criteria equations for 98 parameters for protection of human health from the consumption of fish and shellfish applicable to all State waters. Because the State's human health-based water quality criteria apply to all State waters, regardless of classification, human health criteria were not considered to have a direct effect in the analysis of the proposed revised classification of the Fish and Wildlife use for the stream segment considered in this proposed rule.

Subsection 335–6–10.09(4)(e) (Specific Criteria) contains the water quality criteria related to the protection of the above uses, including numeric and/or narrative criteria for pH, temperature, dissolved oxygen, whole effluent toxicity, bacteria, radioactivity and turbidity.

Criteria for protection of aquatic life for dissolved oxygen (DO) are contained in the Alabama water quality standards at Subsection (4)(e)(4), which includes, in pertinent part:

(i) For a diversified warm water biota, including game fish, daily dissolved oxygen concentrations shall not be less than 5 mg/l at all times; except under extreme conditions due to natural causes, it may range between 5 mg/l and 4 mg/l, provided that the water quality is favorable in all other parameters. The normal seasonal and daily fluctuations shall be maintained above these levels.

(iv) In the application of dissolved oxygen criteria referred to above, dissolved oxygen

shall be measured at a depth of 5 feet in waters 10 feet or greater in depth; and for those waters less than 10 feet in depth, dissolved oxygen criteria will be applied at mid-depth.

Subsection 335–6–10–.09(4)(e) also includes a reference to toxicity-based criteria applicable to the Fish and Wildlife use in section 335–6–10–.07. This Subsection includes narrative criteria for the protection from adverse effects of taste, odor, and color effects, including aesthetic qualities, as well as narrative criteria for the protection of palatability and marketability of fish, wildlife, shrimp and crabs taken from State waters.

C. Factual Background

1. Summary of State and EPA Administrative Actions

In a letter dated October 14, 1986, the EPA Regional Administrator for Region 4 disapproved use designations adopted by the Alabama Department of Environmental Management (ADEM) for 49 stream segments, including the segment of Five Mile Creek from Newfound Creek to Ketona, because the State failed to support a use classification less than ''fishable/swimmable'' in accordance with 40 CFR 131.10(j). From 1986 to 1991, 20 of the use designations were either upgraded to the Fish and Wildlife (F&W) use classification by ADEM or approved as the Agricultural and Industrial Water Supply (A&I) use by EPA based on a supporting analysis. On July 18, 1991, the EPA Regional Administrator for Region 4 disapproved 30 use designations adopted by ADEM, including the designation of A&I for the segment of Five Mile Creek from Newfound Creek to Ketona.

Between July 18, 1991 and today's proposal, ADEM reclassified the use designations of 17 of these 30 segments to the F&W use designation. On August 1, 2000, ADEM incorporated a new use classification of Limited Warmwater Fishery (LWF) as a provision of the State water quality regulations at 335–6–10–.09 (6), and ADEM has since reclassified 10 of these 30 stream segments to the LWF use designation. Four of these 10 reclassification actions included alternative water quality criteria which established more stringent criteria than the LWF designation requires for these four segments based on consideration of site specific conditions. EPA approved some of the reclassification actions involving the LWF use on March 15, 2001. In addition, EPA approved ADEM's A&I use designation for one of these 30 segments on March 15, 2000. The State made revisions and provided additional supporting analyses for the other segments. These recent actions and new information are being reviewed by EPA Region 4 under section 303 (c) of the CWA.

Although ADEM reclassified a segment of Five Mile Creek from Locust Fork to Newfound Creek to F&W in April 1997, the State has not completed actions to reclassify the segment of Five Mile Creek from Newfound Creek to Ketona to F&W or completed a use attainability analysis for this segment to show that the F&W use is not attainable. This is the only remaining segment of the 30 segments disapproved by EPA on July 18, 1991, that does not now have an approved use designation or State-designated use reclassification action under review.

2. Summary of Legal Actions

During the period from 1996 to the present when some of the administrative actions summarized above occurred, EPA has been served with several notices of intent to sue and subsequent suits for failure to take certain actions under section 303(c) of the CWA with regard to water quality standards disapproved by EPA. In each case, the Agency has entered into a consent decree with plaintiffs setting deadlines for EPA to take certain actions, which are described below.

The first of these legal actions was filed on September 18, 1996, when the Legal Environmental Assistance Foundation, Inc. (LEAF) filed suit in District Court in Alabama against EPA for failing to promptly propose Federal replacement water quality standards for a subset of use designations in Alabama disapproved by EPA. LEAF v. Browner No. CV–96–ETC–2454–S (N.D. Ala.). Under a consent decree that EPA and plaintiffs entered into on September 11, 1997, EPA proposed on March 5, 1998, to establish Federal water quality standards for nine stream segments in Alabama in a similar manner as today's proposed rule.

On April 28, 1999, the Alabama Rivers Alliance, Inc. (ARA) filed a 60-day notice under Section 505 of the Clean Water Act, stating an intention to file suit against EPA for failure to promulgate final standards for the stream segments addressed in EPA's March 5, 1998 proposal, and for failure to promptly propose replacement Federal standards for the remaining stream segments disapproved by EPA. This notice combined the contents of similar notices previously filed by LEAF on July 20, 1998 and May 23, 1995.

These parties filed suit on July 17, 2000. LEAF v. Browner No. CV–96–ETC–2454–S (N.D. Ala.). EPA and the plaintiffs subsequently signed a second consent decree which was entered by the court on January 23, 2001, which required that EPA either promulgate Federal standards for the stream segments addressed in the March 5, 1998 proposal, or approve the applicable State water quality standards for these 9 stream segments, no later than March 15, 2001. On December 5, 2000, ADEM had reclassified the use classifications for seven of the stream segments addressed in EPA's March 5, 1998, proposal to the LWF use, and reclassified the use designation for one of the stream segments addressed in EPA's March 5, 1998, proposal to the F&W use. On March 15, 2001, EPA approved these revisions to the State's water quality standards. Also on that date, based on the provisions of 40 CFR 131.10(g)(6), EPA approved the A&I use designation for the remaining stream segment that was addressed in EPA's March 5, 1998 proposal.

Under the terms and conditions of the January 23, 2001, consent decree (as amended on January 2, 2002), EPA was also required to sign a **Federal Register** notice proposing federal use designations for the eight remaining stream segments with a disapproved designated use, or withdraw the EPA disapproval of the existing Alabama standards for these eight stream segments by October 15, 2002. The attached proposal for the segment of Five Mile Creek from Newfound Creek to Ketona, combined with EPA Region 4's approval of the State's revisions to the remaining streams' designated uses will fulfill EPA's obligation under the consent decree.

3. Recent State Actions on Use Designation for Five Mile Creek

The ADEM held a public hearing on February 19, 2002, to consider proposed amendments to ADEM Administrative Code Rule 335–6–11–.02, which included a reclassification of a segment of Five Mile Creek from the A&I use to the F&W use. The public hearing was held to receive data, views, and arguments from interested persons regarding the proposed rules. The public comment period lasted from December 23, 2001, to February 22, 2002, a total of 61 days. Several commenters expressed support for the proposed reclassification of Five Mile Creek from Newfound Creek to Ketona.

However, one commenter opposed the reclassification because the level of total dissolved solids (including chlorides and sulfates) in the effluent of Sloss Industries (a discharger to Five Mile Creek) may result in its failure to meet

the chronic effluent toxicity requirements for LWF and F&W, and the cost of removing these salts were not considered in the reclassification. The commenter asserted that if those removal costs were considered, and if all costs were considered independent of the finances of the parent company (Walter Industries), then a substantial economic burden (as allowed by EPA's regulations at 40 CFR 131.10 (g)(6)) would be established.

In its Reconciliation Statement, which contains responses to comments received during the public comment period, ADEM stated that it ''believes the proposed Fish and Wildlife (F&W) use classification is attainable for this segment of Five Mile Creek. ADEM bases (SIC) its decision on the fact that none of the six factors [identified at 40 CFR 131.10(g)] can be used to support a designated use less than the F&W classification, which EPA has approved as consistent with the fishable/swimmable goal.'' ADEM added, ''The reclassification of Five Mile Creek from A&I to F&W will result in more stringent permit requirements for Sloss Industries, and additional treatment controls will be necessary. However, a feasibility study of the treatment control alternatives available to Sloss Industries demonstrates that: (1) The F&W permit limitations can be met by the facility, and (2) the incremental costs of meeting the F&W permit limits (over and above the costs of meeting the A&I permit limits) will not result in substantial and widespread economic impact.'' With respect to costs, ADEM based its conclusions on a Draft Economic Impact Analysis prepared by EPA, dated December 2001, and EPA's Response to Sloss Industries' comments, dated March 2002.

On April 9, 2002, the Alabama Environmental Management Commission approved reclassified use designations for several stream segments in the State, including the proposed segment of Five Mile Creek. On May 15, 2002, the Joint Legislative Committee of Administrative Regulation Review disapproved the proposed amendment of Alabama Administrative Code Rule 335–6–11–.02, which would upgrade the aforementioned segment of Five Mile Creek from an A&I to F&W use classification. The Committee subsequently proposed an amendment deleting any changes to the status of this segment of Five Mile Creek. On June 25, 2002, the Alabama Environmental Management Commission approved the Joint Legislative Committee's proposed amendment deleting any changes to the status of this segment of Five Mile Creek.

III. Use Designation for Five Mile Creek in Alabama

A. Overview

In terms of Alabama's water quality standards, EPA believes that the F&W use designation appropriately reflects fishable/swimmable uses. EPA has evaluated all available data and information to determine whether the F&W use is attainable. EPA's analysis was informed by the regulatory provisions at 40 CFR part 131 and technical guidance that EPA has provided to States for the development of use attainability analyses. As noted above, EPA regulations define a use attainability analysis as an assessment of the factors affecting attainment of a use, which may include ''physical, chemical, biological and economic factors * * *.'' 40 CFR 131.3(g). Consistent with this provision, EPA evaluated several categories of information in today's analysis of use attainability.

First, EPA evaluated available information regarding the characteristics of the waters in terms of habitat and the biological communities present. If the waters currently reflect habitat conditions and support biological communities commensurate with the F&W use designation, EPA considered this to be strong evidence in favor of an F&W designation. To facilitate this evaluation, EPA examined a 1997 study performed by EPA regarding the habitat and biological conditions in Five Mile Creek (the findings of this study are discussed below in section III.B). A related factor considered by EPA was the use designation in the adjacent segments of Five Mile Creek that are designated as F&W. If the segment of Five Mile Creek designated as A&I was similar in character to adjacent segments designated as F&W by the State, EPA considered such information as supporting the attainability of the F&W use.

Second, EPA reviewed available information regarding ambient stream chemical characteristics. EPA extracted chemical-specific data from the EPA Storage and Retrieval (STORET) Legacy system, which houses ambient water quality data for water bodies throughout the United States, including Alabama. EPA's evaluation focused on those pollutant parameters for which new or more stringent criteria would apply to the affected stream segment in Five Mile Creek. EPA evaluated the extent to which current ambient stream chemical concentrations met the F&W criteria. Significant exceedances of criteria established to protect fishable/swimmable uses may indicate that, notwithstanding the physical habitat and aquatic community present, the use is impaired to some extent. Where the biological and other information indicates that a water body is or could be generally supportive of the F&W use, exceedances of criteria for particular pollutant parameters may not be sufficient to preclude a F&W use. Rather, in some cases an aquatic community could reflect ambient conditions which are less than ideal. In such cases, full attainment of the criteria that support the use might lead to development of a more robust and diverse aquatic community than is currently present.

If significant exceedances of F&W water quality criteria (in terms of relative magnitude above the applicable criteria, duration and frequency of exceedance above the criteria, and the number and types of pollutants) occurred on a consistent basis, such information could suggest that a F&W use is currently not being fully attained. However, considerable judgment must be exercised when evaluating the extent to which current exceedances of water quality criteria in the stream indicate that the F&W use is not attainable within the meaning of the water quality standards regulations. Findings regarding attainability must take into account not only present circumstances, but also the pollutant reductions that would be achieved, at a minimum, through imposition of technology-based controls for point sources as well as implementation of best management practices for nonpoint sources.

The last broad category of information considered by EPA in its decision-making process was monitoring information for each of the dischargers on the stream segment (as reflected in Discharge Monitoring Reports or DMRs). As discussed in detail in section V.C., EPA analyzed the extent to which the proposed Federal use designations may lead to the development of more stringent NPDES permit limits and, if so, what types of controls would be needed by these facilities to meet such limits. Discharger information was used in one of two ways by the Agency. First, monitoring data was used to assess point sources to the affected stream segment and to assist in determining whether their pollutant discharges could contribute to ambient exceedances of criteria. Second, the Agency used the monitoring data to determine whether dischargers would need to significantly alter their operations (or could, in fact, meet permit limits that would be associated with the F&W use). Information indicating that dischargers could

generally meet such revised limits would support the presumption that the F&W use is attainable.

The location of elevated ambient levels of pollutants, combined with effluent monitoring data from permitted industrial and municipal wastewater discharges, provided information on possible sources of the pollutants, and whether combined sewer overflow (CSO) or other sources of storm water runoff might be contributing to any elevated pollutant levels. For example, if elevated pollutant levels occurred at stream locations upstream of permitted industrial and municipal wastewater discharges, or for pollutants not discharged in significant quantities from those sources, then this suggests that other sources are responsible for pollutant loadings to the stream segment. If elevated pollutant levels occurred at stream locations downstream of permitted industrial and municipal wastewater discharges, and there are records of discharge of those pollutants, then this suggests that those sources are contributing to pollutant loading. Based on the projected sources of pollutants, EPA projected potential costs of meeting criteria to protect the F&W use.

B. Proposed Use Designation for Five Mile Creek

Based upon the approach described above, EPA evaluated all available data and information to determine whether the F&W use is attainable for Five Mile Creek. If, prior to any final rulemaking by EPA, Alabama classifies Five Mile Creek with use designations consistent with the CWA and 40 CFR part 131, EPA will approve those use designations, eliminating the need to promulgate Federal water quality standards.

In 1997 EPA conducted a biological survey of several streams in the Birmingham area, including Five Mile Creek. The rapid bioassessment protocol utilized by agency scientists evaluated habitat, water chemistry, and benthic macroinvertebrate and fish communities. The study design allowed comparison of data from two sampling stations within the A&I segment to data from two sampling stations in the adjacent F&W segments (one in the upstream F&W segment and one in the downstream F&W segment). The results of this survey documented that Five Mile Creek had the most intact riparian zone and stream habitat of the Birmingham streams assessed in the study. All four stations received similar habitat evaluation scores (ranging from 118 to 123 (compared to the score of 118 at the reference site)). The total number of macroinvertebrate taxa differed from 20 at both stations in the A&I segment to 26 and 27 in the F&W segments, yet both stations in the A&I segment were rated as similar to the stations in the F&W segment. Likewise, based on the evaluation of fish communities, one station in the A&I segment was rated as similar to the stations in the F&W segments. The biological survey revealed evidence of a reduction in pollution sensitive macro-invertebrates at both stations in the A&I segment (Ephemeroptera, Plecoptera, Trichoptera (EPT) scores of 1 and 2 in the A&I segment versus 3 and 5 in the F&W segments), indicating that dischargers to the A&I segments may be affecting the local biological community.

The results of this survey reveal evidence that there is a viable resident aquatic community in the A&I segment of Five Mile Creek that would benefit from increased protection afforded with a F&W use designation. The habitat as well as the macroinvertebrate and fish communities found at sampling stations in the A&I segment are similar to those of the F&W segments of Five Mile Creek. This information supports the assertion that F&W is attainable for this segment.

Ambient chemical monitoring data are available for two stations on Five Mile Creek (FM1 and FM2) covering more than 20 years. EPA only evaluated data since 1980 to best reflect more recent stream conditions. Station FM1 is located just below two industrial dischargers, ABC Coke and Sloss Industries. Station FM2 is located downstream of FM1 and below the Five Mile Creek Waste Water Treatment Plant outfall. Available data from these stations include dissolved oxygen concentrations, levels of fecal coliform bacteria, and concentrations of various toxic priority pollutants and ammonia.

Dissolved oxygen (DO) levels, necessary to support aquatic life, are generally very good in Five Mile Creek. The mean DO concentration at FM1 is 8.7 mg/L (191 observations), with only 2.6% of these observations less than 5 mg/L (the F&W criterion). The mean DO concentration at FM2 is 8.48 mg/L with only 1.4% of observations less than 5 mg/L.

Criteria for fecal coliform bacteria are set to protect public health and welfare, as well as the seasonal recreational swimming use component of F&W. At station FM1, located upstream of the municipal wastewater discharge, 96.6% of the 88 observations from May 1989 to October 1998 meet (*i.e.*, are less than) the F&W single sample maximum criterion of 2,000 units per 100 mL. The geometric mean of fecal coliform bacteria measurements for this station is 145 units per 100 mL, below the F&W geometric mean criterion of 200 per 100 mL for June through September. At station FM2, below Five Mile Creek Waste Water Treatment Plant, 94.3% of the 87 observations from June 1989 to October 1998 have bacteria counts less than the F&W single sample maximum criterion of 2,000 per 100 mL. The geometric mean of measurements for this station is 232 per 100 mL for all observations, which is less than the F&W geometric mean criterion of 1,000 per 100 mL outside the swimming season. However, the geometric mean between June and September of 363 per 100 mL exceeds the F&W geometric mean criterion of 200 per 100 mL for this period of time. The exceedances of F&W fecal coliform criteria are generally not indicative of significant sewage treatment problems in this segment, yet appear largely attributable to the upstream Waste Water Treatment Plant. Optimization of Five Mile Creek Waste Water Treatment Plant's existing chlorination process would likely reduce fecal coliform levels to the necessary levels.

Criteria for toxic pollutants protect the waters for aquatic life survival (acute criteria) and propagation (chronic criteria) as well as human health from the consumption of aquatic organisms. Acute aquatic life criteria and human health criteria apply both to the A&I and F&W use; however, the F&W use also has chronic aquatic life criteria. Reported concentrations of copper, cyanide, mercury, and zinc occasionally exceed the acute and chronic aquatic life criteria at both stations. Reported concentrations of lead occasionally exceed the chronic criterion at both stations and arsenic concentrations occasionally exceed the human health (organisms only) criterion at both stations. In particular, reported concentrations of cyanide frequently exceed the chronic aquatic life criterion at both stations.

Both stations are downstream of facilities that discharge some of these pollutants found to be exceeding the ambient criteria. However, for other of these pollutants, there are no records indicating a discharge of such pollutants is occurring from the permitted facilities. As a result, some pollutants may continue to exceed criteria even with control of these permitted wastewater discharges, and additional controls on other sources might be needed to meet the current A&I use. If additional controls on other sources are put in place to meet the current A&I use, EPA projects that these controls would also provide the reductions needed to attain the F&W use. Jefferson County is

currently under a 1995 Consent Agreement with U.S. EPA to eliminate combined sewer overflow (CSO) discharges and frequent bypasses of the treatment facilities. However, there are no data on the relative contributions of the latter in relation to loadings from urban areas.

While conditions in this segment of Five Mile Creek indicate some ambient toxic pollutant exceedances, the stream segment meets the F&W criteria in most cases. EPA recognizes that additional controls on sources of certain pollutants would need to be implemented to meet criteria applicable to both the current A&I use as well as the proposed F&W use. However, based on currently available information, implementation of such control measures has not been shown to be infeasible (impacts of achieving reductions through point source controls are discussed further in section V. below).

As noted above, assessments of riparian zone, habitat, biological health, and ambient water quality demonstrate that this segment of Five Mile Creek supports viable benthic macroinvertebrate and fish communities and has physical parameters similar to those found to occur in the portions of Five Mile Creek currently classified for the F&W use. Also, while the discharges to this segment have some impact on water quality, the information available to EPA supports the conclusion that additional control measures are feasible. EPA believes that the currently available information as a whole supports the attainability of the F&W use. Therefore, EPA is proposing to reclassify this segment of Five Mile Creek to the F&W use designation.

C. Request for Comment and Data

EPA believes the F&W proposed designated use is appropriate considering the requirements of the CWA and the data and information available to EPA at the time of today's proposal. EPA acknowledges that additional data and information may exist which may further support or contradict the attainability of a F&W proposed designated use. Accordingly, the Agency will evaluate any new data and information submitted to EPA by the close of the public comment period with regard to designating the use for this stream segment. Based on that evaluation of any new data or information, EPA will make a final decision whether the F&W designated use in today's proposal is appropriate and consistent with the CWA. To assist the Agency in ensuring that this decision is based on the best available information, the Agency is soliciting additional information. To assist commenters, the following paragraphs provide guidance on the type of information EPA considers relevant.

Specifically, EPA is seeking information that would assist in determining (1) whether the designated use identified above is currently being attained or has been attained in the past; (2) whether natural conditions or features or human caused conditions prevent the attainment of this use and whether these conditions can or cannot be remedied or would cause more environmental damage to correct than to leave in place; or (3) whether controls more stringent than those required by section 301(b) and 306 of the CWA would be needed to attain the use, and whether implementation of such controls would result in substantial and widespread social and economic impact. Below is a general discussion of the types of data/information requested by the Agency:

Ambient Monitoring Information: (1) Any in-stream data for the Five Mile Creek stream segment subject to this proposal reflecting either natural conditions (*e.g.*, in-stream flow data or other data relating to stream hydrology) or human-caused conditions which cannot be remedied and which prevent the F&W use or water quality criteria from being attained; (2) any available in-stream biological data; (3) any chemical and biological monitoring data that verify improvements to water quality as a result of treatment plant/facility upgrades and/or expansions; and (4) any in-stream data reflecting nonpoint sources of pollution or best management practices that have been implemented for nonpoint source control.

Water Quality Modeling Information: (1) Any data or information on analytical models which can be used to evaluate or predict stream quality, flow, morphology; (2) any physical, biological or chemical characteristics relating to designated uses; and (3) the results of any such models which can be used to evaluate the attainment of designated uses.

Economic Data: Any information relating to costs and benefits associated or incurred as a result of facility or treatment plant expansions or upgrades. This information includes: (1) Qualitative descriptions or quantitative estimates of any costs and benefits associated with facility or treatment plant expansions or upgrades, or associated with facilities or treatment plants meeting permit limits; (2) any information on costs to households in the community with facility or treatment plant expansions or upgrades, whether through an increase in user fees, an increase in taxes, or a combination of both; (3) descriptions of the geographical area affected; (4) any changes in median household income, employment, and overall net debt as a percent of full market value of taxable property; and (5) any effects of changes in tax revenues if the private-sector entity were to go out of business, including changes in income to the community if workers lose their jobs, and effects on other businesses both directly and indirectly influenced by the continued operation of the private sector entity.

IV. Alternative Regulatory Approaches and Implementation Mechanisms

Today's proposal reflects EPA's determination that F&W is an appropriate use designation for the segment of Five Mile Creek from Newfound Creek to Ketona, based upon the information available to EPA at this time. EPA will consider any data or information submitted to the Agency by the close of the comment period in developing a final rule. However, it is possible that data and information may become available after completion of this rulemaking that will be relevant to the water quality standards for this stream. If EPA ultimately promulgates a Federal F&W use designation for this stream, there are several mechanisms available to ensure that the use and its implementing mechanisms appropriately take into account future information. These mechanisms are described below.

A. Designating Uses

States have considerable discretion in designating uses. The State may find that changes in use designations are warranted. As stated above, EPA will review any new or revised use designations adopted by the State for Five Mile Creek to determine if the standards meet the requirements of the CWA and implementing regulations. If approved, EPA would subsequently initiate withdrawal of any final Federal water quality standards which may result from today's proposal. However, the State must conduct a use attainability analysis as described in 40 CFR 131.3(g) when adopting water quality standards which result in uses which do not include fishable/swimmable, or which result in subcategories of uses which require less stringent criteria.

B. Site-Specific Criteria

The State may also develop data which indicates a site-specific water quality criterion for a particular pollutant is appropriate and take action

to adopt such a criterion into their water quality standards. Site specific criteria are allowed by regulation and are subject to EPA review and approval. 40 CFR 131.11(a) requires States to adopt criteria to protect designated uses which are based on sound scientific rationale and which contain sufficient parameters or constituents to protect the designated use. In adopting water quality criteria, States should establish numerical values based on 304(a) criteria, 304(a) criteria modified to reflect site specific conditions, or other scientifically defensible methods, or establish narrative criteria where numerical criteria cannot be determined, or to supplement numeric criteria. See 40 CFR 131.11(b).

Currently, EPA guidance describes three procedures for States and Tribes to follow in deriving site-specific criteria. These are the Recalculation Procedure, the Water-Effect Ratio Procedure and the Resident Species Procedure. These procedures can be found in the Water Quality Standards Handbook (EPA–823–B940005a, 1994). EPA also recognizes there may be naturally occurring concentrations of pollutants which may exceed the national criteria published under section 304(a) of the CWA, and has issued policy guidance on establishing site specific aquatic life criteria equal to natural background. (Memo from Tudor T. Davies, Director, Office of Science and Technology to the Regional Water Management Division Directors, and State and Tribal Water Quality Management Program Directors, dated November 5, 1997).

Today's proposed rule does not limit Alabama's ability to modify the criteria applicable to the Federal F&W use.

C. Variances

Water quality standards variances are another alternative which can provide a facility with a limited period of time to comply with water quality standards. EPA recognizes that Alabama has chosen not to include a variance procedure in its State standards. EPA is providing an explanation of this procedure as additional information the public may find useful, and as discussed below, the proposed rule contains a Federal variance procedure.

EPA believes variances are particularly suitable when the cause of non-attainment is discharger-specific and/or it appears that the designated use in question will eventually be attainable. EPA has approved the granting of water quality standards variances by States in circumstances which would otherwise justify changing a use designation on grounds of unattainability (*i.e.*, the six circumstances described in 40 CFR 131.10(g)). In contrast to a change in standards which removes a use designation for a water body, a water quality standards variance only applies to the discharger to whom it is granted and only to the pollutant parameter(s) upon which the finding of unattainability was based; the underlying standard remains in effect for all other purposes.

For example, if a designated aquatic life use is currently precluded because of high levels of metals from past mining activities which cannot be remediated in the short term, but it is expected that water quality will eventually improve, a temporary variance may be granted to a discharger with relaxed criteria for such metals, until remediation progresses and the use becomes attainable. The practical effect of such a variance is to allow a permit to be written using less stringent criteria for the problem parameters, while encouraging ultimate attainment of the underlying standard. All other parameter/pollutant criteria for that use would remain in effect. A water quality standards variance provides a mechanism for assuring compliance with sections 301(b)(1)(C) and 402(a)(1) of the CWA that require NPDES permits to meet applicable water quality standards, while granting temporary relief to point source dischargers for certain parameters.

While 40 CFR 131.13 allows States to adopt variance procedures for State-adopted water quality standards, such State procedures may not be used to grant variances from Federally promulgated standards. EPA believes that it is appropriate to provide comparable Federal procedures to address new data and information that may become available in the future. Therefore, EPA is proposing to authorize the Region 4 Regional Administrator to grant water quality standard variances where a permittee submits data indicating that the F&W designated use is not attainable for any of the reasons in 40 CFR 131.10(g). This variance procedure will apply to the F&W use for the specific segment of Five Mile Creek in today's proposal.

Today's proposed rule spells out the process for applying for and granting such variances. The Administrator is delegating to the Regional Administrator the authority to propose and grant these variances. This delegation should expedite the processing of variance requests. EPA is proposing to use informal adjudication processes in reviewing and granting variance requests. That process is contained in 40 CFR 131.34(b)(4) of today's proposed rule. Because water quality standard variances are revised water quality standards, the proposal provides that the Regional Administrator will provide public notice of the proposed variance and provide for an opportunity for public comment. EPA understands that variance related issues can often arise in the context of permit issuance. EPA Region 4 will work closely with the State permitting authorities to ensure that variance requests will be considered in conjunction with the State NPDES permitting process.

The proposed variance procedures require an applicant for a water quality standards variance to submit a request to the Regional Administrator (or his delegatee) with supporting information. The applicant must demonstrate that the designated use is unattainable for one of the reasons specified in 40 CFR 131.10(g). A variance may not be granted if the use could be attained, at a minimum, by implementing effluent limitations required under sections 301(b) and 306 of the CWA and implementing reasonable best management practices for nonpoint source control.

Under the proposal, a variance may not exceed five years or the term of the NPDES permit, whichever is less. A variance may be renewed if the permittee demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if EPA finds that the conditions of 40 CFR 131.10(g) are not met or if the permittee did not comply with the conditions of the original variance.

EPA is soliciting comment on the need for a variance process for EPA-promulgated use designations, the appropriateness of the particular procedures proposed today, and whether the proposed variance procedures are sufficiently detailed.

V. Economic Analysis

It has been determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866. EPA's proposed rule does not itself establish any requirements directly applicable to regulated entities. While implementation of today's rule may ultimately result in some new or revised permit conditions for some dischargers, EPA's action today does not impose any requirements on dischargers. Nonetheless, EPA is attempting, within the limits of these uncertainties, to make an estimate of the potential costs which might ultimately result from this rule-making. The following is a summary of the economic analysis (EA) prepared for this proposed rule. Further discussion is

included in the full EA, which is included in the docket for this rule-making.

A. Method for Estimating Costs

Before estimating potential costs, EPA performed a screening-level analysis of use attainability to determine both the achievability of criteria that support the F&W use for the stream where they are exceeded, and the sources of pollutants that would need to be controlled. EPA then estimated costs by evaluating National Pollutant Discharge Elimination System (NPDES) permitted dischargers to the specific segment of Five Mile Creek. The table below lists the municipal and industrial facilities potentially affected by a change in designated use. All three facilities are classified as major dischargers (municipal facilities discharging more than one million gallons per day (mgd) or industrial facilities discharging toxic pollutants in toxic amounts).

FIVE MILE CREEK FACILITIES POTENTIALLY AFFECTED BY THE USE UPGRADE

Facility (capacity)	NPDES No.
ABC Coke (0.12 mgd)	AL0003417
Five Mile Creek Wastewater Treatment Plant (WWTP) (20 mgd).	AL0026913
Sloss Industries (3.2 mgd)	AL0003247

In evaluating these facilities, EPA used data and information from its Permit Compliance System and publicly available data sources, modeling results provided by ADEM, and information on facility treatment processes provided by EPA Region IV. EPA estimated revised facility effluent limits for conventional pollutants if data indicate that the segment is not currently attaining the State's receiving water criteria for the higher use designation, and the facility currently has permit limits for the pollutants. For toxic pollutants, EPA calculated revised effluent limits for pollutants exhibiting reasonable potential to exceed the State's criteria for each use (following Alabama's implementation procedures for developing effluent limits). EPA made a determination that reasonable potential exists to contribute to the exceedence of the water quality standard if the receiving water concentration that would result from discharge of a facility's maximum effluent concentration (MEC) would cause an exceedance of any of the State's criteria (*e.g.*, acute or chronic) for toxic pollutants.

For some toxic pollutants, NPDES permits for the two industrial facilities currently include only effluent guideline-based limits that represent best available technology (BAT). Section 301(b)(1)(c) of the CWA and EPA regulations at 40 CFR 122.44(d) require that more stringent limits be included in permits where necessary to meet applicable water quality standards. Therefore, EPA calculated water quality-based limits that would be necessary to achieve the A&I acute aquatic life and human health criteria. These effluent limits are consistent with the current A&I use, but have not been implemented in facility permits. EPA then estimated revised effluent limits for all toxic pollutants that would apply under a F&W classification based on acute and chronic aquatic life, and human health criteria (for consumption of organisms only). EPA used the two-value steady-state wasteload allocation procedure specified in EPA's Technical Support Document for Water Quality-based Toxics Control to make these calculations. EPA compared the MEC to the projected limits to estimate the pollutant loading reductions necessary for compliance. This conservative approach maximizes the estimate of necessary pollutant loading reductions.

EPA estimated the most cost-effective control strategy for each facility to achieve compliance. To estimate the potential costs associated with the controls, EPA used readily available documentation and updated these sources to 2002 dollars.

B. Estimated Costs Associated With Fish and Wildlife (F&W) Use

Point source dischargers to the 19.4 mile segment of Five Mile Creek are not meeting their current permit limits (some limits developed only to meet BAT and other limits developed to meet criteria to protect the current State designated use of A&I), and would require additional controls to come into compliance with these limits. Further, some of the current permit limits for these facilities are not reflective of the current (A&I) use designation, and additional costs would be incurred to meet limits based on the current A&I use designation. The annual costs to meet the State's current use designation of A&I for Five Mile Creek, which are not part of the costs for today's proposal to establish the F&W use designation for the same waterbody, could range from $4 million to $10 million.

Once in compliance with limits to meet the current A&I use, only process optimization is needed for these facilities to achieve the incremental pollutant loading reductions associated with a F&W use. The table below summarizes the estimated annual costs of these controls for today's proposal. In addition, based on ambient data for several pollutants, it appears that additional controls on other sources might be needed to meet criteria to protect the current A&I use in a more consistent manner. EPA projects that these controls would also provide the reductions needed to similarly meet the criteria associated with the F&W use.

ESTIMATED ANNUAL INCREMENTAL FACILITY COSTS TO ACHIEVE F&W USE CLASSIFICATION

[Millions of 2002 $]

Facility	Total capital	Annual capital [1]	O&M	Total annual
ABC Coke	0.11	0.011	0.0	0.011
Five Mile Creek WWTP	0.36	0.034	0.0	0.034
Sloss Industries	0.26	0.025	0.0	0.025
Total	0.73	0.070	0.0	0.070

[1] Reflects capital costs annualized at 7% over 20 years.

Toxic Pollutants. Analysis of effluent monitoring data indicates that ABC Coke and Sloss Industries would require additional controls to meet A&I acute aquatic life or human health criteria for PAHs, cyanide, ammonia, and metals. Both facilities would comply with projected effluent limits to meet F&W criteria with optimization of the treatment processes needed to reduce pollutant levels to the projected A&I limits.

Conventional Pollutants. Fecal coliform bacteria counts in Five Mile Creek exceed the geometric mean criterion of 200 per 100 ml for a F&W use. The most likely source of fecal coliform bacteria is the Five Mile Creek WWTP. This facility does not have a limit for fecal coliforms and there are no effluent data for this pollutant. However, optimization of the existing chlorination process at the facility would likely reduce fecal coliform bacteria in the effluent to levels that would meet the F&W criterion.

C. Estimated Pollutant Loading Reductions Associated with F&W Use

The table below summarizes the pollutant loading reductions needed for ABC Coke, Sloss Industries, and Five Mile Creek WWTP to comply with projected effluent limits associated with F&W use. For comparison, also shown are the reductions necessary to comply with the current designated use of A&I.

POLLUTANT LOADING REDUCTIONS ASSOCIATED WITH THE USE CLASSIFICATIONS

[lb/yr]

Pollutant	Use classification	
	A&I [1]	F&W [2]
Ammonia-N	185,668	0
Benzo(a)Anthracene	152	0
Benzo(a)Pyrene	201	0
Benzo(b)Fluoranthene	211	0
Benzo(k)Fluoranthene	79.1	0
Chrysene	160	0
Total Copper	261	0
Total Cyanide	6,772	157
Total Lead	34.4	356
Total	193,539	513

[1] Based on reducing the maximum effluent concentration to the current or projected limit.

[2] Load reduction of zero indicates that the projected A&I and F&W limits are equal.

VI. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

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

VII. Executive Order 13045—Children's Health

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This proposed rule, if promulgated, would establish water quality standards to meet the requirements of the CWA and the implementing Federal regulations.

VIII. Executive Order 13132—Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would not affect the nature of the relationship between EPA and States generally, for the rule only applies to a water body segment in Alabama. Further, the proposed rule would not substantially affect the relationship of EPA and the State of Alabama, or the distribution of power or responsibilities between EPA and the various levels of government. The proposed rule would not alter the State's authority to issue NPDES permits or the State's considerable discretion in implementing these water quality standards. Further, this proposed rule would not preclude Alabama from adopting water quality standards that meet the requirements of the CWA. Thus, Executive Order 13132 does not apply to this proposed rule.

Although Executive Order 13132 does not apply to this rule, EPA did consult with representatives of the State government in developing this rule. Prior to this proposed rulemaking action, EPA had numerous phone calls, meetings and exchanges of written correspondence with Alabama's Department of Environmental Management to discuss EPA's concerns with the State's water quality standards, possible remedies for addressing the disapproved sections of the water quality standards, the use designation in today's proposal, and the Federal rulemaking process. The data and descriptive information from these exchanges was essential to evaluating and analyzing the attainment of use designations for the stream segment in today's proposal. For a more detailed description of EPA's interaction with the State on this proposed rulemaking, refer to section II.C.2. EPA will continue to work with the State before finalizing these water quality standards for Alabama. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA

to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and India tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There are no Indian Tribes in Jefferson County, Alabama, where Five Mile Creek is located. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits comment on this proposed rule from tribal officials.

X. Executive Order 13211—Energy

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

XI. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). It does not include any information collection, reporting, or record-keeping requirements. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

XII. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering these economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. The RFA requires analysis of the impacts of a rule on the small entities subject to the rule's requirements. *See United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's proposed rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. (''[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule*,'' *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by United Distribution court).) The Agency is thus certifying that today's proposed rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

Under the CWA water quality standards program, States must adopt water quality standards for their waters and must submit those water quality standards to EPA for approval; if the Agency disapproves a State standard and the State does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA also has the authority to promulgate criteria or standards in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the Act. These State standards (or EPA-promulgated standards) are implemented through various water quality control programs including the National Pollutant Discharge Elimination System (NPDES) program, which limits discharges to navigable waters except in compliance with an EPA permit or a permit issued under an approved State program. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable water quality standards.

Thus, under the CWA, EPA's promulgation of water quality standards establishes standards that the State implements through the NPDES permit process. The State has discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. While the State's implementation of Federally promulgated water quality standards may result in new or revised discharge limits being placed on small entities, the standards themselves do not apply to any discharger, including small entities.

Today's proposed rule, as explained earlier, does not itself establish any requirements that are applicable to small entities. As a result of this action, the State of Alabama will need to ensure that permits it issues include any limitations on discharges necessary to comply with the standards established in the final rule. In doing so, the State will have a number of discretionary choices associated with permit writing. While Alabama's implementation of the rule may ultimately result in some new or revised permit conditions for some dischargers, EPA's action today does not impose any of these as yet unknown requirements on small entities.

XIII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector. The proposed rule imposes no enforceable duty on any State, local or Tribal governments or the private sector; rather, this rule proposes designated uses for Five Mile Creek in Alabama which, when combined with State adopted water quality criteria, constitute water quality standards for that stream. The State may use these resulting water quality standards in implementing its water quality control programs. Today's proposed rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As stated, the proposed rule imposes no enforceable requirements on any party, including small governments. Moreover, any water quality standards, including those proposed here, apply broadly to dischargers and are not uniquely applicable to small governments. Thus, this proposed rule is not subject to the requirements of section 203 of UMRA.

XIV. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comment on this aspect of the proposed rulemaking, and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

XV. Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), to ensure their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat of such species which have been designated as ''critical.'' Consultation is designed to assist Federal agencies in complying with the requirements of section 7 by supplying a process within which FWS and NMFS provide such agencies with advice and guidance on whether an action complies with the substantive requirements of ESA.

There are no Federally listed species known to utilize this segment of Five Mile Creek and there is no critical habitat designated in Five Mile Creek. Therefore, EPA is not conducting section 7 consultation on this rulemaking with the FWS.

XVI. Plain Language

Executive Order 12886 directs each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

—Have we organized the material to suit your needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that isn't clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—What else could we do to make the rule easier to understand?

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 15, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 131.34 is added to subpart D to read as follows:

§ 131.34 Alabama.

(a) *Use designations for surface waters.* In addition to the State adopted use designations, the following water body segment in Alabama has the beneficial use designated in this paragraph (a).

Basin	Stream segment	From	To	Classification
Warrior	Five Mile Creek	Newfound Creek	Ketona	Fish & Wildlife.

(b) *Water quality standard variances.* (1) The Regional Administrator, EPA Region 4, is authorized to grant variances from the water quality standards in paragraph (a) of this section where the requirements of this paragraph (b) are met. A water quality standard variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(2) A water quality standard variance shall not be granted if:

(i) Standards will be attained by implementing effluent limitations required under sections 301(b) and 306 of the CWA and by the permittee implementing reasonable best management practices for nonpoint source control; or

(ii) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.

(3) Subject to paragraph (b)(2) of this section, a water quality standards variance may be granted if the applicant demonstrates to EPA that attaining the water quality standard is not feasible because:

(i) Naturally occurring pollutant concentrations prevent the attainment of the use;

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met;

(iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use;

(v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or

(vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

(4) *Procedures.* An applicant for a water quality standards variance shall submit a request to the Regional Administrator of EPA Region 4. The application shall include all relevant information showing that the requirements for a variance have been met. The applicant must demonstrate that the designated use is unattainable for one of the reasons specified in paragraph (b)(3) of this section. If the Regional Administrator preliminarily determines that grounds exist for granting a variance, he shall provide public notice of the proposed variance and provide an opportunity for public comment. Any activities required as a condition of the Regional Administrator's granting of a variance shall be included as conditions of the NPDES permit for the applicant. These terms and conditions shall be incorporated into the applicant's NPDES permit through the permit reissuance process or through a modification of the permit pursuant to the applicable permit modification provisions of Alabama's NPDES program.

(5) A variance may not exceed five years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant did not comply with the conditions of the original variance, or otherwise does not meet the requirements of this section.

[FR Doc. 02–26845 Filed 10–22–02; 8:45 am]

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Federal Register

Wednesday,
October 23, 2002

Part V

Department of Housing and Urban Development

24 CFR Part 5
Clarification of Eligibility of Citizens of Freely Associated States for Housing Assistance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–4754–F–01]

RIN 2577–AC35

Clarification of Eligibility of Citizens of Freely Associated States for Housing Assistance

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: Recently enacted law provides that citizens of the Freely Associated States (the Marshall Islands, the Federated States of Micronesia, and Palau) are eligible to receive housing assistance under Section 8, public housing, and other programs while lawfully residing in the United States, its territories and possessions. However, while residing in Guam, such aliens are not entitled to a preference over United States citizens or nationals. This rule makes conforming changes to HUD's regulations concerning restrictions on assistance to noncitizens.

DATES: *Effective Date:* November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Glenda N. Green, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, at (202) 708–0950. Persons with hearing- or speech-impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Background.

On January 14, 1986, Congress approved the Compacts of Free Association between the United States and the Federated States of Micronesia, and between the United States and the Government of the Marshall Islands (48 U.S.C. 1901 note). Section 141 of the Compacts of Free Association grants born or naturalized citizens of Micronesia and the Marshall Islands, and those entitled to citizenship by lineal descent, the right to establish legal residence in the United States and its territories and possessions, and to be employed in the United States. On November 14, 1986, Congress approved the Compact of Free Association with the Government of Palau (48 U.S.C. 1931 note)(collectively, this rule refers to these documents as the ''Compacts of Free Association''). Section 141 of the Compact of Free Association with Palau contains analogous provisions, with the exception, not relevant to the purposes of this rulemaking, of the lineal descent provision.

Section 3(b) of Public Law 106–504 (approved November 13, 2000) amended section 214(a) of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a(a)) which governs restrictions on housing assistance provided by HUD. As a result of this amendment, citizens of the Freely Associated States lawfully residing in the United States, its territories and possessions, are now among those noncitizens eligible for the housing assistance covered in that section. Such assistance includes public housing, Section 8 housing (both tenant and project-based), the development grant programs, and assistance under sections 235 and 236 of the National Housing Act and the Rent Supplement program under 12 U.S.C. 1701s. Additionally, Section 3(b) amends 42 U.S.C. 1436a(a) to provide that aliens legally residing in Guam under the provisions of section 141 of the Compacts of Free Association shall not be entitled to a preference in receiving housing assistance over any United States citizen or national residing in Guam. These provisions are codified in 42 U.S.C. 1436a(a)(7).

II. HUD Notice PIH 2001–27.

On August 3, 2001, HUD issued Notice PIH 2001–27 to provide guidance on the implementation of section 3(b) of Public Law 106–504. This guidance advised, and HUD strongly reiterates, that:

- PHAs must notify in writing all affected families that as a result of Public Law 106–504, citizens of the Marshall Islands, the Federated States of Micronesia, and Palau (''the Freely Associated States'') living in the United States, its territories and possessions, are now eligible to receive housing assistance.
- If a family, prior to the approval of Public Law 106–504, was considered ''mixed'' and receiving prorated assistance because certain of its members were eligible under the legal and regulatory provisions in effect before the statutory change, and other members were citizens of the Freely Associated States who are now eligible, such family is no longer ''mixed'' but is now fully eligible.
- PHAs must conduct interim reexaminations and make any rent adjustments as soon as possible. Notice PIH 2001–27 provided the process for making retroactive rent adjustments.

In addition, HUD advises that:

- PHAs in the United States, its territories and possessions, including Guam, must (if the waiting list is open for applications) accept an application from a citizen of the Freely Associated States. This is true notwithstanding the provision of the law regarding preferences in Guam.
- Citizens of the Freely Associated States may receive a local housing preference, established by the PHA. However, within Guam, such preference cannot allow them to receive housing assistance in preference to applicants who are United States citizens or nationals residing in Guam. Date and time of application are not a preference, so citizens of the Freely Associated States receive the benefit of prior date and time of application.
- Households consisting entirely of citizens of the Freely Associated States must be treated the same as United States citizens in the selection, admission, and occupancy of federally assisted housing in Guam, with the exception of the restriction on preferences. For example, let us assume for the sake of discussion that the Guam Housing and Urban Renewal Authority has a local preference for families paying more than 50% of their income for rent.[1] Let us also assume that family #1, all of whose members are citizens of the Freely Associated States, is eligible for the selection preference, and has applied for a unit of a particular bedroom size on May 15, 2002, at 10 a.m. Let us further assume that family #2 of eligible United States citizens, not entitled to any selection preference, applied for a unit of the same bedroom size on May 15, 2002, at 9:30 a.m., that no other applications were filed between these two times, and that there is one unit of the appropriate bedroom size available. The question is, could family #1 from the Freely Associated States be moved ahead of family #2 of United States citizens because of their preference, even though their application was later in time? The answer is no because the law prohibits such family from receiving a preference in housing assistance over any United States citizen or national residing in Guam.

However, let us change the example slightly. Let us now assume that family #2's application was filed by an eligible family of citizens of the Freely Associated States, but one that is not entitled to the selection preference, there are no other applications, and only one unit is available, as in the previous example. Family #1 from the Freely Associated States that has a preference

[1] This is a hypothetical example for discussion purposes only and is not intended to be an accurate representation of the Guam Housing and Urban Renewal Authority's tenant selection policies or preferences.

would get the benefit of the preference in that case and be given the unit ahead of family #2 without the preference, even though its application was a half-hour later in time.

Finally, if family #2's application was filed by the family from the Freely Associated States, and family #1's application was filed by the U.S. citizen family, and neither had any selection preferences, family #1's application would be selected according to the normal priority based on date and time of application.

III. This Final Rule

This rule merely conforms HUD's regulations to existing law. Therefore, public comment is unnecessary, and this rule is being issued as a final rule.

This final rule amends 24 CFR part 5, subpart E, the implementing regulation for 42 U.S.C. 1436a. Specifically, the rule adds a new paragraph 5.506(c) to conform the rule to the limitation on preferences in 42 U.S.C. 1436a(a)(7). It should be noted that current 24 CFR 5.506(a)(2) now includes citizens of the countries in the Compacts of Free Association (including those living in Guam and other territories and possessions) by virtue of cross-reference to 42 U.S.C. 1436a(a).

IV. Findings and Certifications

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impractical, unnecessary, or contrary to the public interest'' (see 24 CFR 10.1). In this case, public comment is unnecessary, since this rule simply conforms HUD's regulations to statutory changes that are currently in effect, in order to emphasize and communicate those legal changes to HUD's regulated community.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely conforms HUD's regulations to existing law.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact to this final rule is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

For the foregoing reasons, HUD amends 24 CFR part 5, subpart E as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

Subpart E—Restrictions on Assistance to Noncitizens

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

Authority: 42 U.S.C. 1436a and 3535d.

2. Amend 24 CFR 5.506 as follows:

a. Add a new paragraph (c) to read as follows:

§ 5.506 General provisions.

* * * * *

(c) *Preferences.* Citizens of the Republic of Marshall Islands, the Federated States of Micronesia, and the Republic of Palau who are eligible for assistance under paragraph (a)(2) of this section are entitled to receive local preferences for housing assistance, except that, within Guam, such citizens who have such local preference will not be entitled to housing assistance in preference to any United States citizen or national resident therein who is otherwise eligible for such assistance.

Dated: September 20, 2002.

Michael Liu,

Asistant Secretary for Public and Indian Housing.

[FR Doc. 02–27046 Filed 10–22–02; 8:45 am]

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October 23, 2002

Part VI

Department of Housing and Urban Development

24 CFR Part 15
Testimony of Employees in Legal Proceedings; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 15

[Docket No. FR–4783–F–01]

RIN 2501–AC90

Testimony of Employees in Legal Proceedings

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD regulations to delegate authority to the General Counsel to authorize, for good cause shown, an employee to testify as an expert or opinion witness in both matters in which the United States is a party as well as in matters exclusively among non-federal litigants.

DATES: Effective Date: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Carole W. Wilson, Associate General Counsel, Office of Litigation, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10258, Washington, DC 20410, telephone (202) 708–0300 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services) (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This rule amends the HUD regulations in subpart D of 24 CFR part 15 to provide explicitly that only the Secretary or the General Counsel may authorize an exception to the general prohibition against an employee of the Department being called to testify as an expert or opinion witness by a party other than the United States. The rule also defines ''good cause'' for when HUD may permit expert or opinion testimony under specified circumstances.

The general rule currently in 24 CFR 15.302 only permits employees of the Department to provide expert or opinion testimony on behalf of the United States. The objective of HUD's decision to authorize its employees to provide such testimony on behalf of non-federal litigants for good cause shown is to allow HUD to respond to meritorious requests for expert and opinion testimony, for example in criminal proceedings or administrative disciplinary actions for misconduct in connection with a HUD program. HUD believes that the amendment made by this rule will strengthen the integrity of HUD programs, and support HUD's partners in ensuring that business is conducted in accordance with HUD's core values and ethical standards.

Findings and Certifications

Justification for Final Rule

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule under which prior notice and comment are not required. One exception provides that the notice and public procedure may be omitted with respect to rules governing the Department's organization or the Department's own internal practices or procedures. This rule authorizes the General Counsel to make determinations regarding the testimony of employees of the Department in legal proceedings, and, as such, is limited to the Department's internal practices and procedures. Prior notice and comment are, therefore, not required.

Environmental Review

This rule would not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule would not impose a Federal mandate that will result in expenditure by State, local, or tribal governments and the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. The rule only addresses the Department's internal practices and procedures.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 15

Administrative practice and procedure, courts.

Accordingly, for the reasons described in the preamble, HUD is amending 24 CFR part 15 to read as follows:

PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES

1. The authority citation for 24 CFR part 15 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

Subpart A also issued under 5 U.S.C. 552.

Section 15.107 also issued under E.O. 12958, 60 FR 19825, 3 CFR Comp., p. 333.

Subparts C and D also issued under 5 U.S.C. 301.

2. Revise § 15.302(a) to read as follows:

§ 15.302 Testimony in proceedings in which the United States is a party.

(a) In any legal proceeding in which the United States is a party, an employee of the Department may not be called to testify as an expert or opinion witness by any party other than the United States unless specifically authorized by the Secretary or the General Counsel for good cause shown. An employee may be called by a non-federal party to testify as to facts.

* * * * *

3. Revise § 15.303 to read as follows:

§ 15.303 Legal proceedings among non-federal litigants; general rule.

(a) In any legal proceeding exclusively among non-federal litigants, no employee of the Department may, unless specifically authorized by the Secretary or General Counsel for good cause shown, testify as an expert or opinion witness as to any matter related to his or her duties or the functions of the Department, including the meaning of Departmental documents.

(b) For purposes of this subpart, ''good cause'' includes action necessary to prevent a miscarriage of justice or to promote a significant interest of the Department.

4. Revise § 15.305 to read as follows:

§ 15.305 Legal proceedings among non-federal litigants; expert or opinion testimony.

If, while testifying in a legal proceeding exclusively among non-federal litigants, an employee of the Department is asked for expert or opinion testimony, the employee shall, unless specifically authorized by the Secretary or General Counsel in accordance with § 15.303, decline to answer on the grounds that he or she is forbidden to do so by this part.

Dated: October 16, 2002.

Mel Martinez,

Secretary.

[FR Doc. 02–27045 Filed 10–22–02; 8:45 am]

BILLING CODE 4783–32–P

Federal Register

Wednesday,
October 23, 2002

Part VII

The President

Federal Register
Vol. 67, No. 205
Wednesday, October 23, 2002

Presidential Documents

Title 3—

The President

Proclamation 7612 of October 18, 2002

National Character Counts Week, 2002

By the President of the United States of America

A Proclamation

President Theodore Roosevelt once said that, ''Character, in the long run, is the decisive factor in the life of an individual and of nations alike.'' During National Character Counts Week, Americans reaffirm our dedication to promoting good character and upholding the timeless virtues that make our Nation strong.

Our Founding Fathers understood that our country would survive and flourish if our Nation was committed to good character and an unyielding dedication to liberty and justice for all. Throughout our history, our most honorable heroes practiced the values of hard work and honesty, commitment to excellence and courage, and self-discipline and perseverance. Today, as we work to preserve peace and freedom throughout the world, we are guided by a national character that respects human dignity and values every life.

The future success of our Nation depends on our children's ability to understand the difference between right and wrong and to have the strength of character to make the right choices. To help them reach their full potential and live with integrity and pride, we must teach our children to be kind, responsible, honest, and self-disciplined. These important values are first learned in the family, but all of our citizens have an obligation to support parents in the character education of our children.

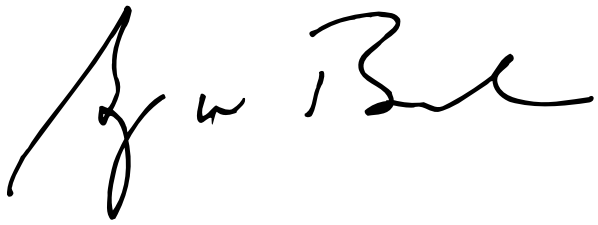
Our schools play a crucial role in teaching the skills, knowledge, and moral values that will help our children succeed. As Martin Luther King, Jr., stated, ''. . . intelligence is not enough. Intelligence plus character—that is the goal of true education.'' By guiding children to understand universal values such as respect, tolerance, compassion, and commitment to family and community, our schools are working to achieve this goal.

My Administration is committed to promoting character by encouraging public service and civic awareness. The USA Freedom Corps is helping citizens discover volunteer opportunities in their communities and spreading the message that everyone can do something to care for their neighbors in need. This past June, we convened the White House Conference on Character and Community, which showcased programs from around the country that are proving that sound values can be effectively taught.

By affirming the importance of good character in our society and encouraging all people to lead lives of virtuous purpose, we can prepare our Nation, and especially our Nation's children, for the challenges and opportunities that lie ahead. Strengthening our national character will help secure greater opportunity, prosperity, and hope for all.

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 20 through October 26, 2002, as National Character Counts Week. I call upon all public officials, educators, librarians, and all the people of the United States to observe this week with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth 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. 02–27192
Filed 10–22–02; 9:07 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7613 of October 18, 2002

National Forest Products Week, 2002

By the President of the United States of America

A Proclamation

America's forests are one of our greatest natural resources. They offer majestic beauty and fabulous recreational opportunities for all Americans to enjoy. They also are an important source of materials that help our Nation's economy to grow and flourish. By observing National Forest Products Week, we recognize the countless ways in which forests enrich our lives, and we renew our commitment to preserving these natural assets for future generations.

Forests strengthen our economy by supplying us with renewable, energy-efficient, and environmentally friendly resources that are the source of good jobs and valuable products. The wood we get from forests is a prime construction and manufacturing product that is used to build our homes and many other essential structures. Wood is also recyclable, biodegradable, and serves as a raw material for many items we use and enjoy every day, including paper, tissue, furniture, packaging materials, musical instruments, and postage stamps. The use of wood for biomass energy generation derived from thinning projects conserves fossil fuels and strengthens rural economies.

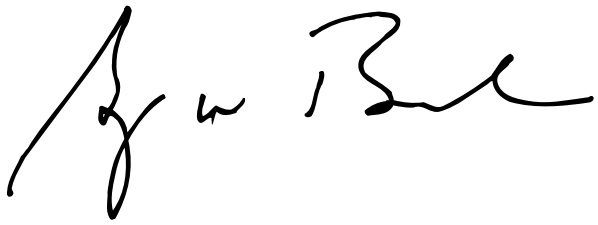
In addition, our Nation's forests protect watersheds, preserve water quality, help keep our air clean, and provide habitat for our wildlife.

To protect these vital natural resources, we must take affirmative steps towards managing our forests better, and we must work together to safeguard the health of our forests. My Administration has developed the Healthy Forests Initiative, which seeks to restore the health of our woodlands and prevent forest fires through a combination of thinning overgrowth and restoring fire-damaged areas. For the safety of our citizens, the good of our forests, and the prosperity of our economy, we must make forest health a national priority.

Recognizing the importance of our forests in ensuring our Nation's well-being, the Congress, by Public Law 86–753 (36 U.S.C. 123), as amended, has designated the week beginning on the third Sunday in October of each year as ''National Forest Products Week'' and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 20 through October 26, 2002, as National Forest Products Week. I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth 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. 02–27193
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Reader Aids

Federal Register

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 5531/P.L. 107–245

Sudan Peace Act (Oct. 21, 2002; 116 Stat. 1504)

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